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## FEDERAL HOUSING FINANCE BOARD

## 12 CFR Part 911

## FEDERAL HOUSING FINANCE AGENCY

## 12 CFR Part 1214

**RIN 2590–AA06**

## Availability of Non-Public Information

**AGENCY:** Federal Housing Finance Board; Federal Housing Finance Agency.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Agency (FHFA or Agency) is issuing a final rule governing the disclosure of FHFA non-public information. The final rule replaces rules issued by FHFA's predecessor agencies the Federal Housing Finance Board (Finance Board) and the Office of Federal Housing Enterprise Oversight (OFHEO). The final rule prohibits the unauthorized disclosure of FHFA non-public information, replaces the Finance Board's rule on the Availability of Unpublished Information, and parallels those portions of OFHEO's former rule on non-public information that were not replaced by FHFA's Freedom of Information Act regulation.

**DATES:** The effective date of this regulation is: August 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** James P. Jordan, Senior Counsel, 202–649–3075 (not a toll-free number), Federal Housing Finance Agency, Constitution Center, 400 Seventh Street SW., Eighth Floor, Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*Establishment of FHFA*

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 122 Stat. 2654) (HERA), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act), and the Federal Home Loan Bank Act (12 U.S.C. 1421–1449) to establish FHFA as an independent regulatory agency of the Federal Government. FHFA was established with all of the authorities necessary to supervise and regulate the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks (collectively, regulated entities), and the Office of Finance of the Federal Home Loan Bank System (Office of Finance).

HERA transferred to FHFA the employees, functions, and regulations of OFHEO, the Finance Board, and the Government-Sponsored Enterprise mission team within the U.S. Department of Housing and Urban Development. FHFA is responsible for ensuring that the regulated entities operate in a safe and sound manner, including maintaining adequate capital and internal controls; foster liquid, efficient, competitive, and resilient national housing finance markets; comply with the Safety and Soundness Act and their respective authorizing statutes, as well as all rules, regulations, guidelines, and orders issued under law; and carry out their missions through activities that are authorized by law and are consistent with the public interest. In addition, FHFA may prescribe regulations as determined to be appropriate regarding the conduct of conservatorships or receiverships.

The FHFA published a proposed regulation on the Availability of Non-Public Information for public comment in the **Federal Register**, 78 FR 6042 (January 29, 2013). No comments were received. Accordingly, the proposed regulation is adopted as a final regulation with only minor editorial changes.

### II. Analysis of Rule

The Safety and Soundness Act mandates that FHFA issue regulations in connection with FHFA's supervision and regulation of the regulated entities and the Office of Finance. The final rule updates, clarifies, and simplifies existing regulations and eliminates redundant provisions. It reduces confusion about the applicability of predecessor agencies' rules.

The final rule prohibits the unauthorized disclosure of FHFA non-public information, replace the Finance Board's rule on the Availability of Unpublished Information at 12 CFR part 911, and parallel those portions of OFHEO's former rule on non-public information that were not replaced by FHFA's Freedom of Information Act regulation at 12 CFR part 1202. The final rule does not affect 12 CFR part 1703 Subparts E–F. As described below, FHFA is issuing a separate rule to replace those subparts.

The final rule §§ 1214.3 and 1214.4 are substantively analogous to the former 12 CFR 1703.6 to 1703.8 and to the existing 12 CFR 911.3, which the final rule replaces. The final FHFA rule (12 CFR part 1214), the former OFHEO rule (12 CFR part 1703), and the existing Finance Board rule (12 CFR part 911), all generally prohibit disclosure of non-public agency information to parties that are not agency employees, and set forth the limited circumstances when disclosure is permitted. The Finance Board rule, 12 CFR part 911, also outlines how the Finance Board handled demands and requests for information in the context of legal proceedings. Today, FHFA also sent to be published in this issue of the **Federal Register** a final rule on ''Production of FHFA Records, Information, and Employee Testimony in Third-Party Legal Proceedings (''Touhy'') which sets forth FHFA's process for handling those demands and requests.

*Use of the Term ''Confidential''*

The final rule would define ''confidential supervisory information,'' to be included as a subset of ''non-public information.'' The inclusion of the term ''confidential'' within the definition of ''confidential supervisory information'' is not intended to invoke the meaning of ''confidential,'' as that term is used in Executive Order 13526, Classified National Security Information, December 29, 2009. Confidential supervisory information is used in part 1214 to refer to the distinct category of information defined in final § 1214.1. FHFA used the word ''confidential'' within the label for this

category of information simply to be consistent with the manner in which federal banking agencies refer to similar or identical types of information.

**Regulatory Impacts**

*Paperwork Reduction Act*

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*Regulatory Flexibility Act and Executive Order 13272—Consideration of Small Entities*

FHFA has considered the final rule's impact under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) and Executive Order 13272 of August 13, 2002. The final rule, is not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act and Executive Order 13272, because it will not: (1) Impose record-keeping requirements on them; (2) affect their competitive position in relation to large entities; and (3) affect their cash flow, liquidity or ability to remain in the market. (5 U.S.C. 605(b)).

**List of Subjects**

*12 CFR Part 911*

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

*12 CFR Part 1214*

Administrative practice and procedure, Confidential commercial information, Disclosure, Exemptions, Government employees, Records.

Accordingly, for the reasons set forth in the **SUPPLEMENTARY INFORMATION**, and under the authority of 12 U.S.C. 4526, FHFA hereby amends chapters IX and XII of title 12 of the Code of Federal Regulations as follows:

**Chapter IX—Federal Housing Finance Board**

## PART 911—[REMOVED]

■ 1. Remove part 911.

**Chapter XII—Federal Housing Finance Agency**

■ 2. Add part 1214 to read as follows:

## PART 1214—AVAILABILITY OF NON-PUBLIC INFORMATION

Sec.
1214.1 Definitions.
1214.2 Purpose and scope.
1214.3 General rule.
1214.4 Exceptions.

**Authority:** 5 U.S.C. 301, 552; 12 U.S.C. 4501, 4513, 4522, 4526, 4639.

### § 1214.1 Definitions.

*Confidential supervisory information* means information prepared or received by FHFA that meets all of the following criteria:

(1) The information is not a document prepared by a regulated entity or the Office of Finance for its own business purposes that is in its possession;

(2) The information is exempt from the Freedom of Information Act, 5 U.S.C. 552 (1966); and

(3) The information—(i) Consists of reports of examination, inspection and visitation, confidential operating and condition reports, and any information derived from, related to, or contained in such reports, or

(ii) Is gathered by FHFA in the course of any investigation, suspicious activity report, cease-and-desist order, civil money penalty enforcement order, suspension, removal or prohibition order, or other supervisory or enforcement orders or actions taken under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Public Law 102–550, 122 Stat. 2654.

*Disclosure* means release or divulgence of information by any person to a person outside of FHFA.

*FHFA employee* means strictly for the purpose of this regulation, any person employed by FHFA, including any current or former officer, intern, agent, contractor or contractor personnel, or detailee of FHFA, and any person employed by the FHFA Office of the Inspector General (FHFA–OIG), including any current or former officer, intern, agent, contractor or contractor personnel, or detailee of FHFA–OIG.

*Non-public information* means information that FHFA has not made public that is created by, obtained by, or communicated to an FHFA employee in connection with the performance of official duties, regardless of who is in possession of the information. This includes confidential supervisory information as defined above. It does not include information or documents that FHFA has disclosed under the Freedom of Information Act (5 U.S.C. 552; 12 CFR part 1202), or Privacy Act of 1974 (5 U.S.C. 552a; 12 CFR part 1204). It also does not include specific information or documents that were previously disclosed to the public at large or information or documents that are customarily furnished to the public at large in the course of the performance of official FHFA duties, including but not limited to: Disclosures made by the Director pursuant to 24 CFR subpart F, and any FHFA successor rules; the annual report that FHFA submits to Congress pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), press releases, FHFA blank forms, and materials published in the **Federal Register**.

*Person* means individual or business entity.

### § 1214.2 Purpose and scope.

(a) *Purpose.* The purpose of this part is to control the dissemination of non-public information, which includes confidential supervisory information, and maintain its controlled, sensitive, privileged, or proprietary nature, as appropriate.

(b) *Scope.* This part imposes a broad-based prohibition against unauthorized disclosure of any non-public information. This part does not supersede the regulations at 12 CFR part 1202 (governing disclosure under the Freedom of Information Act); 12 CFR part 1204 (governing disclosure under the Privacy Act); and the sections describing permitted disclosures in any FHFA rules on Federal Home Loan Bank Information Sharing or on the FHFA Public Use Database.

(c) These provisions also do not supersede or otherwise alter the rights or liabilities created by 5 U.S.C. 7211 (governing disclosures to Congress); 5 U.S.C. 2302(b)(8) (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); or 12 U.S.C. 3401 (governing disclosure of financial institution customer information).

### § 1214.3 General rule.

(a) *In general, Non-FHFA Employees.* The Director makes available to each regulated entity a copy of FHFA's report of examination of that regulated entity. The report of examination and all other confidential supervisory information is the property of FHFA and is provided to the regulated entity for its confidential internal use only. Under no circumstance shall any person in possession or control of confidential supervisory information make public or disclose, in any manner, the confidential supervisory information, or any portion of the contents thereof, except as authorized in writing by the Director.

(b) *In general, FHFA Employees.* Except as authorized in writing by the Director, no FHFA employee in possession or control of non-public information may disclose or permit the use or disclosure of such information in any manner or for any purpose.

(c) *Persons possessing confidential supervisory information.* All confidential supervisory information, for which the Director authorizes disclosure, remains the property of FHFA and may not be used or disclosed for any purpose other than that authorized under this part without the prior written permission of the Director.

(d) *No Waiver.* FHFA's disclosure of non-public information to any person does not constitute a waiver by FHFA of any privilege or FHFA's right to control, supervise, or impose limitations on, the subsequent use and disclosure of the non-public information.

(e) *Penalties, Confidential Supervisory Information.* Any person that discloses or uses confidential supervisory information except as authorized under this part may be subject to the penalties provided in 18 U.S.C. 641 and other applicable laws. In addition to those penalties, FHFA, regulated entity, Office of Finance, affiliate (as defined in 12 U.S.C. 4502(20)), or entity-affiliated party (as defined in 12 U.S.C. 4502(11)) employees may be subject to appropriate administrative, enforcement, or disciplinary proceedings.

(f) *Penalties, Non-Public Information.* Any FHFA employee that discloses or uses non-public information except as authorized under this part may be subject to the penalties provided in 18 U.S.C. 641, other applicable laws, and appropriate administrative, enforcement, or disciplinary proceedings.

**§ 1214.4 Exceptions.**

(a) *FHFA Employees.* Current FHFA employees may disclose or permit the disclosure of non-public information to another FHFA employee or regulated entity or the Office of Finance, when necessary and appropriate, for the performance of their official duties.

(b) *Regulated Entity Agents and Consultants.*—(1) When necessary and appropriate for regulated entity or Office of Finance business purposes, a regulated entity, the Office of Finance, or any director, officer, or employee thereof may disclose confidential supervisory information to any person currently engaged by the regulated entity or the Office of Finance, as officer, director, employee, attorney, auditor, or independent auditor (''regulated entity agents'').

(2) A regulated entity, the Office of Finance, or a director, officer, employee, or agent thereof, also may disclose confidential supervisory information to a consultant under this paragraph if the consultant is under a written contract to provide services to the regulated entity or the Office of Finance and the consultant has agreed in writing:

(i) To abide by the prohibition on the disclosure of confidential supervisory information contained in this section; and

(ii) That it will not use the confidential supervisory information for any purposes other than those stated in its contract to provide services to the regulated entity or the Office of Finance.

(c) *Law Enforcement Proceedings.* Notwithstanding the general prohibition of disclosure of non-public information, to the minimum extent required by the Inspector General Act, Public Law 95–452, 92 Stat. 1101 (1978), FHFA's Office of Inspector General is permitted under this section to disclose non-public FHFA information without Director approval.

(d) *Privilege.* FHFA retains all privilege claims for non-public information shared under § 1214.4, including, but not limited to attorney-client, attorney-work product, deliberative process, and examination privileges.

Dated: June 27, 2013.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

[FR Doc. 2013–15905 Filed 7–2–13; 8:45 am]

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## FEDERAL HOUSING FINANCE AGENCY

## 12 CFR Part 1215

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of Federal Housing Enterprise Oversight

## 12 CFR Part 1703

**RIN 2590–AA51**

## Production of FHFA Records, Information, and Employee Testimony in Third-Party Legal Proceedings

**AGENCY:** Federal Housing Finance Agency, Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing a final rule governing the production of FHFA records, information or employee testimony in connection with legal proceedings in which neither the United States nor FHFA is a party. This final rule establishes requirements and procedures for parties to submit demands or requests, and factors for FHFA to consider in determining whether FHFA employees will provide records, information, or testimony relating to their official duties. FHFA's intent is to standardize practices, promote uniformity in decisions, preserve the ability of FHFA to conduct agency business, protect confidential information, provide guidance to demanding or requesting parties, minimize involvement in matters unrelated to FHFA's missions and programs, avoid wasteful allocation of agency resources, and preclude spending public time and money for private purposes.

**DATES:** The effective date of this regulation is: August 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** James P. Jordan, Senior Counsel, 202–649–3075 (not a toll-free number), Federal Housing Finance Agency, Constitution Center, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Establishment of FHFA*

The Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) (12 U.S.C. 4501 *et seq.*) and the Federal Home Loan Bank Act (12 U.S.C. 1421–1449) to establish FHFA as an independent agency of the Federal Government. HERA transferred the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight over Fannie Mae and Freddie Mac, and of the Federal Housing Finance Board over the Federal Home Loan Banks and the Bank System's Office of Finance, to FHFA. FHFA is tasked with ensuring that the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks (collectively, the regulated entities) operate in a safe and sound manner; foster liquid, efficient, competitive and resilient national housing finance markets; comply with their respective authorizing statutes, and all rules, regulations, guidelines, and orders issued pursuant to those authorities; carry out their missions through duly authorized activities; and that their activities and operations are consistent with the public interest. Section 1105 of HERA amended the Safety and Soundness Act and the Inspector General Act of 1978 to establish an Inspector General within

FHFA. *See* 12 U.S.C. 4517(d). Among other duties, FHFA Office of Inspector General (FHFA–OIG) is responsible for conducting audits, evaluations, and investigations of FHFA's programs and operations; recommending policies that promote economy and efficiency in the administration of FHFA's programs and operations; and preventing and detecting fraud, waste and abuse in FHFA's programs and operations.

*B. Need for Rule*

Federal agencies often receive formal demands (including subpoenas) or informal requests to produce records, information, or testimony in judicial, legislative, or administrative proceedings in which those agencies or the United States is not a named party. Many Federal agencies have issued regulations to address the submission, evaluation, and processing of these demands or requests. They have done so because responding to these demands or requests is burdensome, may disrupt an agency employee's work schedule significantly, may involve the agency in issues unrelated to its responsibilities, may divert agency resources from accomplishing mission-critical functions, and may impede the agency's accomplishment of its mission and goals. Standard rules alleviate these difficulties by ensuring timely notice and centralized, objective decision making. The United States Supreme Court upheld this type of regulation in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), holding that provisions in the federal ''housekeeping'' statute, 5 U.S.C. 22, 5 U.S.C.A. 22 (now 5 U.S.C. 301), authorize agencies to promulgate rules governing record production and employee testimony.

Since its establishment, FHFA has not issued a regulation governing the submission, evaluation, and processing of demands or requests in connection with a legal proceeding. This final rule fills that gap and replaces applicable legacy regulations issued by FHFA's predecessor agencies, the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board. The final rule will prohibit FHFA employees from producing records, information, or testimony in response to demands or requests, unless the demands or requests comply with the rule, and FHFA then grants permission for the production. Compliance with the rule is necessary, but not sufficient, for production to occur. The final rule identifies the information that demanding or requesting parties must provide and the factors that FHFA may consider when evaluating demands or requests.

The final rule will ensure a more efficient use of agency resources, minimize the possibility of involving FHFA in issues unrelated to its mission, promote uniformity in responding to demands or requests, and maintain the impartiality of FHFA in matters that are in dispute between other parties. It will also serve the interests of FHFA in protecting sensitive, confidential and privileged information and records that are generated and compiled in the performance of official duties.

FHFA also published in this issue of the **Federal Register** a final rule titled ''Availability of Non-Public Information,'' which will govern the disclosure of FHFA non-public information.

*C. Proposed Rulemaking*

FHFA published a proposed regulation on the Production of FHFA Records, Information, and Employee Testimony in Legal Proceedings for public comment in the **Federal Register**, 78 FR 9336 (February 8, 2013). No comments were received. Accordingly, the proposed regulation is adopted as a final regulation with only minor editorial changes.

**II. Section-by-Section Analysis**

*Section 1215.1 Scope and Purpose*

This section describes the rule's scope, which includes internal agency operations. This section also sets forth the rule's purpose, which is to specify the manner in which, and standards by which, demands or requests for records, information, or testimony must be submitted, evaluated, and processed.

*Section 1215.2 Applicability*

This section identifies those demands or requests for FHFA records, information, or testimony that are subject to the rule. This section also states the types of demands or requests excepted from the rule.

*Section 1215.3 Definitions*

This section defines terms relevant to the regulation.

*Section 1215.4 General Prohibition*

This section bars producing FHFA records, information, or testimony in response to a demand or request without proper written authorization.

*Section 1215.5 Delegation*

This section authorizes FHFA's Director to delegate the Director's authority under this part.

*Section 1215.6 Factors FHFA May Consider*

This section sets forth factors that FHFA may consider when evaluating demands or requests.

*Section 1215.7 Serving Demands and Submitting Requests*

This section describes the manner in which demands or requests for FHFA records, information, or testimony must be served and submitted.

*Section 1215.8 Timing and Form of Demands and Requests*

This section describes the timing by which and the form in which a demanding or requesting party must serve its demand or submit its request.

*Section 1215.9 Failure To Meet This Part's Requirements*

This section describes the consequences of failing to meet requirements set forth in this part.

*Section 1215.10 Processing Demands and Requests*

This section describes how demands or requests must be processed and establishes deadlines. This section also provides the limited instances in which these processes or deadlines may be waived.

*Section 1215.11 FHFA Determination*

This section authorizes FHFA's Director to make FHFA's determination on demands or requests for information to be provided by FHFA. This section also describes the notice to be provided to the demanding or requesting parties when an FHFA determination is made.

*Section 1215.12 Restrictions That Apply to Testimony*

This section authorizes the imposition of conditions on employee testimony.

*Section 1215.13 Restrictions That Apply to Records and Information*

This section authorizes the imposition of conditions on production of records or information.

*Section 1215.14 Procedure in the Event of an Adverse FHFA Determination*

This section establishes an administrative mechanism by which parties aggrieved by an FHFA determination about a demand or request may seek reconsideration of that determination. This section also establishes a petition for FHFA reconsideration as a prerequisite to judicial review.

*Section 1215.15 Conflicting Court Order*

This section directs persons in possession of FHFA information to decline to comply with a court order that conflicts with an FHFA determination.

*Section 1215.16 Fees*

This section describes FHFA's entitlement to fees arising from the production of requested records, information, or testimony.

*Section 1215.17 Responses To Demands Served on Nonemployees*

This section describes how nonemployees in possession of FHFA confidential supervisory information must respond to a request or demand to produce or testify about that confidential supervisory information.

*Section 1215.18 Inspector General*

This section addresses the possibility that FHFA's Office of Inspector General may provide documents or testimony without Director approval if required by the Inspector General Act.

## III. Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

## IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the regulation under the Regulatory Flexibility Act. FHFA certifies that the final rule is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the internal operations and legal obligations of FHFA and FHFA–OIG.

## List of Subjects

*12 CFR Part 1215*

Administrative practice and procedure, Courts, Government employees, Records, Subpoenas, Testimony.

*12 CFR Part 1703*

Administrative practice and procedure, Confidential business information, Freedom of information.

## Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, and under the authority of 12 U.S.C. 4526, FHFA amends chapters and XII and XVII of title 12 of the Code of Federal Regulations as follows:

### Chapter XII—Federal Housing Finance Agency

■ 1. Add part 1215 to read as follows:

## PART 1215—PRODUCTION OF FHFA RECORDS, INFORMATION, AND EMPLOYEE TESTIMONY IN THIRD-PARTY LEGAL PROCEEDINGS

Sec.

1215.1 Scope and purpose.
1215.2 Applicability.
1215.3 Definitions.
1215.4 General prohibition.
1215.5 Delegation.
1215.6 Factors FHFA may consider.
1215.7 Serving demands and submitting requests.
1215.8 Timing and form of demands and requests.
1215.9 Failure to meet this part's requirements.
1215.10 Processing demands and requests.
1215.11 FHFA determination.
1215.12 Restrictions that apply to testimony.
1215.13 Restrictions that apply to records and information.
1215.14 Procedure in the event of an adverse FHFA determination.
1215.15 Conflicting court order.
1215.16 Fees.
1215.17 Responses to demands served on nonemployees.
1215.18 Inspector General.

**Authority:** 5 U.S.C. 301; 12 U.S.C. 4526.

### § 1215.1 Scope and purpose.

(a) This regulation sets forth the policies and procedures that must be followed in order to compel an employee of the Federal Housing Finance Agency (FHFA) to produce records or information, or to provide testimony relating to the employee's official duties, in the context of a legal proceeding. Parties seeking records, information, or testimony must comply with these requirements when submitting demands or requests:

(b) FHFA intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize the possibility of involving FHFA in controversial issues not related to its mission and functions;

(3) Maintain FHFA's impartiality;

(4) Protect employees from being compelled to serve as involuntary witnesses for wholly private interests, or as inappropriate expert witnesses regarding current law or the activities of FHFA; and

(5) Protect sensitive, confidential information and FHFA's deliberative processes.

(c) By providing these policies and procedures, FHFA does not waive the sovereign immunity of the United States.

(d) This part provides guidance for FHFA's internal operations. This part does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

(e) The production of records, information, or testimony pursuant to this part, does not constitute a waiver by FHFA of any privilege.

### § 1215.2 Applicability.

(a) This regulation applies to demands or requests for records, information, or testimony, in legal proceedings in which FHFA is not a named party.

(b) This regulation does not apply to:

(1) Demands or requests for an FHFA employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of FHFA;

(2) Requests for the release of non-exempt records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; or

(3) Congressional demands or requests for records or testimony.

### § 1215.3 Definitions.

As used in this part:

*Confidential supervisory information* means information prepared or received by FHFA that meets all of the following criteria:

(1) The information is not a document prepared by a regulated entity or the Office of Finance for its own business purposes that is in its possession;

(2) The information is exempt from the Freedom of Information Act, 5 U.S.C. 552 (1966); and

(3) The information:

(i) Consists of reports of examination, inspection and visitation, confidential operating and condition reports, and any information derived from, related to, or contained in such reports, or

(ii) Is gathered by FHFA in the course of any investigation, suspicious activity report, cease-and-desist order, civil money penalty enforcement order, suspension, removal or prohibition order, or other supervisory or enforcement orders or actions taken under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, 12 U.S.C. 4501 *et seq.*

(4) The inclusion of the term ''confidential'' within the definition of ''confidential supervisory information'' is not intended to invoke the meaning of ''confidential,'' as that term is used in Executive Order No. 13526, December 29, 2009 (75 FR 707 (Jan. 5, 2010) (President's order on the classification of National Security Information). Confidential supervisory information is used in part 1215 to refer to the distinct category of information defined in § 1215.3. FHFA used the word ''confidential'' within the label for this category of information simply to be consistent with the manner in which federal banking agencies refer to similar or identical types of information.

*Demand* means a subpoena, or an order or other command of a court or other competent authority, for the production of records, information, or testimony that is issued in a legal proceeding.

*Employee* means:

(1) Any current or former officer or employee of FHFA or of FHFA–OIG;

(2) Any other individual hired through contractual agreement by or on behalf of FHFA who has performed or is performing services under such an agreement for FHFA; and

(3) Any individual who has served or is serving in any consulting or advisory capacity to FHFA, whether formal or informal.

*Federal Home Loan Bank* means a bank established under the authority of 12 U.S.C. 1423(a).

*FHFA* means the Federal Housing Finance Agency including the FHFA–OIG.

*FHFA Counsel* means an attorney in FHFA's Office of General Counsel.

*General Counsel* means FHFA's General Counsel or a person within FHFA's Office of General Counsel to whom the General Counsel has delegated responsibilities under this part.

*Legal proceeding* means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

*Produce* means provide, disclose, expose, or grant access to.

*Records or information* means, regardless of the person or entity in possession:

(1) All documents and materials that are FHFA agency records under the Freedom of Information Act, 5 U.S.C. 552;

(2) All other documents and materials contained in FHFA files; and

(3) All other information or materials acquired by an FHFA employee in the performance of his or her official duties or because of his or her official status, including confidential supervisory information.

*Regulated entity* has the same meaning as set forth in 12 U.S.C. 4502(20). For this regulation's purposes, ''regulated entity'' also includes:

(1) The Office of Finance; and

(2) Any current or former director, officer, employee, contractor or agent of a regulated entity.

*Request* means any informal request, by whatever method, in connection with a legal proceeding, seeking production of records, information, or testimony that has not been ordered by a court or other competent authority.

*Testimony* means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, and recorded interviews made by an individual about FHFA information in connection with a legal proceeding.

**§ 1215.4 General prohibition.**

(a) No employee may produce records or information, or provide any testimony related to the records or information, in response to any demand or request without prior written approval to do so from the Director or the Director's designee.

(b) Any person or entity that fails to comply with this part may be subject to the penalties provided in 18 U.S.C. 641 and other applicable laws. A current employee also may be subject to administrative or disciplinary proceedings.

**§ 1215.5 Delegation.**

To the extent permissible by statute, the Director may delegate his or her authority under this part to any FHFA employee and the General Counsel may delegate his or her authority under this part to any FHFA Counsel.

**§ 1215.6 Factors FHFA may consider.**

The Director may grant an employee permission to testify regarding agency matters, and to produce records and information, in response to a demand or request. Among the relevant factors that the Director may consider in making this determination are whether:

(a) This part's purposes are met;

(b) FHFA has an interest in the decision that may be rendered in the legal proceeding;

(c) Approving the demand or request would assist or hinder FHFA in performing statutory duties or use FHFA resources;

(d) Production might assist or hinder employees in doing their work;

(e) The records, information, or testimony can be obtained from other sources. (Concerning testimony, ''other sources'' means a non-agency employee, or an agency employee other than the employee named).

(f) The demand or request is unduly burdensome or otherwise inappropriate under the rules of discovery or procedure governing the case or matter in which the demand or request arose;

(g) Production of the records, information, or testimony might violate or be inconsistent with a statute, Executive Order, regulation, or other legal authority;

(h) Production of the records, information, or testimony might reveal confidential or privileged information, trade secrets, or confidential commercial or financial information;

(i) Production of the records, information, or testimony might impede or interfere with an ongoing law enforcement investigation or proceedings, or compromise constitutional rights;

(j) Production of the records, information, or testimony might result in FHFA appearing to favor one litigant over another;

(k) The demand or request pertains to documents that were produced by another agency;

(l) The demand or request complies with all other applicable rules;

(m) The demand or request is sufficiently specific to be answered;

(n) The relevance of the records, information, or testimony to the purposes for which they are sought, and for which they may be used for substantive evidence;

(o) Production of the records, information, or employee testimony may implicate a substantial government interest; and

(p) Any other good cause.

**§ 1215.7 Serving demands and submitting requests.**

(a) All demands and requests must be in writing.

(b) Demands must be served and requests must be submitted to the FHFA General Counsel at the following address: General Counsel, Federal Housing Finance Agency, Constitution Center, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024.

(c) Demands must not be served upon, nor requests submitted to any regulated entity for records, information, or testimony regardless of whether the records, information, or testimony sought are in the possession of, or known by, the regulated entity. If a regulated entity receives a request or demand for records, information, or

testimony, the regulated entity must immediately notify the General Counsel and provide FHFA an opportunity to object to the demand or request before responding to the demand or request. Submitting a demand or request to a regulated entity may result in rejection of the demand or request under § 1215.9.

(d) If an employee receives a request or demand that is not properly routed through FHFA's General Counsel, as required under this section, the employee must promptly notify the General Counsel. An employee's failure to notify the General Counsel is grounds for discipline or other adverse action.

**§ 1215.8 Timing and form of demands and requests.**

(a) A party seeking records, information, or testimony must submit a request and receive a rejection before making a demand for records, information, or testimony.

(b) A demand or request to FHFA must include a detailed description of the basis for the demand or request and comply with the requirements in § 1215.7.

(c) Demands and requests must be submitted at least 60 days in advance of the date on which the records, information, or testimony is needed. Exceptions to this requirement may be granted upon a showing of compelling need.

(d) A demand or request for testimony also must include an estimate of the amount of time that the employee will need to devote to the process of testifying (including anticipated travel time and anticipated duration of round trip travel), plus a showing that no document or the testimony of non-agency persons, including retained experts, could suffice in lieu of the employee's testimony.

(e) Upon submitting a demand or request seeking employee testimony, the requesting party must notify all other parties to the legal proceeding.

(f) After receiving notice of a demand or request for testimony, but before the testimony occurs, a party to the legal proceeding who did not join in the demand or request and who wishes to question the witness beyond the scope of the testimony sought must submit a separate demand or request within 60 days of receiving the notice required under paragraph (e) of this section and must then comply with paragraph (c) of this section.

(g) Every demand or request must include the legal proceeding's caption and docket number, the forum; the name, address, phone number, State Bar number, and, if available, electronic mail address of counsel to all parties to the legal proceeding (in the case of *pro-se* parties, substitute the name, address, phone number, and electronic mail address of the *pro-se* party); and a statement of the demanding or requesting party's interest in the case. In addition, the demanding or requesting party must submit a clear and concise written statement that includes: a summary of the legal and factual issues in the proceeding and a detailed explanation as to how the records, information or testimony will contribute substantially to the resolution of one or more specially identified issues in the legal proceeding. A copy of the complaint or charging document may accompany—but must not be substituted for—the required statement.

**§ 1215.9 Failure to meet this part's requirements.**

FHFA may oppose any demand or request that does not meet the requirements set forth in this part.

**§ 1215.10 Processing demands and requests.**

(a) The Director will review every demand or request received and, in accordance with this regulation, determine whether, and under what conditions, to authorize an employee to produce records, information, or testimony.

(b) The Director will process demands and requests in the order in which they are received. The Director will ordinarily respond within 60 days from the date that the agency receives all information necessary to evaluate the demand or request. However, the time for response will depend upon the scope of the demand or request. The Director may respond outside of the 60-day period:

(1) Under exigent or unusual circumstances; or

(2) When FHFA must receive and process records or information in the possession, custody, or control of a third party.

(c) The Director may confer with counsel to parties to a legal proceeding about demands or requests made pursuant to this part. The conference may be *ex-parte.* Failure to confer in good faith, in order to enable the Director to make an informed determination, may justify rejection of the demand or request.

(d) The Director may rely on sources of information other than those provided by the demanding or requesting parties as bases for making a determination.

(e) The Director may grant a waiver of any requirement in this section to promote a significant interest of FHFA or the United States, or for other good cause.

**§ 1215.11 FHFA determination.**

(a) The Director makes FHFA's determinations regarding demands and requests.

(b) The Director will notify the demanding or requesting party of FHFA's determination, the reasons for the approval or rejection of the demand or request, and any conditions that the Director may impose on the release of records, information, or testimony.

**§ 1215.12 Restrictions that apply to testimony.**

(a) The Director may impose conditions or restrictions on testimony, including but not limited to limiting the scope of testimony or requiring the demanding or requesting party and other parties to the legal proceeding to agree that the testimony transcript will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The Director may also require a copy of the transcript of testimony to be provided to FHFA at the demanding or requesting party's expense.

(b) The Director may offer an employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the Director, the employee must not:

(1) Disclose confidential or privileged information; or

(2) Testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or FHFA's mission or functions. This provision does not apply to requests from the United States for expert or opinion testimony.

(d) The Director may assign FHFA Counsel to be present for an employee's testimony.

**§ 1215.13 Restrictions that apply to records and information.**

(a) The Director may impose conditions or restrictions on the release of records and information, including but not limited to requiring that parties to the legal proceeding obtain a protective order or execute a confidentiality agreement to limit access and further disclosure, or that parties take other appropriate steps to comply with applicable privacy requirements. The terms of a protective order or confidentiality agreement must be acceptable to the Director. In cases

where protective orders or confidentiality agreements have already been executed, the Director may condition the release of records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the Director so determines, original agency records may be presented for examination in response to a demand or request, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their status as original records, nor are they to be marked or altered. In lieu of the original records, certified copies will be presented for evidentiary purposes.

(c) The scope of permissible production is limited to that set forth in the prior, written authorization granted by the Director.

(d) If records or information are produced in connection with a legal proceeding, the demanding or requesting party must:

(1) Promptly notify all other parties to the legal proceeding that the records or information are FHFA records or information and are subject to this part and any applicable confidentiality agreement or protective order;

(2) Provide copies of any confidentiality agreement or protective order to all other parties; and

(3) Retrieve the records or information from the court or other competent authority's file when the court or other competent authority no longer requires the records or information and certify that every party covered by a confidentiality agreement, protective order, or other privacy protection has destroyed all copies of the records or information.

**§ 1215.14 Procedure in the event of an adverse FHFA determination.**

(a) *Procedure for seeking reconsideration of FHFA's determination.* A demanding or requesting party seeking reconsideration of FHFA's rejection of a demand or request, or of any restrictions on receiving records, information, or testimony, may seek reconsideration of the rejection or restrictions as follows:

(1) *Notice of Intention to Petition for Reconsideration.* The aggrieved demanding or requesting party may seek reconsideration by filing a written Notice of Intention to Petition for Reconsideration (Notice) within 10 business days of the date of FHFA's determination. The Notice must identify the petitioner, the determination for which reconsideration is being petitioned, and any dates (such as deposition, hearing, or court dates) that are significant to petitioner. The Notice must be served in accordance with § 1215.7.

(2) *Petition for Reconsideration.* Within five business days of filing Notice, the petitioner must file a Petition for Reconsideration (Petition) in accordance with § 1215.7. The Petition must contain a clear and concise statement of the basis for the reconsideration with supporting authorities. Determinations about petitions for reconsideration are within the discretion of the FHFA Director, and are final.

(b) *Prerequisite to judicial review.* Pursuant to section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to FHFA for reconsideration of a final determination made under the authority of this part is a prerequisite to judicial review.

**§ 1215.15 Conflicting court order.**

Notwithstanding FHFA's rejection of a demand for records, information, or testimony, if a court or other competent authority orders an FHFA employee to comply with the demand, the employee must promptly notify FHFA's General Counsel of the order, and the employee must respectfully decline to comply, citing *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). An employee's failure to notify the General Counsel of a court or other authority's order is grounds for discipline or other adverse action.

**§ 1215.16 Fees.**

(a) The Director may condition the production of records, information, or an employee's appearance on advance payment of reasonable costs to FHFA, which may include but are not limited to those associated with employee search time, copying, computer usage, and certifications.

(b) Witness fees will include fees, expenses, and allowances prescribed by the rules applicable to the particular legal proceeding. If no fees are prescribed, FHFA will base fees on the rule of the federal district court closest to the location where the witness will appear. Such fees may include but are not limited to time for preparation, travel, and attendance at the legal proceeding.

**§ 1215.17 Responses to demands served on nonemployees.**

(a) FHFA confidential supervisory information is the property of FHFA, and is not to be disclosed to any person without the Director's prior written consent.

(b) If any person in possession of FHFA confidential supervisory information, is served with a demand in a legal proceeding directing that person to produce FHFA's confidential supervisory information or to testify with respect thereto, such person shall immediately notify the General Counsel of such service, of the testimony requested and confidential supervisory information described in the demand, and of all relevant facts. Such person shall also object to the production of such confidential supervisory information on the basis that the confidential supervisory information is the property of FHFA and cannot be released without FHFA's consent and that production must be sought from FHFA following the procedures set forth in §§ 1215.7, 1215.8, and 1215.14 of this part.

**§ 1215.18 Inspector General.**

Notwithstanding the general prohibition of disclosure of records and information, to the minimum extent required by the Inspector General Act, Public Law 9–452 (1978), FHFA's Office of Inspector General is permitted under this section to disclose records and information and permit FHFA–OIG employee testimony without Director approval.

**Chapter XVII—Office of Federal Housing Finance Oversight, Department of Housing and Urban Development**

## PART 1703—[REMOVED]

■ 2. Remove part 1703.

Dated: June 27, 2013.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

[FR Doc. 2013–15906 Filed 7–2–13; 8:45 am]

**BILLING CODE 8070–01–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 73

**[Docket No. FAA–2010–1146; Airspace Docket No. 10–ASO–25]**

**RIN 2120–AA66**

## Amendment of Restricted Areas R–2907A and R–2907B, Lake George, FL; and R–2910, Pinecastle, FL

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

**ACTION:** Final rule.

**SUMMARY:** This action expands the restricted airspace at Lake George, FL, and Pinecastle, FL, providing additional restricted airspace needed to contain

airborne laser operations and other hazardous activities. The changes allow more realistic training in current tactics to be conducted at the range.

**DATES:** Effective date 0901 UTC, August 22, 2013.

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

**SUPPLEMENTARY INFORMATION:**

## History

On December 22, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to restructure and expand the restricted areas at Lake George, FL, and Pinecastle, FL (75 FR 80372). Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the FAA. Over 35 responses were received. The commenters included pilots, flight instructors, property owners, Aircraft Owners and Pilots Association (AOPA), Embry Riddle Aeronautical University (ERAU) and Phoenix East Aviation, Inc.

## Discussion of Comments

The majority of the commenters objected to the proposed establishment of two new restricted areas, R–2907B (located between R–2907 and R–2906); and R–2910D (located between R–2910 and R–2907). Because both R–2907B and R–2910D would extend from 500 feet MSL up to FL 230, the commenters argued that this would block two important east-west VFR corridors forcing VFR pilots to make an extensive circumnavigation of the Pinecastle/Lake George complex or risk flying beneath the restricted areas below 500 feet. Many commenters suggested that raising the floors anywhere from 1,000 feet to 3,000 feet would resolve the situation.

After negotiations with the proponent, it was decided to subdivide R–2907B and R–2910D into two areas each with the split at 2,000 feet MSL. As agreed, R–2907B extends from 2,000 feet MSL up to FL 230; and a new area, R–2907C, is established directly below R–2907B with vertical limits of 500 feet MSL up to but not including 2,000 feet MSL. Similarly, R–2910D is split at 2,000 feet MSL with dimensions of 2,000 feet MSL up to FL 230; and a new area, R–2910E directly beneath R–2910D, with vertical limits of 500 feet MSL up to but not including 2,000 feet MSL. To provide greater opportunity for availability of the VFR corridors, the proponent agreed to limit the activation of R–2907C and R–2910E to a maximum of 800 hours per year. The idea of subdividing the areas at 3,000-feet MSL instead of 2,000 feet was considered. However, the proponent was concerned that a 3,000-foot split could result in the need for more frequent activation of the ''low'' restricted areas to accomplish some mission profiles, which could further limit access to the VFR corridors.

Another issue noted by the commenters was the compression of airspace due to the close proximity of the southern boundary of R–2910 (extending from the surface to 6,000 feet MSL) to the northern boundary of the Orlando Class B airspace area and the Orlando Mode C veil. Because the R–2910 boundary effectively abuts the Orlando Class B/Mode C veil (a gap less than 1 NM wide) pilots transiting the area would be forced to choose whether to climb above the 6,000-foot restricted area, risk intrusion into the Class B airspace or the restricted area, or make a significant deviation to avoid the area entirely. Non-electrical system/non-transponder equipped aircraft face similar choices regarding the Class B boundary and the Mode C veil. Two commenters suggested moving the southernmost boundary of R–2910 five nautical miles (NM) to the north to alleviate the problem.

Moving the boundary five NM to the north, as suggested, would eliminate R–2910C and most of R–2910B which would adversely affect mission accomplishment. The proponent agreed that R–2910C will be activated only when absolutely necessary to accomplish the mission. When R–2910C is not in use, the gap between R–2910B and the Class B boundary/Mode C veil would be about 2.5 NM.

A number of commenters were concerned about the inability to communicate by radio with the controlling agency to determine the status of the airspace, particularly at lower altitudes. They requested that a communications frequency for the controlling agency be printed on the Sectional Aeronautical Chart to make it easier for pilots to obtain the airspace status while en route.

The proponent agreed to this request and provided a VHF frequency for contacting the Fleet Area Control and Surveillance Facility, Jacksonville (call sign ''Sealord''). Communications coverage with ''Sealord'' is much better due to the transmitter site being located within the Pinecastle Range complex. Local pilots taking off from airports that lie underneath the Palatka MOA, as well as pilots transiting the area, should be able to determine the status of the airspace without delay. In fact, a communications frequency box for obtaining restricted area status is already published near the restricted areas on both the Jacksonville Sectional Aeronautical Chart and the Tampa/Orlando VFR Terminal Area Chart.

Some commenters said that the published time of designation for the restricted areas more accurately reflect actual utilization. The proponent agreed to reduce the current charted times from ''Intermittent, 0500–0100 local time, daily; other times by NOTAM 6 hours in advance,'' to ''Intermittent, 0800–2400 local time, daily; other times by NOTAM 6 hours in advance.'' During periods when the airspace is not needed by the using agency for its designated purpose, the airspace will be returned to the controlling agency (i.e., Jacksonville ARTCC) for access by other airspace users. Keep in mind that the areas are not constantly in use during the published times. These times reflect the most likely periods when activity could occur and the 6-hour NOTAM provision provides the using agency with the flexibility to accommodate mission requirements outside the ''core'' hours. The charted status frequency box provides a means for pilots to obtain real time status of the restricted areas.

## Differences From NPRM

Restricted area R–2906 was added to this rule to reduce the time of designation to be consistent with the adjacent restricted areas and to update the name of the using agency. The current boundaries and altitudes for R–2906 are not affected by this rule.

The time of designation for all Pinecastle, FL, and Lake George, FL, restricted areas is reduced from ''Intermittent, 0500 to 0100 local time, daily; other times by NOTAM 6 hours in advance,'' to ''Intermittent, 0800–2400, daily; other times by NOTAM, 6 hours in advance.''

R–2907B was further divided into two subareas: R–2907B and R–2907C, to preserve access to a VFR corridor. Similarly, R–2910D was divided into two subareas: R–2910D and R–2910E, to preserve access to a VFR corridor.

## The Rule

This action amends 14 CFR part 73 by modifying restricted areas R–2906, Rodman, FL; R–2907A and B, Lake George, FL; and R–2910, Pinecastle, FL, as outlined below.

### *R–2906 Changes*

The NPRM did not propose any changes for R–2906. However, it was decided to reduce the time of designation for R–2906 from ''Intermittent, 0500 to 0100 local time,

daily; other times by NOTAM 6 hours in advance,'' to ''Intermittent, 0800 to 2400 local time, daily; other times by NOTAM 6 hours in advance,'' to match the times for R–2907 and R–2910. In addition, an editorial correction is made to the using agency name by removing the abbreviation ''NAS'' from the text. The boundaries and altitudes of R–2906 remain unchanged.

*R–2907 Changes*

This action expands the boundaries of R–2907A westward to incorporate that restricted airspace currently designated as R–2907B. Further, the upper altitude limit in that incorporated section (currently 6,000 feet and 9,000 feet MSL) is raised to FL 230 to match the current R–2907A ceiling. The R–2907B title is redescribed as a new restricted area immediately to the north of the newly incorporated section of R–2907A. The new R–2907B extends northward from the expanded R–2907A boundary to abut the boundary of the southern half of existing restricted area R–2906, Rodman, FL. In the NPRM, the FAA proposed that R–2907B would extend from 500 feet MSL up to FL 230. After commenters objected, as discussed above, it was decided to further subdivide R–2907B into two areas. The revised R–2907B extends from 2,000 feet MSL up to FL 230; and a new area, R–2907C extends from 500 feet MSL up to but not including 2,000 feet MSL (directly below R–2907B). R–2907C will be activated only on a limited basis, not to exceed 800 hours per year, and only when absolutely needed to accomplish the mission. This ensures greater availability of the VFR corridor than what was originally proposed.

*R–2910 Changes*

This action expands and restructures R–2910. Currently, R–2910 extends from the surface to three different altitudes: 6,000 feet MSL, 9,000 feet MSL and FL 230. This action replaces R–2910 with five subareas: R–2910A, R–2910B, R–2910C, R–2910D and R–2910E. The new R–2910A consists of that part of the existing R–2910 running from the current northwest end of R–2910 southeastward to latitude 29°00′00″ N. The new R–2910A extends from the surface up to FL 230. As proposed, the remaining section of the current R–2910 (i.e., the airspace south of latitude 29°00′0″ N.) is split into two new subareas, designated R–2910B and R–2910C, that each extend from the surface to 6,000 feet MSL. The 6,000-foot MSL ceiling of these two subareas provides airspace to enable nonparticipating aircraft to climb above that segment of the R–2910 complex while remaining outside the Orlando Class B airspace area. In response to comments about the compression of airspace between the Class B airspace/Orlando Mode C veil and R–2910, the U.S. Navy agreed to activate R–2910C only when absolutely necessary to accomplish the mission. When R–2910C is not in use, this will provide additional room for pilots wishing to navigate below 6,000 feet MSL between the Class B/Mode C veil and the boundary of R–2910B.

An additional new restricted area is established within the airspace that lies between the new R–2910A and the expanded R–2907A. As proposed, this new area was designated R–2910D extending from 500 feet MSL to FL 230. In response to commenters, objections discussed above, R–2910D was changed to extend from 2,000 feet MSL to FL 230 and a new area R–2907E, extending from 500 feet MSL to but not including 2,000 feet MSL, is established directly below R–2907D. This allows greater availability of the VFR corridor. As with R–2907C, above, the U.S. Navy agreed to a maximum of 800 hours per year for use of R–2910E.

This rule includes several editorial changes to update controlling and using agency information. The controlling agency for R–2907A is updated by replacing ''Jacksonville ARTC Center'' with ''Jacksonville ARTCC.'' The using agency for R–2907A is changed from ''Jacksonville Operating Area Coordination Center, (JOACC), NAS Jacksonville, FL,'' to ''U.S. Navy, Fleet Area Control and Surveillance Facility, Jacksonville (FACSFAC JAX), Jacksonville, FL.'' The using agency for R–2906 and the remaining R–2907 and R–2910 areas is edited by adding ''U.S. Navy'' and removing the abbreviation ''NAS.''

In a separate nonrulemaking action, the FAA is modifying the Palatka 1 and Palatka 2 military operations areas (MOA) to reduce the times of use to match the modified restricted area times; amending the boundary descriptions to reflect the restricted area changes, and excluding the restricted airspace when the restricted areas are active.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in SubtitleVII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it will restructure special use airspace in Florida to accommodate military training requirements.

**Environmental Review**

In accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraphs 402 and 404d, the FAA has conducted an independent evaluation of the U.S. Navy's ''Final Environmental Assessment (FEA),'' dated August 2012, regarding the expansion of the Pinecastle Range Complex. The FAA adopted the FEA and prepared a Finding of No Significant Impact/Record of Decision dated June 2013. The FAA has determined that no significant impacts would occur as a result of the Federal Action and therefore that preparation of an Environmental Impact Statement is not warranted and a Finding of No Significant Impact in accordance with 40 CFR 1501.4 (e) is appropriate.

**List of Subjects in 14 CFR Part 73**

Airspace, Prohibited Areas, Restricted Areas.

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

## PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

**§ 73.29 (Amended)**

■ 2. § 73.29 is amended as follows:

* * * * *

**R–2906 Rodman, FL [Amended]**

By removing the current time of designation and using agency and inserting the following:

Time of designation. Intermittent, 0800–2400, daily; other times by NOTAM 6 hours in advance.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Jacksonville (FACSFAC JAX), Jacksonville, FL.

* * * * *

**R–2907A Lake George, FL [Amended]**

By removing the current boundaries, time of designation and using agency and inserting the following:

Boundaries. Beginning at lat. 29°22′51″ N., long. 81°31′19″ W.; to lat. 29°12′31″ N., long. 81°29′59″ W.; to lat. 29°12′31″ N., long. 81°38′29″ W.; to lat. 29°15′06″ N., long. 81°39′59″ W.; to lat. 29°15′06″ N., long. 81°51′49″ W.; to lat. 29°20′06″ N., long. 81°51′49″ W.; to lat. 29°20′06″ N., long. 81°39′59″ W.; to lat. 29°23′01″ N., long. 81°39′59″ W.; to lat. 29°23′01″ N., long. 81°38′54″ W.; thence clockwise along the 5 NM arc centered at lat. 29°19′12″ N., long. 81°35′14″ W. to the point of beginning.

Time of designation. Intermittent, 0800–2400, daily; other times by NOTAM, 6 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Jacksonville (FACSFAC JAX), Jacksonville, FL.

* * * * *

**R–2907B Lake George, FL [Amended]**

By removing the current boundaries, designated altitudes, time of designation and using agency and inserting the following:

Boundaries. Beginning at lat. 29°25′41″ N., long. 81°41′47″ W.; to lat. 29°23′01″ N., long. 81°39′59″ W.; to lat. 29°20′06″ N., long. 81°39′59″ W.; to lat. 29°20′06″ N., long. 81°51′49″ W.; to lat. 29°29′30″ N., long. 81°51′41″ W.; thence counterclockwise along a 5 NM arc centered at lat. 29°29′01″ N., long. 81°45′59″ W.; to the point of beginning.

Designated altitudes. 2,000 feet MSL to FL 230.

Time of designation. Intermittent, 0800–2400, daily; other times by NOTAM, 6 hours in advance.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Jacksonville (FACSFAC JAX), Jacksonville, FL.

* * * * *

**R–2907C Lake George, FL [New]**

Boundaries. Beginning at lat. 29°25′41″ N., long. 81°41′47″ W.; to lat. 29°23′01″ N., long. 81°39′59″ W.; to lat. 29°20′06″ N., long. 81°39′59″ W.; to lat. 29°20′06″ N., long. 81°51′49″ W.; to lat. 29°29′30″ N., long. 81°51′41″ W.; thence counterclockwise along a 5 NM arc centered at lat. 29°29′01″ N., long. 81°45′59″ W.; to the point of beginning.

Designated altitudes. 500 feet MSL to, but not including, 2,000 feet MSL.

Time of designation. Intermittent, 0800–2400, daily; other times by NOTAM, 6 hours in advance; not to exceed 800 hours per year.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Jacksonville (FACSFAC JAX), Jacksonville, FL.

* * * * *

**R–2910 Pinecastle, FL [Removed]**

* * * * *

**R–2910A Pinecastle, FL [New]**

Boundaries. Beginning at lat. 29°07′58″ N., long. 81°48′29″ W.; to lat. 29°10′01″ N., long. 81°50′34″ W.; to lat. 29°14′01″ N., long. 81°45′49″ W.; to lat. 29°11′51″ N., long. 81°42′59″ W.; thence clockwise along a 5 NM arc centered at lat. 29°06′53″ N., long. 81°42′54″ W.; to lat. 29°10′14″ N., long. 81°38′39″ W.; to lat. 29°00′00″ N., long. 81°30′00″ W.; to lat. 29°00′01″ N., long. 81°42′29″ W.; to lat. 29°03′15″ N., long. 81°46′50″ W.; thence clockwise along a 5 NM arc centered at lat. 29°06′53″ N., long. 81°42′54″ W.; to the point of beginning.

Designated altitudes. Surface to FL 230.

Time of designation. Intermittent, 0800–2400, daily; other times by NOTAM, 6 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Jacksonville (FACSFAC JAX), Jacksonville, FL.

* * * * *

**R–2910B Pinecastle, FL [New]**

Boundaries. Beginning at lat. 29°00′00″ N., long. 81°30′00″ W.; to lat. 28°57′56″ N., long. 81°28′24″ W.; to lat. 28°55′20″ N., long. 81°36′12″ W.; to lat. 29°00′01″ N., long. 81°42′29″ W.; to the point of beginning.

Designated altitudes. Surface to 6,000 feet MSL.

Time of designation. Intermittent, 0800–2400, daily; other times by NOTAM, 6 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Jacksonville (FACSFAC JAX), Jacksonville, FL.

* * * * *

**R–2910C Pinecastle, FL [New]**

Boundaries. Beginning at lat. 28°57′56″ N., long. 81°28′24″ W.; to lat. 28°53′39″ N., long. 81°33′56″ W.; to lat. 28°55′20″ N., long. 81°36′12″ W.; to the point of beginning.

Designated altitudes. Surface to 6,000 feet MSL.

Time of designation. Intermittent, 0800–2400, daily; other times by NOTAM, 6 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Jacksonville (FACSFAC JAX), Jacksonville, FL.

* * * * *

**R–2910D Pinecastle, FL [New]**

Boundaries. Beginning at lat. 29°12′31″ N., long. 81°29′59″ W.; to lat. 29°00′00″ N., long. 81°30′00″ W.; to lat. 29°10′14″ N., long. 81°38′39″ W.; thence counterclockwise along a 5 NM arc centered at lat. 29°06′53″ N., long. 81°42′54″ W.; to lat. 29°11′51″ N., long. 81°42′59″ W.; to lat. 29°14′01″ N., long. 81°45′49″ W.; to lat. 29°10′01″ N., long. 81°50′34″ W.; to lat. 29°15′55″ N., long. 81°56′40″ W.; to lat. 29°20′06″ N., long. 81°51′49″ W.; to lat. 29°15′06″ N., long. 81°51′49″ W.; to lat. 29°15′06″ N., long. 81°39′59″ W.; to lat. 29°12′31″ N., long. 81°38′29″ W.; to the point of beginning.

Designated altitudes. 2,000 feet MSL to FL 230.

Time of designation. Intermittent, 0800–2400, daily; other times by NOTAM, 6 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Jacksonville (FACSFAC JAX), Jacksonville, FL.

* * * * *

**R–2910E Pinecastle, FL [New]**

Boundaries. Beginning at lat. 29°12′31″ N., long. 81°29′59″ W.; to lat. 29°00′00″ N., long. 81°30′00″ W.; to lat. 29°10′14″ N., long. 81°38′39″ W.; thence counterclockwise along a 5 NM arc centered at lat. 29°06′53″ N., long. 81°42′54″ W.; to lat. 29°11′51″ N., long. 81°42′59″ W.; to lat. 29°14′01″ N., long. 81°45′49″ W.; to lat. 29°10′01″ N., long. 81°50′34″ W.; to lat. 29°15′55″ N., long. 81°56′40″ W.; to lat. 29°20′06″ N., long. 81°51′49″ W.; to lat. 29°15′06″ N., long. 81°51′49″ W.; to lat. 29°15′06″ N., long. 81°39′59″ W.; to lat. 29°12′31″ N., long. 81°38′29″ W.; to the point of beginning.

Designated altitudes. 500 feet MSL to, but not including, 2,000 feet MSL.

Time of designation. Intermittent, 0800–2400, daily; other times by NOTAM, 6 hours in advance; not to exceed 800 hours per year.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility, Jacksonville (FACSFAC JAX), Jacksonville, FL.

Issued in Washington, DC, on June 27, 2013.

**Gary A. Norek,**

*Manager, Airspace Policy and ATC Procedures Group.*

[FR Doc. 2013–16054 Filed 7–2–13; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 91, 121 and 125**

**[Docket No.: FAA–2013–0579; Amendment Nos. 91–329, 121–364 and 125–62]**

**RIN 2120–AK27**

# Flight Data Recorder Airplane Parameter Specification Omissions and Corrections

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** This action amends the operating regulations for flight data recorders by correcting errors in recording rates in three different appendices. These errors create requirements that could not be met by certain airplanes without extensive modification, which was not intended when the requirements were adopted. The corrected recording rates are as intended when the applicable flight data recorder parameter requirements were adopted, but which have been omitted from the current publication of the regulatory text.

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

Submit comments on or before August 2, 2013.

**ADDRESSES:** Send comments identified by docket number FAA–2013–0579 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov*.

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action contact Chris Parfitt, Flight Standards Service, Aircraft Maintenance Division—Avionics Maintenance Branch, AFS–360, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–6398; email *chris.parfitt@faa.gov.*

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

**SUPPLEMENTARY INFORMATION:**

## Good Cause for Immediate Adoption

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

This rule corrects errors in the recording rates for two flight data recorder parameters. The errors appear in three appendices to the flight recorder requirements. The correct standards were adopted during full notice and comment rulemakings. The nature of the errors is explained in the preamble below. None of the errors changes a standard, nor will there be any effect on regulated entities other than to prevent future misunderstandings that would have been resolved when interested persons contact the FAA.

Accordingly, the FAA finds that further notice and comment are unnecessary.

## Comments Invited

For the reasons noted above, the FAA is adopting this final rule without prior notice and public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice.

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the changes. The most helpful comments reference a specific portion of this rule, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or, if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. Once the comment period closes, the FAA will review and dispose of the comments filed in the rulemaking docket. Because this is a final rule, the FAA will publish a disposition of comments in the **Federal Register**. Based on the comments received, the FAA will state whether it has decided that (i) no action is necessary other than publishing the disposition of comments in the **Federal Register**, or (ii) the FAA should prepare a revised final rule.

## Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. Mark the information that is considered proprietary or confidential. If the information is on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under § 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. The FAA holds it in a separate file to which the public

does not have access, and the agency places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, the FAA treats it as any other request under the Freedom of Information Act, 5 U.S.C. 552. The FAA processes such a request under the DOT procedures found in 49 CFR part 7.

**Authority for This Rulemaking**

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701. Under that section, the FAA is charged with prescribing regulations providing minimum standards for other practices, methods and procedures necessary for safety in air commerce. This regulation is within the scope of that authority since flight data recorders are the only means available to account for airplane movement and flight crew actions critical to finding the probable cause of incidents or accidents, including data that could prevent future incidents or accidents.

**I. Discussion of Final Rule**

This final rule amends three appendices in 14 CFR related to flight data recorder (FDR) requirements.

First, Appendix E to part 91 is amended to correct what appears to be a typographical error introduced when the rule was published. Currently, for the altitude parameter, the sampling rate per second is listed as 11. The correct rate has always been 1 sample per second. A review of the original typewritten document that was submitted for publication suggests that a stray mark caused the number to be translated as 11. The sample rate of 1 per second was in the proposed rule (53 FR 4314; February 12, 1988) and the final rule (54 FR 34284; August 18, 1989). Since a sample rate of 11 is unknown in the industry and compliance would require a major airplane equipment modification, affected operators have understood that this was a typographical error, and complied with the 1 sample per second rate. Despite the age of the error, this correction does not comprise the adoption of a different standard that will affect airplanes operating under these regulations since any initial misunderstandings have been clarified when the agency was contacted.

The second and third corrections concern identical standards in Appendix M to part 121 and Appendix E to part 125. In each Appendix, footnote 5 was added following a petition for rulemaking from Airbus Industries and subsequent rulemaking to adopt the changes (64 FR 46117; August 24, 1999), as evidenced by the discussion in the preamble to that rule. However, the current regulation lists only the adjustment for the resolution, and not the sampling interval. This action puts the sampling interval of once per second back in to the footnote for the affected airplanes. Since the airplane can be operated under parts 121 or 125 using the identical standard, the appendices for each are being corrected.

None of these changes will require action by airplane owners, operators or manufacturers as the affected airplanes already comply with the requirements of the originally adopted rules and the corrections adopted here. Since these requirements were intended in the original rules, there is no new impact on safety. The correction of these errors and omissions will prevent future confusion and require less contact between the FAA and regulated entities who must comply with the regulations.

**II. Summary of the Costs and Benefits of the Final Rule**

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

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

> This rule has minimal cost because none of the changes outlined above will require action by airplane owners, operators or manufacturers as the affected airplanes already comply with the requirements of the originally adopted rules and the corrections adopted here. Furthermore, since these requirements were intended in the original rules, there is no new impact on safety.

The FAA has, therefore, determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

**III. Regulatory Notices and Analyses**

*A. Regulatory Flexibility Determination*

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

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must

include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule will have minimal cost because none of the changes outlined above will require action by airplane owners, operators or manufacturers as the affected airplanes already comply with the requirements of the originally adopted rules and the corrections adopted here. Furthermore, since these requirements were intended in the original rules, there is no new impact on safety.

Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

*B. International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Public Law 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that none of the rule changes will require action by airplane owners, operators or manufacturers as the affected airplanes already comply with the requirements of the originally adopted rules and the corrections adopted here. Therefore this final rule will have no effect on international trade.

*C. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

*E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

*F. International Compatibility and Cooperation*

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

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

*G. Environmental Analysis*

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312f and involves no extraordinary circumstances.

## IV. Executive Order Determinations

*A. Executive Order 13132, Federalism*

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

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

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

## V. How To Obtain Additional Information

*A. Rulemaking Documents*

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

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Access the Government Printing Office's Web page at: *http://www.gpo.gov/fdsys/*.

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

*B. Small Business Regulatory Enforcement Fairness Act*

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

## List of Subjects

*14 CFR Part 91*

Aircraft, Aviation safety.

*14 CFR Part 121*

Air carriers, Aircraft, Aviation safety, Safety, Transportation.

*14 CFR Part 125*

Aircraft, Aviation safety.

**The Amendment**

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

## PART 91—GENERAL OPERATING AND FLIGHT RULES

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

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

■ 2. In Appendix E to part 91, revise the entry for Altitude under the column heading ''Parameters'' to read as follows:

| Parameters | Range | Installed system [1] minimum accuracy (to recovered data) | Sampling interval (per second) | Resolution [4] read out |
|---|---|---|---|---|
| * * * | * | * * | * | * |
| Altitude | −1,000 ft. to max cert. alt. of A/C. | ±100 to ±700 ft. (see Table 1, TSO C51–a). | 1 | 25 to 150 ft. |
| * * * | * | * * | * | * |

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 3. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

■ 4. In Appendix M to part 121, revise footnote 5 to parameter 14a, Yaw control position(s) (fly-by-wire), to read as follows:

**Appendix M to Part 121**

* * * * *

[5] For A330/A340 series airplanes, resolution = 1.18% (0.703° > 0.120°).

For A330/A340 series airplanes, seconds per sampling interval = 1.

* * * * *

## PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD COPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 5. The authority citation for part 125 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 6. In Appendix E to part 125, revise footnote 5 to parameter 14a, Yaw control position(s) (fly-by-wire), to read as follows:

**Appendix E to Part 125**

* * * * *

[5] For A330/A340 series airplanes, resolution = 1.18% (0.703° > 0.120°).

For A330/A340 series airplanes, seconds per sampling interval = 1.

* * * * *

Issued under authority of 49 U.S.C. 106(f) and 44701(a) in Washington, DC, on June 21, 2013.

**Michael P. Huerta,**

*Administrator.*

[FR Doc. 2013–16011 Filed 7–2–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Part 774

**[Docket No. 120806310–3555–02]**

**RIN 0694–AF76**

## Implementation of the Understandings Reached at the 2012 Australia Group (AG) Plenary Meeting and the 2012 AG Intersessional Decisions; Changes to Select Agent Controls—Correction

**AGENCY:** Bureau of Industry and Security, Commerce.

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

**SUMMARY:** The Bureau of Industry and Security (BIS) published a final rule in the **Federal Register** on Wednesday, June 5, 2013 (78 FR 33692), that amended the Export Administration Regulations (EAR) to implement the understandings reached at the June 2012 plenary meeting of the Australia Group (AG) and the 2012 AG intersessional decisions. That final rule also amended the EAR to reflect recent changes to the controls maintained by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, on the possession, use, and transfer of select biological agents within the United States. The preamble of that final rule contained an error in its description of the amendments to Export Control Classification Number (ECCN) 1C351 that were based on the understandings reached at the 2012 AG Plenary. The preamble also contained an error in its description of the amendments to ECCN 2B352 that were based on the 2012 AG intersessional decisions. In addition, that final rule contained errors affecting the control language in ECCN 2B352, which controls specified equipment capable of use in handling biological materials. This document corrects these errors.

**DATES:** This rule is effective July 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Sangine, Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3343.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 5, 2013, the final rule ''Implementation of the Understandings Reached at the 2012 Australia Group (AG) Plenary Meeting and the 2012 AG Intersessional Decisions; Changes to Select Agent Controls'' was published in the **Federal Register** (78 FR 33692). In the preamble of that final rule, the discussion of the amendments to ECCN 1C351 erroneously indicated that the bacterium ''Coxiella burnetii'' was previously controlled under ECCN 1C351.c.11 when, in fact, this bacterium was previously controlled under ECCN 1C351.c.10 and is now controlled under 1C351.c.13, based on the amendments contained that final rule. Instead, prior to the publication of that final rule, ECCN 1C351.c.11 controlled ''Enterohaemorrhagic Escherichia coli, serotype O157 and other verotoxin producing serotypes.'' As a result of the

amendments made by that final rule, these bacteria are now controlled under ECCN 1C351.c.17, with the control language having been clarified to read ''Shiga toxin producing Escherichia coli (STEC) of serogroups O26, O45, O103, O104, O111, O121, O145, O157, and other shiga toxin producing serogroups.''

The preamble of that final rule also contained an error in its description of the amendments to ECCN 2B352. Specifically, in the description of the technical characteristics of the spray-drying equipment now controlled under ECCN 2B352.f, the preamble mistakenly referred to ''a typical mean product particles size'' when it should have said ''a typical mean product particle size,'' consistent with the control language in ECCN 2B352.f.2.

In addition, that final rule amended ECCN 2B352, under the ''Items'' paragraph in the List of Items Controlled, by redesignating paragraphs f. through h. as paragraphs g. through i., respectively, and adding a new paragraph f. to control specified spray drying equipment capable of drying toxins or pathogenic microorganisms. However, that final rule did not make the necessary conforming changes, in ECCN 2B352.i.3 and Technical Note 2 to ECCN 2B352, to reflect the redesignation of 2B352.h (specified spraying or fogging systems and components therefor) as 2B352.i.

This rule makes these conforming changes, as follows. First, in ECCN 2B352.i.3, the phrase ''as specified in paragraphs h.1 and h.2 of this ECCN'' is revised to read, ''as specified in paragraphs i.1 and i.2 of this ECCN.'' Second, in Technical Note 2 to ECCN 2B352, the phrase ''as specified in 2B352.h'' is revised to read, ''as specified in 2B352.i.'' These conforming changes do not affect either the scope of the EAR controls that apply to equipment controlled under ECCN 2B352 or the specific equipment that is subject to these EAR controls.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 15, 2012, 77 FR 49699 (August 16, 2012), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

**Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Room 6622, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). The changes contained in this rule are non-substantive technical corrections of a previously published rule that has already been exempted from notice and comment and delay in effective date provisions, because the content of the June 5, 2013, final rule involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). The corrections contained in this final rule are essential to ensuring the accurate and complete implementation of the June 5, 2013, final rule.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Therefore, this regulation is issued in final form.

**List of Subjects in 15 CFR Part 774**

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

## PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR Part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

**Supplement No. 1 to Part 774—[Amended]**

■ 2. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is amended under the ''*Items''* paragraph in the List of Items Controlled section by revising paragraph i.3 and Technical Note 2 that follows paragraph i. to read as follows:

**2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* * * *
*Related Controls:* * * *
*Related Definitions:* * * *
*Items:*

* * * * *

i. * * *

i.3. Aerosol generating units specially designed for fitting to the systems as specified in paragraphs i.1 and i.2 of this ECCN.

*Technical Notes:*

1. * * *

2. This ECCN does not control spraying or fogging systems and components, as specified in 2B352.i., that are demonstrated not to be capable of delivering biological agents in the form of infectious aerosols.

* * * * *

Dated: June 27, 2013.

**Bernard Kritzer,**

*Director, Office of Exporter Services.*

[FR Doc. 2013–15970 Filed 7–2–13; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1 and 602

**[TD 9623]**

**RIN 1545–BI99**

## Application of Section 108(i) to Partnerships and S Corporations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations relating to the application of section 108(i) of the Internal Revenue Code (Code) to partnerships and S corporations and provides rules regarding the deferral of discharge of indebtedness income and original issue discount deductions by a partnership or an S corporation with respect to reacquisitions of applicable debt instruments after December 31, 2008, and before January 1, 2011. The regulations affect partnerships and S corporations with respect to reacquisitions of applicable debt instruments and their partners and shareholders.

**DATES:** *Effective Date:* These regulations are effective on July 2, 2013.

*Applicability Date:* For dates of applicability, see § 1.108(i)–0(b).

**FOR FURTHER INFORMATION CONTACT:** Joseph R. Worst, Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 622–3070 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–2147. The collection of information in these final regulations is in § 1.108(i)–2(b)(3)(iv). Under § 1.108(i)–2(b)(3)(iv), when a partnership makes an election under section 108(i), one or more of the partners in the partnership may be required to provide certain information to the partnership so that the partnership can correctly determine each such partner's deferred section 752 amount with respect to an applicable debt instrument.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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 return information are confidential, as required by 26 U.S.C. 6103.

### Background

Section 108(i) was added to the Code by section 1231 of the American Recovery and Reinvestment Tax Act of 2009, Public Law 111–5 (123 Stat. 338 (2009)), and generally provides for an elective deferral of cancellation of debt income (COD income) realized by a taxpayer from a reacquisition of an applicable debt instrument that occurs after December 31, 2008, and before January 1, 2011. COD income deferred under section 108(i) is included in gross income ratably over a five taxable-year period (inclusion period) beginning with the taxpayer's fourth or fifth taxable year following the taxable year of the reacquisition.

When a debt instrument is issued (or treated as issued) as part of the reacquisition, some or all of any original issue discount (OID) expense accruing from the debt instrument in a taxable year prior to the first taxable year of the inclusion period may also be required to be deferred (deferred OID deduction). The aggregate amount of deferred OID deductions is limited to the amount of COD income deferred with respect to the applicable debt instrument for which the section 108(i) election is made, and the aggregate amount of deferred OID deductions is taken into account ratably over the inclusion period.

In general, COD income deferred under section 108(i) and related deferred OID deductions with respect to an applicable debt instrument that have not been previously taken into account (deferred items) are accelerated and taken into account in the taxable year in which an acceleration event occurs.

A section 108(i) election is irrevocable and, if a section 108(i) election is made, sections 108(a)(1)(A), (B), (C), and (D) do not apply to the COD income that is deferred under section 108(i). Section 108(i)(7) authorizes the Secretary to prescribe regulations, rules, or other guidance as may be necessary or appropriate for purposes of applying section 108(i).

In August 2009, the IRS and the Treasury Department issued Rev. Proc. 2009–37 (2009–36 IRB 309), which provides election procedures for taxpayers (including partnerships and S corporations) and other guidance under section 108(i). Partnerships and S corporations that make an election under section 108(i) (electing partnership or electing S corporation) must follow the election procedures and reporting requirements of Rev. Proc. 2009–37.

Temporary regulations (TD 9498, 75 FR 49380) and a notice of proposed rulemaking (REG–144762–09, 75 FR 49427) (proposed regulations) cross-referencing the temporary regulations were published in the **Federal Register** on August 13, 2010. No public hearing was requested or held. However, written comments responding to the notice of proposed rulemaking were received from the public. These comments were considered and are available for public inspection at *http://www.regulations.gov* or upon request. After consideration of the comments, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed in this preamble.

### Summary of Comments and Explanation of Provisions

*A. Partnership-Level Election*

Section 108(i)(5)(B)(iii) provides that in the case of a partnership, S corporation, or other passthrough entity that reacquires an applicable debt instrument, the election under section 108(i) shall be made by the partnership, S corporation, or other entity involved. One commenter suggested that the final regulations permit a partner in a partnership to make a section 108(i) election if the partnership does not make the election. The commenter reasoned that a partner-level election rule would align section 108(i) with section 108(d)(6), which generally applies the rules under section 108 at the partner level. Additionally, the commenter noted that a partner-level election would be beneficial when the partners who control the partnership have no interest in making a section

108(i) election, but a non-controlling partner does. Section 108(i)(5)(B)(iii) is unambiguous as to permitting only a partnership to make the election and, therefore, the IRS and the Treasury Department do not adopt the commenter's suggestion in the final regulations.

*B. Applicable Debt Instrument Safe Harbors*

Section 108(i) applies to the reacquisition of an ''applicable debt instrument,'' which is defined under section 108(i)(3)(A) as any debt instrument issued by a C corporation or any other person in connection with the conduct of a trade or business by such person. The statute does not define what ''in connection with the conduct of a trade or business'' means in this context. The proposed regulations do not explicitly define the phrase either but, rather, provide five safe harbors under which a debt instrument is deemed to be issued in connection with a partnership's or S corporation's conduct of a trade or business for purposes of section 108(i) (trade or business safe harbors). If none of the trade or business safe harbors apply, then the determination of whether a debt instrument is an applicable debt instrument is based on the facts and circumstances.

One commenter recommended that the final regulations add an additional trade or business safe harbor providing that a debt instrument issued by a partnership to acquire or improve real property held for rental purposes is treated as issued in connection with a trade or business for purposes of section 108(i) if at least 30 percent of the total tax basis (without reduction for depreciation deductions) of the partnership's property is allocable to depreciable property. Section 167(a) provides that a depreciation deduction is allowed for the exhaustion, wear and tear (1) of property used in a trade or business or (2) of property held for the production of income. Thus, the fact that property is depreciable does not necessarily indicate that the property is used in a trade or business. The final regulations, therefore, do not adopt this comment.

One of the trade or business safe harbors in the proposed regulations requires that the gross fair market value of the trade or business assets of the partnership that issued the debt instrument be at least 80 percent of the gross fair market value of that partnership's total assets on the date of issuance. The commenter also requested that, because many partnerships own interests in lower-tier partnerships, the final regulations should permit an upper-tier electing partnership to take into account its proportionate share of assets held through lower-tier partnerships in which the upper-tier electing partnership holds a significant percentage of the interests (for example, at least 20 percent) as part of its trade or business assets. After consideration of the comment, the IRS and the Treasury Department have decided to not adopt the comment in the final regulations because doing so would add undue complexity to the trade or business safe harbors. No inference should be drawn from the decision not to adopt the comments as to whether a partnership described in the comments is or is not engaged in a trade or business.

*C. Deferred Section 752 Amount Rules*

Section 108(i)(6) provides that any decrease in a partner's share of partnership liabilities as a result of the discharge shall not be taken into account for purposes of section 752 at the time of the discharge to the extent it would cause the partner to recognize gain under section 731 (section 108(i)(6) deferral). The decrease in a partner's share of a partnership liability under section 752(b) resulting from the reacquisition of an applicable debt instrument that is not treated as a current distribution of money to the partner under section 752(b) by reason of the section 108(i)(6) deferral is referred to as a partner's ''deferred section 752 amount.'' Under the proposed regulations, a partner's deferred section 752 amount cannot exceed the partner's share of deferred COD income. The partner's deferred section 752 amount is treated as a distribution of money to the partner under section 752(b) at the same time and, to the extent remaining, in the same amount as the partner recognizes the deferred COD income (the last sentence of section 108(i)(6)).

Some commenters are unsure how to apply the last sentence of section 108(i)(6) during the inclusion period when a partner's deferred section 752 amount is less than the partner's deferred COD income. The final regulations clarify the last sentence of section 108(i)(6) by adding an example to illustrate that the deferred section 752 amount is treated as a deemed distribution under section 752(b) in a taxable year of the inclusion period to the extent that the deferred section 752 amount (less any deferred section 752 amount that has already been treated as a deemed distribution under section 752(b) in a prior taxable year of the inclusion period) is equal to or less than the partner's deferred COD income that is recognized in such taxable year.

*D. Acceleration Events*

1. Bankruptcy Issues

The proposed regulations provide that the deferred section 108(i) items are accelerated in the taxable year that includes the day before the day on which an electing partnership or S corporation files a petition in a Title 11 or similar case (filing acceleration rule). Some commenters questioned when this rule applies. The filing acceleration rule applies to partnerships and S corporations that make an election under section 108(i) before filing a petition in a Title 11 or similar case. Without this rule, the period of limitations on assessment under section 6501 may prevent the IRS from assessing tax on deferred COD income. The filing acceleration rule, however, does not apply to partnerships and S corporations that file a petition in a Title 11 or similar case before making an election under section 108(i).

A commenter also suggested that the final regulations permit partnerships and S corporations that have made an election under section 108(i) after filing bankruptcy to reorganize, recapitalize, or liquidate in bankruptcy without triggering acceleration of the deferred items under section 108(i). The commenter explained that a bankruptcy reorganization will in many cases cause an acceleration of the deferred items under section 108(i) because the bankrupt partnerships or S corporations may sell, exchange or transfer substantially all of their assets or liquidate as part of the reorganization. The IRS and the Treasury Department do not adopt this comment because the same acceleration events that apply to partnerships and S corporations that do not file bankruptcy should apply to partnerships and S corporations that make an election under section 108(i) after filing bankruptcy.

2. Calculation of ''Substantially All'' of the Assets

The proposed regulations provide that a sale, exchange, transfer, or gift of ''substantially all'' of the assets of an electing partnership or S corporation triggers an acceleration of the deferred section 108(i) items. The proposed regulations provide that ''substantially all'' of a partnership's or S corporation's assets means assets representing at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets (90/70 test), as measured immediately prior

to the sale, exchange, transfer, or gift in question.

One commenter advocated for a facts and circumstance test rather than the 90/70 test in determining whether a partnership or S corporation transfers substantially all of its assets for purposes of accelerating the deferred items under section 108(i). The IRS and the Treasury Department considered the comment but decided to retain the rule in the proposed regulations, because the 90/70 test provides electing partnerships and S corporations clear guidance on when a sale, exchange, transfer, or gift of their assets accelerates their deferred items.

3. Exceptions for Certain Distributions and Section 381 Transactions

Section 1.108(i)–2(b)(6)(ii)(A) of the proposed regulations provides that when a direct or indirect partner of an electing partnership sells, exchanges, transfers (including contributions and distributions), or gifts all or a portion of its ''separate interest'' (a direct interest in an electing partnership or in a partnership or S corporation that is a direct or indirect partner of an electing partnership), its deferred items with respect to the separate interest are accelerated and must be taken into account.

The proposed regulations provide an exception to this acceleration rule under § 1.108(i)–2(b)(6)(iii)(E) for certain distributions of separate interests. Under § 1.108(i)–2(b)(6)(iii)(E), if a partnership (upper-tier partnership) that is a direct or indirect partner of an electing partnership distributes its entire separate interest (distributed separate interest) to one or more of its partners (distributee partners) that have a share of the electing partnership's deferred items from the upper-tier partnership with respect to the distributed separate interest, the distributee partners' shares of the electing partnership's deferred items with respect to the distributed separate interest are not accelerated.

The proposed regulations also provide an exception to the acceleration rule in § 1.108(i)–2(b)(6)(ii)(A) for section 381 transactions. Under § 1.108(i)–2(b)(6)(iii)(F), a C corporation partner's share of an electing partnership's deferred items is not accelerated if, as part of a transaction described in § 1.108(i)–2(b)(6)(ii)(A), the assets of the C corporation partner are acquired by another C corporation in a transaction that is treated, under § 1.108(i)–1(b)(2)(ii)(B), as a transaction to which section 381(a) applies. An S corporation partner's share of an electing partnership's deferred items is not accelerated if, as part of a transaction described in § 1.108(i)–2(b)(6)(ii)(A), the assets of the S corporation partner are acquired by another S corporation in a transaction to which section 381(a) applies.

Since the publication of the proposed regulations, the IRS and the Treasury Department have considered whether the exceptions in § 1.108(i)–2(b)(6)(iii)(E) and § 1.108(i)–2(b)(6)(iii)(F) should apply when the electing partnership terminates under section 708(b)(1)(A). In that situation, the electing partnership no longer exists and cannot report any deferred items to its partners. Therefore, the final regulations clarify that the exceptions to acceleration for distributions of entire separate interests under § 1.108(i)–2(b)(6)(iii)(E) and for section 381 transactions under § 1.108(i)–2(b)(6)(iii)(F), do not apply if the electing partnership terminates under section 708(b)(1)(A).

*E. Real Estate Investment Trusts*

Section 2.01 of Rev. Proc. 2009–37 provides that for purposes of section 108(i), real estate investment trusts (REITs) are not passthrough entities. One commenter recommended that, for purposes of clarity, the final regulations should reiterate the statement in Rev. Proc. 2009–37 that REITs are not passthrough entities for purposes of section 108(i).

As stated in Rev. Proc. 2009–37, the IRS and the Treasury Department believe that REITs are not passthrough entities for purposes of section 108(i). However, the IRS and the Treasury Department do not believe it is necessary to add a rule in the final regulations to that effect because the issue is addressed in Rev. Proc. 2009–37.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information imposed on partners of partnerships is minimal in that it requires partners to share information with partnerships that partners already maintain. Moreover, it should take a partner no more than one hour to satisfy the information-sharing requirement in these regulations. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

## Drafting Information

The principal author of these regulations is Joseph R. Worst of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

## List of Subjects

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

## PART 1—INCOME TAXES

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

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

Section 1.108(i)–2 also issued under 26 U.S.C. 108(i)(7). * * *

■ **Par. 2.** Section 1.108(i)–2 is added to read as follows:

### § 1.108(i)–2 Application of section 108(i) to partnerships and S corporations.

(a) *Overview.* Under section 108(i), a partnership or an S corporation may elect to defer COD income arising in connection with a reacquisition of an applicable debt instrument for the deferral period. COD income deferred under section 108(i) is included in gross income ratably over the inclusion period, or earlier upon the occurrence of any acceleration event described in paragraph (b)(6) or (c)(3) of this section. If a debt instrument is issued (or treated as issued under section 108(e)(4)) in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in

§ 1.108(i)–3(a), some or all of the deductions for OID with respect to such debt instrument must be deferred during the deferral period. The aggregate amount of OID deductions deferred during the deferral period is generally allowed as a deduction ratably over the inclusion period, or earlier upon the occurrence of any acceleration event described in paragraph (b)(6) or (c)(3) of this section. Paragraph (b) of this section provides rules that apply to partnerships. Paragraph (c) of this section provides rules that apply to S corporations. Paragraph (d) of this section provides general rules that apply to partnerships and S corporations. Paragraph (e) of this section provides election procedures and reporting requirements. Paragraph (f) of this section contains the effective/applicability date. See § 1.108(i)–0(a) for definitions that apply to this section.

(b) *Specific rules applicable to partnerships*—(1) *Allocation of COD income and partner's deferred amounts.* An electing partnership that defers any portion of COD income realized from a reacquisition of an applicable debt instrument under section 108(i) must allocate all of the COD income with respect to the applicable debt instrument to its direct partners that are partners in the electing partnership immediately before the reacquisition in the manner in which the income would be included in the distributive shares of the partners under section 704 and the regulations under section 704, including § 1.704–1(b)(2)(iii), without regard to section 108(i). The electing partnership may determine, in any manner, the portion, if any, of a partner's COD income amount with respect to an applicable debt instrument that is the deferred amount, and the portion, if any, that is the included amount. However, no partner's deferred amount with respect to an applicable debt instrument may exceed that partner's COD income amount with respect to such applicable debt instrument, and the aggregate amount of the partners' COD income amounts and deferred amounts with respect to each applicable debt instrument must equal the electing partnership's COD income amount and deferred amount, respectively, with respect to each such applicable debt instrument.

(2) *Basis adjustments and capital account maintenance*—(i) *Basis adjustments.* The adjusted basis of a partner's interest in a partnership is not increased under section 705(a)(1) by the partner's deferred amount in the taxable year of the reacquisition. The adjusted basis of a partner's interest in a partnership is not decreased under section 705(a)(2) by the partner's share of any deferred OID deduction in the taxable year in which the deferred OID accrues. The adjusted basis of a partner's interest in a partnership is adjusted under section 705(a) by the partner's share of the electing partnership's deferred items for the taxable year in which the partner takes into account such deferred items under this section.

(ii) *Capital account maintenance.* For purposes of maintaining a partner's capital account under § 1.704–1(b)(2)(iv) and notwithstanding § 1.704–1(b)(2)(iv)(*n*), the capital account of a partner of a partnership is adjusted under § 1.704–1(b)(2)(iv) for a partner's share of an electing partnership's deferred items as if no election under section 108(i) were made.

(3) *Deferred section 752 amount*—(i) *In general.* An electing partnership shall determine, for each of its direct partners with a deferred amount, the partner's deferred section 752 amount, if any, with respect to an applicable debt instrument. A partner's deferred section 752 amount with respect to an applicable debt instrument equals the decrease in the partner's share of a partnership liability under section 752(b) resulting from the reacquisition of the applicable debt instrument that is not treated as a current distribution of money under section 752(b) by reason of section 108(i)(6) (deferred section 752 amount). A partner's deferred section 752 amount is treated as a distribution of money by the partnership to the partner under section 752(b) at the same time and, to the extent remaining, in the same amount as the partner recognizes the deferred amount with respect to the applicable debt instrument.

(ii) *Electing partnership's computation of a partner's deferred section 752 amount.* To compute a partner's deferred section 752 amount, the electing partnership must first determine the amount of gain that its direct partner would recognize in the taxable year of a reacquisition under section 731 as a result of the reacquisition of one or more applicable debt instruments during the taxable year absent the deferral provided in the second sentence of section 108(i)(6) (the section 108(i)(6) deferral). If a direct partner of an electing partnership would not recognize any gain under section 731 as a result of the reacquisition of one or more applicable debt instruments during the taxable year absent the section 108(i)(6) deferral, the partner will not have a deferred section 752 amount with respect to any applicable debt instrument that is reacquired during the taxable year. If a direct partner of an electing partnership would recognize gain under section 731 as a result of the reacquisition of one or more applicable debt instruments during the taxable year absent the section 108(i)(6) deferral, the partner's deferred section 752 amount for all applicable debt instruments that are reacquired during the taxable year is equal to the lesser of the partner's aggregate deferred amounts from the electing partnership for all applicable debt instruments reacquired during the taxable year, or the gain that the partner would recognize in the taxable year of the reacquisitions under section 731 as a result of the reacquisitions absent the section 108(i)(6) deferral. In determining the amount of gain that the direct partner would recognize in the taxable year of a reacquisition under section 731 as a result of the reacquisition of one or more applicable debt instruments during the taxable year absent the section 108(i)(6) deferral, the rule under § 1.731–1(a)(1)(ii) applies to any deemed distribution of money under section 752(b) resulting from a decrease in the partner's share of a reacquired applicable debt instrument that is treated as an advance or drawing of money. The amount of any deemed distribution of money under section 752(b) resulting from a decrease in the partner's share of a reacquired applicable debt instrument that is treated as an advance or drawing of money under § 1.731–1(a)(1)(ii) is determined as if no COD income resulting from the reacquisition of the applicable debt instrument is deferred under section 108(i).

(iii) *Multiple section 108(i) elections.* If a direct partner of an electing partnership has a deferred section 752 amount under paragraph (b)(3)(ii) of this section for the taxable year of a reacquisition, and the partner has a deferred amount with respect to more than one applicable debt instrument from the electing partnership for which a section 108(i) election is made in that taxable year, the partner's deferred section 752 amount with respect to each such applicable debt instrument equals the partner's deferred section 752 amount as determined under paragraph (b)(3)(ii) of this section, multiplied by a ratio, the numerator of which is the partner's deferred amount with respect to such applicable debt instrument, and the denominator of which is the partner's aggregate deferred amounts from the electing partnership for all applicable debt instruments reacquired during the taxable year.

(iv) *Electing partnership's request for information.* At the request of an electing partnership, each direct partner

of the electing partnership that has a deferred amount with respect to such partnership must provide to the electing partnership a written statement containing information requested by the partnership that is necessary to determine the partner's deferred section 752 amount (such as the partner's adjusted basis in the partner's interest in the electing partnership). The written statement must be signed under penalties of perjury and provided to the requesting partnership within 30 days of the date of the request by the electing partnership.

(v) *Examples.* The following examples illustrate the rules under paragraph (b)(3) of this section:

*Example 1.* (i) A and B each hold a 50 percent interest in Partnership, a calendar-year partnership. As of January 1, 2009, A and B each have an adjusted basis of $50 in their partnership interests. Partnership has two applicable debt instruments outstanding, debt one of $300 and debt two of $200. A and B share equally in the debt for section 752(b) purposes. On March 1, 2009, debt one is cancelled and Partnership realizes $300 of COD income. On December 1, 2009, debt two is cancelled and Partnership realizes $200 of COD income. The Partnership has no other income or loss items for 2009. A and B are each allocated $150 of COD income from debt one and $100 of COD income from debt two. Partnership makes an election under section 108(i) to defer $225 of the $300 of COD income realized from the reacquisition of debt one, $150 of which is A's deferred amount, and $75 of which is B's deferred amount. Partnership also makes an election under section 108(i) to defer $125 of the $200 of COD income realized from the reacquisition of debt two, $100 of which is A's deferred amount, and $25 of which is B's deferred amount. A has no included amount for either debt. B has an included amount of $75 with respect to debt one and an included amount of $75 with respect to debt two for 2009.

(ii) Under paragraph (b)(3)(ii) of this section, the amount of gain that A would recognize under section 731 as a result of the reacquisitions absent the section 108(i)(6) deferral is $200. Thus, A's deferred section 752 amount with respect to debt one and debt two equals $200 (the lesser of A's aggregate deferred amounts with respect to debt one and debt two of $250, or gain that A would recognize under section 731 in 2009, as a result of the reacquisitions absent the section 108(i)(6) deferral, of $200). Under paragraph (b)(3)(iii) of this section, $120 of A's $200 deferred section 752 amount relates to debt one ($200 × $150/$250) and $80 relates to debt two ($200 × $100/$250).

(iii) Under paragraph (b)(3)(ii) of this section, the amount of gain that B would recognize under section 731 as a result of the reacquisitions absent the section 108(i)(6) deferral is $50. Thus, B's deferred section 752 amount with respect to debt one and debt two equals $50 (the lesser of B's aggregate deferred amounts with respect to debt one and debt two of $100, or gain that B would recognize under section 731 in 2009, as a result of the reacquisitions absent the section 108(i)(6) deferral, of $50). Under paragraph (b)(3)(iii) of this section, $37.50 of B's $50 deferred section 752 amount relates to debt one ($50 × $75/$100) and $12.50 relates to debt two ($50 × $25/$100).

(iv) A will recognize $50 of deferred COD income ($30 with respect to debt one and $20 with respect to debt two) in each of the five taxable years of the inclusion period, provided there are no earlier acceleration events under paragraph (b)(6) of this section. Under paragraph (b)(3)(i) of this section, A will be treated as receiving a $30 deemed distribution under section 752(b) with respect to debt one and a $20 deemed distribution with respect to debt two in each of the first, second, third, and fourth taxable years of the inclusion period. A will not have any remaining deferred section 752 amounts in the fifth taxable year of the inclusion period.

(v) B will recognize $20 of deferred COD income ($15 with respect to debt one and $5 with respect to debt two) in each of the five taxable years of the inclusion period, provided there are no earlier acceleration events under paragraph (b)(6) of this section. Under paragraph (b)(3)(i) of this section, B will be treated as receiving a $15 deemed distribution under section 752(b) with respect to debt one and a $5 deemed distribution with respect to debt two in the first and second taxable year of the inclusion period, and a $7.50 deemed distribution under section 752(b) with respect to debt one ($10 × $15/$20) and a $2.50 deemed distribution with respect to debt two ($10 × $5/$20) in the third taxable year of the inclusion period. B will not have any remaining deferred section 752 amounts in the fourth and fifth taxable years of the inclusion period.

*Example 2.* (i) The facts are the same as in *Example 1,* except that Partnership has gross income for the year (including the $500 of COD income) of $700 and other separately stated losses of $500. A's and B's distributive share of each item is 50 percent.

(ii) In determining the amount of gain that A would recognize under section 731 as a result of the reacquisitions absent the section 108(i)(6) deferral, Partnership first increases A's $50 adjusted basis in his interest in Partnership by A's distributive share of Partnership income (other than the deferred amounts relating to debt one and debt two) of $100, and then decreases A's adjusted basis in Partnership by deemed distributions under section 752(b) of $250 and, thereafter, by A's distributive share of Partnership losses of $250, but only to the extent that A's basis is not reduced below zero. Under paragraph (b)(3)(ii) of this section, the amount of gain that A would recognize under section 731 as a result of the reacquisitions absent section 108(i)(6) deferral is $100. Thus, A's deferred section 752 amount with respect to debt one and debt two equals $100 (the lesser of A's aggregate deferred amounts with respect to debt one and debt two of $250, or gain that A would recognize under section 731 as a result of the reacquisitions absent the deferral section 108(i)(6) deferral of $100). Under paragraph (b)(3)(iii) of this section, A's deferred section 752 amount with respect to debt one is $60 ($100 × $150/$250), and A's deferred section 752 amount with respect to debt two is $40 ($100 × $100/$250). A's $250 of Partnership losses are suspended under section 704(d).

(iii) In determining the amount of gain that B would recognize under section 731 as a result of the reacquisitions absent the section 108(i)(6) deferral, Partnership first increases B's $50 adjusted basis in his interest in Partnership by B's distributive share of Partnership income (other than the deferred amounts relating to debt one and debt two) of $250 ($100 other income plus $150 included amount with respect to debt one and debt two), and then decreases B's adjusted basis in Partnership by deemed distributions under section 752(b) of $250 and, thereafter, by B's distributive share of Partnership losses of $250, but only to the extent that B's basis is not reduced below zero. Under paragraph (b)(3)(ii) of this section, B would not recognize any gain under section 731 as a result of the reacquisitions absent the section 108(i)(6) deferral. Thus, B has no deferred section 752 amount with respect to either debt one or debt two. B may deduct his distributive share of Partnership losses to the extent of $50, with the remaining $200 suspended under section 704(d).

(4) *Tiered partnerships*—(i) *In general.* If a partnership (upper-tier partnership) is a direct or indirect partner of an electing partnership and directly or indirectly receives an allocation of a COD income amount from the electing partnership, all or a portion of which is deferred under section 108(i), the upper-tier partnership must allocate its COD income amount to its partners that are partners in the upper-tier partnership immediately before the reacquisition in the manner in which the income would be included in the distributive shares of the partners under section 704 and the regulations under section 704, including § 1.704–1(b)(2)(iii), without regard to section 108(i). The upper-tier partnership may determine, in any manner, the portion, if any, of a partner's COD income amount with respect to an applicable debt instrument that is the deferred amount, and the portion, if any, that is the included amount. However, no partner's deferred amount with respect to an applicable debt instrument may exceed that partner's COD income amount with respect to such applicable debt instrument, and the aggregate amount of the partners' COD income amounts and deferred amounts with respect to each applicable debt instrument must equal the upper-tier partnership's COD income amount and deferred amount, respectively, with respect to each such applicable debt instrument.

(ii) *Deferred section 752 amount.* The computation of a partner's deferred

section 752 amount, as described in paragraph (b)(3)(ii) of this section, is calculated only for direct partners of the electing partnership. An upper-tier partnership's deferred section 752 amount with respect to an applicable debt instrument of the electing partnership is allocated only to those partners of the upper-tier partnership that have a deferred amount with respect to that applicable debt instrument, and in proportion to such partners' share of the upper-tier partnership's deferred amount with respect to that applicable debt instrument. A partner's share of the upper-tier partnership's deferred section 752 amount with respect to an applicable debt instrument must not exceed that partner's share of the upper-tier partnership's deferred amount with respect to the applicable debt instrument to which the deferred section 752 amount relates. The deferred section 752 amount of a partner of an upper-tier partnership is treated as a distribution of money by the upper-tier partnership to the partner under section 752(b), at the same time and, to the extent remaining, in the same amount as the partner recognizes the deferred amount with respect to the applicable debt instrument.

(iii) *Examples.* The following examples illustrate the rules under paragraph (b)(4) of this section:

*Example 1.* (i) PRS, a calendar-year partnership, has two equal partners, A, an individual, and XYZ, a partnership. As of January 1, 2009, A and XYZ each have an adjusted basis of $50 in their partnership interests. PRS has a $500 applicable debt instrument outstanding. On June 1, 2009, the creditor agrees to cancel the $500 indebtedness. PRS realizes $500 of COD income as a result of the reacquisition. PRS has no other income or loss items for 2009. PRS makes an election under section 108(i) to defer $200 of the $500 of COD income. PRS allocates the $500 of COD income equally between its partners ($250 each). PRS determines that, for each partner, $100 of the COD income amount is the deferred amount, and $150 is the included amount. For 2009, each of A's and XYZ's share of the decrease in PRS's reacquired applicable debt instrument is $250.

(ii) XYZ has two equal partners, individuals X and Y. X and Y share equally in XYZ's liabilities. XYZ allocates the $250 COD income amount from PRS equally between X and Y ($125 each). XYZ determines that X has a deferred amount of $100 and an included amount of $25. All $125 of Y's COD income amount is Y's included amount. For 2009, each of X's and Y's share of XYZ's $250 decrease in liability with respect to the reacquired applicable debt instrument of PRS is $125.

(iii) Under paragraph (b)(3)(ii) of this section, PRS determines that XYZ has a deferred section 752 amount of $50. Therefore, for 2009, of XYZ's $250 share of the decrease in PRS's reacquired applicable debt instrument, $200 is treated as a deemed distribution under section 752(b) and $50 is the deferred section 752 amount.

(iv) Under paragraph (b)(4)(ii) of this section, none of XYZ's $50 deferred section 752 amount is allocated to Y because Y does not have a deferred amount with respect to the reacquired applicable debt interest. XYZ's entire $50 of deferred section 752 amount is allocated to X. Therefore, of X's $125 share of the XYZ's decrease in liability with respect to the reacquired applicable debt instrument of PRS, $75 is treated as a deemed distribution under section 752(b) and $50 is X's deferred section 752 amount. Y's $125 share of XYZ's decrease in liability with respect to the reacquired applicable debt instrument of PRS is treated as a deemed distribution under section 752(b) and none is a deferred section 752 amount.

*Example 2.* (i) The facts are the same as in *Example 1,* except for the following: XYZ has three partners, X, Y, and Z. The profits and losses of XYZ are shared 25 percent by X, 25 percent by Y, and 50 percent by Z. XYZ allocates its $250 COD income amount from PRS $62.50 to each of X and Y, and $125 to Z. XYZ determines that X has a deferred amount of $50 and an included amount of $12.50, Y has a deferred amount of $0 and an included amount of $62.50, and Z has a deferred amount of $50 and an included amount of $75 with respect to the applicable debt instrument. X's, Y's, and Z's share of XYZ's decrease in liability with respect to the reacquired applicable debt instrument of PRS is $62.50, $62.50 and $125, respectively.

(ii) Under paragraph (b)(4)(ii) of this section, none of XYZ's $50 deferred section 752 amount is allocated to Y because Y does not have a deferred amount with respect to the reacquired applicable debt instrument. XYZ's $50 deferred section 752 amount is allocated to X and Z in proportion to X's and Z's share of XYZ's deferred amount, or $25 each ($50 × ($50/$100)). Therefore, of X's $62.50 share of XYZ's decrease in liability with respect to the reacquired applicable debt instrument, $37.50 is treated as a deemed distribution under section 752(b) and $25 is X's deferred section 752 amount. All of Y's $62.50 share of XYZ's decrease in liability with respect to the reacquired applicable debt instrument is treated as a deemed distribution under section 752(b). Of Z's $125 share of XYZ's decrease in liability with respect to the reacquired applicable debt instrument, $100 is treated as a deemed distribution under section 752(b) and $25 is Z's deferred section 752 amount.

(5) *S corporation partner*—(i) *In general.* If an S corporation partner has a deferred amount with respect to an applicable debt instrument of an electing partnership, such deferred amount is shared pro rata only among those shareholders that are shareholders of the S corporation partner immediately before the reacquisition of the applicable debt instrument.

(ii) *Basis adjustments.* The adjusted basis of a shareholder's stock in an S corporation partner is not increased under section 1367(a)(1) by the shareholder's share of the S corporation partner's deferred amount in the taxable year of the reacquisition. The adjusted basis of a shareholder's stock in an S corporation partner is not decreased under section 1367(a)(2) by the shareholder's share of the S corporation partner's deferred OID deduction in the taxable year in which the deferred OID accrues. The adjusted basis of a shareholder's stock in an S corporation partner is adjusted under section 1367(a) by the shareholder's share of the S corporation partner's share of the electing partnership's deferred items for the taxable year in which the shareholder takes into account its share of such deferred items under this section.

(iii) *Accumulated adjustments account.* The accumulated adjustments account (AAA), as defined in section 1368(e)(1), of an S corporation partner that has a deferred amount with respect to an applicable debt instrument of an electing partnership is not increased by its deferred amount in the taxable year of the reacquisition. The AAA of an S corporation partner is not decreased by its share of any deferred OID deduction in the taxable year in which the deferred OID accrues. The AAA of an S corporation partner is adjusted under section 1368(e) by a shareholder's share of the S corporation partner's share of the electing partnership's deferred items for the S period (as defined in section 1368(e)(2)) in which the shareholder of the S corporation partner takes into account its share of the deferred items under this section.

(6) *Acceleration of deferred items*—(i) *Electing partnership-level events*

(A) *General rules.* Except as provided in paragraph (b)(6)(iii) of this section, a direct or indirect partner's share of an electing partnership's deferred items is accelerated and must be taken into account by such partner—

(*1*) In the taxable year in which the electing partnership liquidates;

(*2*) In the taxable year in which the electing partnership sells, exchanges, transfers (including contributions and distributions), or gifts substantially all of its assets;

(*3*) In the taxable year in which the electing partnership ceases doing business; or

(*4*) In the taxable year that includes the day before the day on which the electing partnership files a petition in a Title 11 or similar case.

(B) *Substantially all requirement.* For purposes of this paragraph (b)(6), substantially all of a partnership's assets means assets representing at least 90 percent of the fair market value of the

net assets, and at least 70 percent of the fair market value of the gross assets, held by the partnership immediately prior to the sale, exchange, transfer, or gift. For purposes of applying the rule in paragraph (b)(6)(i)(A)(*2*) of this section, a sale, exchange, transfer, or gift by any direct or indirect lower-tier partnership of the electing partnership (lower-tier partnership) of all or part of its assets is not treated as a sale, exchange, transfer, or gift of the assets of any partnership that holds, directly or indirectly, an interest in such lower-tier partnership. However, for purposes of applying the rule in paragraph (b)(6)(i)(A)(*2*) of this section, a sale, exchange, transfer, or gift of substantially all of the assets of a transferee partnership (as described in paragraph (b)(6)(iii)(A)(*1*) of this section), or of a lower-tier partnership that received assets of the electing partnership from a transferee partnership or another lower-tier partnership in a transaction governed all or in part by section 721, is treated as a sale, exchange, transfer, or gift by the holder of an interest in such transferee partnership or lower-tier partnership of its entire interest in that transferee partnership or lower-tier partnership.

(ii) *Direct or indirect partner-level events*—(A) *General rules.* Except as provided in paragraph (b)(6)(iii) of this section, a direct or indirect partner's share of an electing partnership's deferred items with respect to a separate interest is accelerated and must be taken into account by such partner in the taxable year in which—

(*1*) The partner dies or liquidates;

(*2*) The partner sells, exchanges (including redemptions treated as exchanges under section 302), transfers (including contributions and distributions), or gifts (including transfers treated as gifts under section 1041) all or a portion of its separate interest;

(*3*) The partner's separate interest is redeemed within the meaning of paragraph (b)(6)(ii)(B)(*2*) of this section; or

(*4*) The partner abandons its separate interest.

(B) *Meaning of terms; special rules*—(*1*) *Partial transfers.* For purposes of paragraph (b)(6)(ii)(A)(*2*) of this section, if a partner sells, exchanges (including redemptions treated as exchanges under section 302), transfers (including contributions and distributions), or gifts (including transfers treated as gifts under section 1041) a portion of its separate interest, such partner's share of the electing partnership's deferred items with respect to the separate interest proportionate to the separate interest sold, exchanged, transferred, or gifted is accelerated and must be taken into account by such partner.

(*2*) *Redemptions.* For purposes of paragraph (b)(6)(ii)(A)(*3*) of this section, a partner's separate interest is redeemed if the partner receives a distribution of cash and/or property in complete liquidation of such separate interest.

(*3*) *S corporation partners.* In addition to the rules in paragraphs (b)(6)(i) and (ii) of this section, an S corporation partner's share of the electing partnership's deferred items is accelerated and the shareholders of the S corporation partner must take into account their respective shares of the S corporation partner's share of the electing partnership's deferred items in the taxable year in which the S corporation partner's election under section 1362(a) terminates.

(*4*) *C corporation partners.* In addition to the rules in paragraphs (b)(6)(i), (ii), and (iii) of this section, the acceleration rules in § 1.108(i)–1(b) and the earnings and profits rules in § 1.108(i)–1(d) apply to partners that are electing corporations.

(iii) *Events not constituting acceleration.* Notwithstanding the rules in paragraphs (b)(6)(i) and (ii) of this section, a direct or indirect partner's share of an electing partnership's deferred items with respect to a separate interest is not accelerated by any of the events described in this paragraph (b)(6)(iii).

(A) *Section 721 contributions*—(*1*) *Electing partnership contributions.* A direct or indirect partner's share of an electing partnership's deferred items is not accelerated if the electing partnership contributes all or a portion of its assets in a transaction governed all or in part by section 721(a) to another partnership (transferee partnership) in exchange for an interest in the transferee partnership provided that the electing partnership does not terminate under section 708(b)(1)(A) or transfer its assets and liabilities in a transaction described in section 708(b)(2)(A) or section 708(b)(2)(B). See paragraph (b)(6)(iii)(D) of this section for transactions governed by section 708(b)(2)(A). Notwithstanding the rules in this paragraph (b)(6)(iii)(A)(*1*), the rules in paragraphs (b)(6)(i)(A) and (b)(6)(ii)(A) of this section apply to any part of the transaction to which section 721(a) does not apply.

(*2*) *Partner contributions.* A direct or indirect partner's share of an electing partnership's deferred items with respect to a separate interest is not accelerated if the holder of such interest (contributing partner) contributes its entire separate interest (contributed separate interest) in a transaction governed all or in part by section 721(a) to another partnership (transferee partnership) in exchange for an interest in the transferee partnership provided that the partnership in which the separate interest is held does not terminate under section 708(b)(1)(A) or transfer its assets and liabilities in a transaction described in section 708(b)(2)(A) or section 708(b)(2)(B). See paragraph (b)(6)(iii)(D) of this section for transactions governed by section 708(b)(2)(A). The transferee partnership becomes subject to section 108(i), including all reporting requirements under this section, with respect to the contributing partner's share of the electing partnership's deferred items associated with the contributed separate interest. The transferee partnership must allocate and report the share of the electing partnership's deferred items that is associated with the contributed separate interest to the contributing partner to the same extent that such share of the electing partnership's deferred items would have been allocated and reported to the contributing partner in the absence of such contribution. Notwithstanding the rules in this paragraph (b)(6)(iii)(A)(*2*), the rules in paragraph (b)(6)(ii)(A) of this section apply to any part of the transaction to which section 721(a) does not apply.

(B) *Section 1031 exchanges.* A direct or indirect partner's share of the electing partnership's deferred items is not accelerated if the electing partnership transfers property held for productive use in a trade or business or for investment in exchange for property of like kind which is to be held either for productive use in a trade or business or for investment in a transaction to which section 1031(a)(1) applies. Notwithstanding the rules in this paragraph (b)(6)(iii)(B), to the extent the electing partnership receives money or other property which does not meet the requirements of section 1031(a) (boot) in the exchange, a proportionate amount of the property transferred by the electing partnership equal to the proportion of the boot to the total consideration received in the exchange shall be treated as sold for purposes of paragraph (b)(6)(i)(A)(*2*) of this section.

(C) *Section 708(b)(1)(B) terminations.* A direct or indirect partner's share of the deferred items of an electing partnership with respect to a separate interest is not accelerated if the electing partnership or a partnership that is a direct or indirect partner of the electing partnership terminates under section 708(b)(1)(B). Notwithstanding the rules in this paragraph (b)(6)(iii)(C), the rules

in paragraph (b)(6)(ii)(A) of this section apply to the event that causes the termination under section 708(b)(1)(B) to the extent not otherwise excepted under paragraph (b)(6)(iii) of this section.

(D) *Section 708(b)(2)(A) mergers or consolidations.* A direct or indirect partner's share of the deferred items of an electing partnership with respect to a separate interest is not accelerated if the partnership in which the separate interest is held (the merger transaction partnership) merges into or consolidates with another partnership in a transaction to which section 708(b)(2)(A) applies. The resulting partnership or new partnership, as determined under § 1.708–1(c)(1), becomes subject to section 108(i), including all reporting requirements under this section, to the same extent that the merger transaction partnership was so subject prior to the transaction, and must allocate and report any merger transaction partnership's deferred items to the same extent and to the same partners that the merger transaction partnership allocated and reported such items prior to such transaction. Notwithstanding the rules in this paragraph (b)(6)(iii)(D), the rules in paragraphs (b)(6)(i)(A)(*2*) and (b)(6)(ii)(A)(*2*) of this section apply to that portion of the transaction that is treated as a sale, and the rules of (b)(6)(ii)(A)(*3*) apply if, as part of the transaction, the partner's separate interest is redeemed and the partner does not receive an interest in the resulting partnership with respect to such separate interest.

(E) *Certain distributions of separate interests.* If a partnership (upper-tier partnership) that is a direct or indirect partner of an electing partnership distributes its entire separate interest (distributed separate interest) to one or more of its partners (distributee partners) that have a share of the electing partnership's deferred items from upper-tier partnership with respect to the distributed separate interest, the distributee partners' shares of the electing partnership's deferred items with respect to such distributed separate interest are not accelerated. The partnership, the separate interest in which was distributed, must allocate and report the share of the electing partnership's deferred items associated with the distributed separate interest only to such distributee partners that had a share of the electing partnership's deferred items from the upper-tier partnership with respect to the distributed separate interest prior to the distribution. This paragraph (b)(6)(iii)(E) does not apply if the electing partnership terminates under section 708(b)(1)(A).

(F) *Section 381 transactions.* A C corporation partner's share of an electing partnership's deferred items is not accelerated if, as part of a transaction described in paragraph (b)(6)(ii)(A) of this section, the assets of the C corporation partner are acquired by another C corporation (acquiring C corporation) in a transaction that is treated, under § 1.108(i)–1(b)(2)(ii)(B), as a transaction to which section 381(a) applies. An S corporation partner's share of an electing partnership's deferred items is not accelerated if, as part of a transaction described in paragraph (b)(6)(ii)(A) of this section, the assets of the S corporation partner are acquired by another S corporation (acquiring S corporation) in a transaction to which section 381(a) applies. In such cases, the acquiring C corporation or acquiring S corporation, as the case may be, succeeds to the C corporation partner's or the S corporation partner's remaining share of the electing partnership's deferred items and becomes subject to section 108(i), including all reporting requirements under this section, as if the acquiring C corporation or acquiring S corporation were the C corporation partner or the S corporation partner, respectively. The acquiring S corporation must allocate and report the S corporation partner's deferred items to the same extent as the S corporation partner would have been required to allocate and report those deferred items, and only to those shareholders of the S corporation partner who had a share of the S corporation partner's deferred items from the electing partnership prior to the transaction. This paragraph (b)(6)(iii)(F) does not apply if the electing partnership terminates under section 708(b)(1)(A).

(G) *Intercompany transfers.* A C corporation partner's share of an electing partnership's deferred items is not accelerated if, as part of a transaction described in paragraph (b)(6)(ii)(A) of this section, the C corporation partner transfers its entire separate interest in an intercompany transaction, as described in § 1.1502–13(b)(1)(i), and the electing partnership does not terminate under section 708(b)(1)(A) as a result of the intercompany transaction.

(H) *Retirement of a debt instrument.* See § 1.108(i)–3(c)(1) for rules regarding the retirement of a debt instrument that is subject to section 108(i).

(I) *Other non-acceleration events.* A direct or indirect partner's share of an electing partnership's deferred items is not accelerated with respect to any transaction if the Commissioner makes a determination by published guidance that such transaction is not an acceleration event under the rules of this paragraph (b)(6).

(iv) *Related partnerships.* A direct or indirect partner's share of a related partnership's deferred OID deduction (as determined in paragraph (d)(2) of this section) that has not previously been taken into account is accelerated and taken into account by the direct or indirect partner in the taxable year in which, and to the extent that, the deferred COD income to which the related partnership's deferred OID deduction relates is taken into account by the electing entity or its owners.

(v) *Examples.* The following examples illustrate the rules under this paragraph (b)(6):

*Example 1. Meaning of ''separate interest.''* (i) Electing partnership (EP) has three partners, MT1, MT2, and UT, each of which is a partnership. The partners of MT1 are X and UT. The partners of MT2 are Y, UT, and B. The partners of UT are A, B, and C. In addition to their interests in the partnerships noted, MT1, MT2, and UT own other assets.

(ii) Within the meaning of paragraph (a)(29) of § 1.108(i)–0, A and C each hold one separate interest (their interests in UT), B holds two separate interests (its interests in UT and MT2), UT holds three separate interests (its interests in MT1, MT2, and EP), MT1 and MT2 each hold one separate interest (their interests in EP), and X and Y each hold one separate interest (their interests in MT1 and MT2, respectively) with respect to EP.

*Example 2. Distributions of separate interests in an electing partnership.* (i) The facts are the same as in *Example 1,* except that A, as a direct partner of UT, has a share of EP's deferred items with respect to UT's interests in MT1 and EP. A does not have a share of EP's deferred items with respect to UT's interest in MT2. B, as a direct partner of UT, has a share of EP's deferred items with respect to UT's interest in MT1 and MT2, but not with respect to UT's interest in EP. B also has a share of EP's deferred items with respect to its separate interest in MT2. C does not have any share of EP's deferred items with respect to UT's interest in MT1, MT2, or EP.

(ii) UT distributes 40 percent of its separate interest in MT1 to A in redemption of A's interest in UT. Under paragraphs (b)(6)(ii)(A)(*2*) and (b)(6)(ii)(B)(*1*) of this section, a portion of UT's interest in MT1 has been transferred and a corresponding portion (40 percent) of UT's share of EP's deferred items from MT1 is accelerated. Thus, 40 percent of A's and B's share of EP's deferred items from UT with respect to UT's interest in MT1 is accelerated. Further, because A's interest in UT is redeemed within the meaning of paragraph (b)(6)(ii)(B)(*2*) of this section, all of A's shares of EP's deferred items from UT are accelerated under paragraph (b)(6)(ii)(A)(*3*) of this section. UT continues to allocate and report to B its remaining share of EP's deferred items from

its separate interest in MT1 that was not distributed to A.

(iii) UT distributes its entire separate interest in MT1 to B (other than in redemption of B's interest in UT). Under paragraph (b)(6)(ii)(A)(*2*) of this section, UT's share of EP's deferred items from MT1 would be accelerated. However, because UT distributes its entire separate interest in MT1 to B, B's share of EP's deferred items from UT with respect to UT's separate interest in MT1 is not accelerated under paragraph (b)(6)(iii)(E) of this section. MT1 allocates and reports to B B's share of EP's deferred items from UT's separate interest in MT1 that was distributed to B.

(iv) UT distributes its entire separate interest in MT1 to A and B (other than in redemption of their interests in UT). Under paragraph (b)(6)(iii)(E) of this section, none of A's or B's shares of EP's deferred items from UT with respect to UT's separate interest in MT1 is accelerated, and MT1 allocates and reports to A and B their respective share of EP's deferred items from UT's separate interest in MT1 that was distributed to A and B.

*Example 3. Partial sale of interest by an indirect partner.* (i) Individual A holds a 50 percent partnership interest in UTP, a partnership that holds a 50 percent interest in EP, a partnership that makes an election to defer COD income under section 108(i). A's share of UTP's deferred amount with respect to EP's election under section 108(i) is $100. During a taxable year within the deferral period, A sells 25 percent of his partnership interest in UTP to an unrelated third party.

(ii) Under paragraphs (b)(6)(ii)(A)(*2*) and (b)(6)(ii)(B)(*1*) of this section, 25 percent of A's $100 deferred amount is accelerated as a result of A's partial sale of his interest in UTP. Thus, A must recognize $25 of his deferred amount in the taxable year of the sale. A's remaining deferred amount is $75.

*Example 4. Section 708(b)(1)(B) termination of electing partnership.* (i) A and B are equal partners in partnership AB. On January 1, 2009, AB reacquires an applicable debt instrument and makes an election under section 108(i) to defer $400 of COD income. A and B each have a deferred amount with respect to the applicable debt instrument of $200. On January 1, 2010, A sells its entire 50 percent interest in AB to C in a transfer that terminates the partnership under section 708(b)(1)(B).

(ii) Under paragraph (b)(6)(iii)(C) of this section, the technical termination of AB under section 708(b)(1)(B) does not cause A's or B's shares of AB's deferred items to be accelerated. However, A's $200 deferred amount is accelerated under paragraph (b)(6)(ii)(A)(*2*) of this section as a result of the sale.

*Example 5. Section 708(b)(2)(A) mergers.* (i) A, B, and C are equal partners in partnership X, which has made an election under section 108(i) to defer $150 of COD income. The fair market value of each interest in partnership X is $100. A, B, and C each has a deferred amount of $50 with respect to partnership X's election under section 108(i). E, F, and G are partners in partnership Y. Partnership X and partnership Y merge in a taxable year during the deferral period of partnership X's election under section 108(i). Under section 708(b)(2)(A), the resulting partnership is considered a continuation of partnership Y and partnership X is considered terminated. Under state law, partnerships X and Y undertake the assets-over form of § 1.708–1(c)(3)(i) to accomplish the merger. C does not want to become a partner in partnership Y, and partnership X does not have the resources to redeem C's interest before the merger. C, partnership X, and partnership Y enter into a merger agreement that satisfies the requirements of § 1.708–1(c)(4) and specifies that partnership Y will purchase C's interest in partnership X for $100 before the merger, and as part of the agreement, C consents to treat the transaction in a manner that is consistent with the agreement. As part of the merger, partnership X receives from partnership Y $100 (which will be distributed to C immediately before the merger), $100 (which will be distributed equally to A and B ($50 each)), and interests in partnership Y with a value of $100 (which will be distributed equally to A and B) in exchange for partnership X's assets and liabilities.

(ii) Under the general rule of paragraph (b)(6)(iii)(D) of this section, and except as provided below, the deferred items of partnership X are not accelerated as a result of the merger with partnership Y. Partnership Y, the resulting partnership that is considered the continuation of partnership X, becomes subject to section 108(i), including all reporting requirements under section 108(i), to the same extent that partnership X was subject to such rules. Under paragraph (b)(6)(iii)(D) of this section, partnership Y must allocate and report partnership X's deferred items to A and B in the same manner as partnership X had prior to the merger transaction.

(iii) Under § 1.708–1(c)(4), C is treated as selling its interest in partnership X immediately before the merger. As a result, C's $50 deferred amount is accelerated under paragraph (b)(6)(ii)(A)(*2*) of this section.

(iv) Under section 707(a)(2)(B), partnership X is deemed to have sold a portion of its assets to partnership Y. Because partnership X is not treated as selling substantially all of its assets under paragraph (b)(6)(i)(B) of this section, A's and B's deferred amounts are not accelerated under paragraph (b)(6)(i)(A)(*2*) of this section.

(v) Because A's and B's interests in partnership X are redeemed within the meaning of paragraph (b)(6)(ii)(B)(*2*) of this section, all of their shares of partnership X's deferred items would be accelerated under paragraph (b)(6)(ii)(A)(*3*). However, because they receive an interest in partnership Y in the merger, none of A's and B's share of partnership X's deferred items is accelerated.

(7) *Withholding under section 1446.* See section 1446 regarding withholding by a partnership on a foreign partner's share of income effectively connected with a U.S. trade or business.

(c) *Specific rules applicable to S corporations*—(1) *Deferred COD income.* An electing S corporation's COD income deferred under section 108(i) (an S corporation's deferred COD income) is shared pro rata among those shareholders that are shareholders of the electing S corporation immediately before the reacquisition of the applicable debt instrument. Any COD income deferred under section 108(i) is taken into account under section 1366(a) by those shareholders in the inclusion period, or earlier upon the occurrence of an acceleration event described in paragraph (c)(3) of this section.

(2) *Basis adjustments and accumulated adjustments account*—(i) *Basis adjustments.* The adjusted basis of a shareholder's stock in an electing S corporation is not increased under section 1367(a)(1) by the shareholder's share of the S corporation's deferred COD income in the taxable year of the reacquisition. The adjusted basis of a shareholder's stock in an electing S corporation or a related S corporation is not decreased under section 1367(a)(2) by the shareholder's share of the S corporation's deferred OID deduction in the taxable year in which the deferred OID accrues. The adjusted basis of a shareholder's stock in an electing S corporation or a related S corporation is adjusted under section 1367(a) by the shareholder's share of the S corporation's deferred items for the taxable year in which the shareholder takes into account its share of the deferred items under this section.

(ii) *Accumulated adjustments account.* The AAA of an electing S corporation is not increased by the S corporation's deferred COD income in the taxable year of a reacquisition. The AAA of an electing S corporation or a related S corporation is not decreased by the S corporation's deferred OID deduction in the taxable year in which the deferred OID accrues. The AAA of an electing S corporation or a related S corporation is adjusted under section 1368(e) by a shareholder's share of the S corporation's deferred items for the S period (as defined in section 1368(e)(2)) in which a shareholder of the S corporation takes into account its share of the deferred items under this section.

(3) *Acceleration of deferred items*—(i) *Electing S corporation-level events*—(A) *General rules.* Except as provided in paragraph (c)(3)(iii) of this section, a shareholder's share of an electing S corporation's deferred items is accelerated and must be taken into account by such shareholder—

(*1*) In the taxable year in which the electing S corporation liquidates;

(*2*) In the taxable year in which the electing S corporation sells, exchanges, transfers (including contributions and

distributions), or gifts substantially all of its assets;

(*3*) In the taxable year in which the electing S corporation ceases doing business;

(*4*) In the taxable year in which the electing S corporation's election under section 1362(a) terminates; or

(*5*) In the taxable year that includes the day before the day on which the electing S corporation files a petition in a Title 11 or similar case.

(B) *Substantially all requirement.* For purposes of this paragraph (c)(3), substantially all of an electing S corporation's or partnership's assets means assets representing at least 90 percent of the fair market value of the net assets, and at least 70 percent of the fair market value of the gross assets, held by the S corporation or partnership immediately prior to the sale, exchange, transfer, or gift. For purposes of applying the rule in paragraph (c)(3)(i)(A)(*2*) of this section, a sale, exchange, transfer, or gift by any direct or indirect lower-tier partnership of the electing S corporation (lower-tier partnership) of all or part of its assets is not treated as a sale, exchange, transfer, or gift of the assets of any person that holds, directly or indirectly, an interest in such lower-tier partnership. However, for purposes of applying the rule in paragraph (c)(3)(i)(A)(*2*) of this section, a sale, exchange, transfer, or gift of substantially all of the assets of a transferee partnership (as described in paragraph (c)(3)(iii)(A) of this section), or of a lower-tier partnership that received assets of the electing S corporation from a transferee partnership of the electing S corporation or another lower-tier partnership in a transaction governed all or in part by section 721, is treated as a sale, exchange, transfer, or gift by the holder of an interest in such transferee partnership or lower-tier partnership of its entire interest in that transferee partnership or lower-tier partnership.

(ii) *Shareholder events*—(A) *General rules.* Except as provided in paragraph (c)(3)(iii) of this section, a shareholder's share of an electing S corporation's deferred items is accelerated and must be taken into account by such shareholder in the taxable year in which—

(*1*) The shareholder dies;

(*2*) The shareholder sells, exchanges (including redemptions treated as exchanges under section 302), transfers (including contributions and distributions), or gifts (including transfers treated as gifts under section 1041) all or a portion of its interest in the electing S corporation; or

(*3*) The shareholder abandons its interest in the electing S corporation.

(B) *Partial transfers.* For purposes of paragraph (c)(3)(ii)(A)(*2*) of this section, if a shareholder of an electing S corporation sells, exchanges (including redemptions treated as exchanges under section 302), transfers (including contributions or distributions), or gifts (including transfers treated as gifts under section 1041) a portion of its interest in the electing S corporation, such shareholder's share of the electing S corporation's deferred items proportionate to the interest that was sold, exchanged, transferred, or gifted is accelerated and must be taken into account by such shareholder.

(iii) *Events not constituting acceleration.* Notwithstanding the rules in paragraphs (c)(3)(i) and (ii) of this section, a shareholder's share of an electing S corporation's deferred items is not accelerated by any of the events described in this paragraph (c)(3)(iii).

(A) *Electing S corporation's contributions.* A shareholder's share of an electing S corporation's deferred items is not accelerated if the electing S corporation contributes all or a portion of its assets in a transaction governed all or in part by section 721(a) to a partnership (transferee partnership) in exchange for an interest in the transferee partnership. Notwithstanding the rules in this paragraph (c)(3)(iii)(A), the rules in paragraph (c)(3)(i)(A) of this section apply to any part of the transaction to which section 721(a) does not apply.

(B) *Section 1031 exchanges.* A shareholder's share of an electing S corporation's deferred items is not accelerated if the electing S corporation transfers property held for productive use in a trade or business or for investment in exchange for property of like kind which is to be held either for productive use in a trade or business or for investment in a transaction to which section 1031(a)(1) applies. Notwithstanding the rules in this paragraph (c)(3)(iii)(B), to the extent the electing S corporation receives money or other property which does not meet the requirements of section 1031(a) (boot) in the exchange, a proportionate amount of the property transferred by the electing S corporation equal to the proportion of the boot to the total consideration received in the exchange shall be treated as sold for purposes of paragraph (c)(3)(i)(A)(*2*) of this section.

(C) *Section 381 transactions.* A shareholder's share of an electing S corporation's deferred items is not accelerated if, as part of a transaction described in paragraph (c)(3)(i)(A) of this section, the electing S corporation's assets are acquired by another S corporation (acquiring S corporation) in a transaction to which section 381(a) applies. In such a case, the acquiring S corporation succeeds to the electing S corporation's remaining deferred items and becomes subject to section 108(i), including all reporting requirements under this section, as if the acquiring S corporation were the electing S corporation. The acquiring S corporation must allocate and report the electing S corporation's deferred items to the same extent that the electing S corporation would have been required to allocate and report those deferred items, and only to those shareholders who had a share of the electing S corporation's deferred items prior to the transaction.

(D) *Retirement of a debt instrument.* See § 1.108(i)–3(c)(1) for rules regarding the retirement of a debt instrument that is subject to section 108(i).

(E) *Other non-acceleration events.* A shareholder's share of an electing S corporation's deferred items is not accelerated with respect to any transaction if the Commissioner makes a determination by published guidance that such transaction is not an acceleration event under the rules of this paragraph (c)(3).

(iv) *Related S corporations.* A shareholder's share of a related S corporation's deferred OID deduction (as determined in paragraph (d)(2) of this section) that has not previously been taken into account is accelerated and taken into account by the shareholder in the taxable year in which, and to the extent that, deferred COD income to which the related S corporation's deferred OID deduction relates is taken into account by the electing entity or its owners.

(d) *General rules applicable to partnerships and S corporations*—(1) *Applicable debt instrument (trade or business requirement).* The determination of whether a debt instrument issued by a partnership or an S corporation is treated as a debt instrument issued in connection with the conduct of a trade or business by the partnership or S corporation for purposes of this section is based on all the facts and circumstances. However, a debt instrument issued by a partnership or an S corporation shall be treated as an applicable debt instrument for purposes of this section if the electing partnership or electing S corporation can establish that—

(i) The gross fair market value of the trade or business assets of the partnership or S corporation that issued the debt instrument represented at least 80 percent of the gross fair market value

of that partnership's or S corporation's total assets on the date of issuance;

(ii) The trade or business expenditures of the partnership or S corporation that issued the debt instrument represented at least 80 percent of the partnership's or S corporation's total expenditures for the taxable year of issuance;

(iii) At least 95 percent of interest paid or accrued on the debt instrument issued by the partnership or S corporation was allocated to one or more trade or business expenditures under § 1.163–8T for the taxable year of issuance;

(iv) At least 95 percent of the proceeds from the debt instrument issued by the partnership or S corporation were used by the partnership or S corporation to acquire one or more trades or businesses within six months from the date of issuance; or

(v) The partnership or S corporation issued the debt instrument to a seller of a trade or business to acquire the trade or business.

(2) *Deferral of OID at entity level*—(i) *In general.* For each taxable year during the deferral period, an issuing entity determines the amount of its deferred OID deduction with respect to a debt instrument, if any. An issuing entity's deferred OID deduction for a taxable year is the lesser of:

(A) The OID that accrues in a current taxable year during the deferral period with respect to the debt instrument (less any of such OID that is allowed as a deduction in the current taxable year as a result of an acceleration event), or

(B) The excess, if any, of the electing entity's deferred COD income (less the aggregate amount of such deferred COD income that has been included in income in the current taxable year and any previous taxable year during the deferral period) over the aggregate amount of OID that accrued in previous taxable years during the deferral period with respect to the debt instrument (less the aggregate amount of such OID that has been allowed as a deduction in the current taxable year and any previous taxable year during the deferral period).

(ii) *Excess deferred OID deduction.* If, as a result of an acceleration event during a taxable year in the deferral period, an issuing entity's aggregate deferred OID deduction for previous taxable years with respect to a debt instrument (less the aggregate amount of such deferred OID deduction that has been allowed as a deduction in a previous taxable year during the deferral period) exceeds the amount of the electing entity's deferred COD income (less the aggregate amount of such deferred COD income that has been included in income in the current taxable year and any previous taxable year during the deferral period), the excess deferred OID deduction shall be allowed as a deduction in the taxable year in which the acceleration event occurs.

(iii) *Examples.* The following examples illustrate the rules under paragraph (d)(2) of this section:

*Example 1. Partner joins partnership during deferral period.* (i) A and B each hold a 50 percent interest in AB partnership, a calendar-year partnership. On January 1, 2009, AB partnership issues a new debt instrument with OID and uses all of the proceeds to reacquire an outstanding applicable debt instrument of AB partnership, realizing $100 of COD income, and makes an election under section 108(i) to defer $50 of the COD income. During the deferral period, a total of $150 of OID accrues on the new debt instrument issued as part of the reacquisition. A and B each have a deferred amount of $25 with respect to the applicable debt instrument reacquired by AB partnership. For 2009, $28 of OID accrues on the new debt instrument and A and B are each allocated $14 of accrued OID with respect to the new debt instrument. On January 1, 2010, C contributes cash to AB partnership in exchange for a ⅓ partnership interest. For 2010, $29 of OID accrues on the new debt instrument, and A, B, and C are each allocated $9.67 of accrued OID.

(ii) Under paragraph (d)(2) of this section, AB partnership's deferred OID deduction for 2009 is the lesser of: $28 of OID that accrues on the new debt instrument in 2009, or the excess of AB partnership's deferred COD income of $50 over the aggregate amount of OID that accrued on the debt instrument in previous taxable years during the deferral period of $0, or $50. Thus, all $28 of the OID that accrues on the debt instrument in 2009 is deferred under section 108(i).

(iii) Under paragraph (d)(2) of this section, AB partnership's deferred OID deduction for 2010 is the lesser of: $29 of OID that accrues on the new debt instrument in 2010, or the excess of AB partnership's deferred COD income of $50 over the aggregate amount of OID that accrued on the debt instrument in previous taxable years during the deferral period of $28, or $22. Thus, $22 of the $29 of OID that accrues in 2010 is deferred under section 108(i). A, B, and C will each defer $7.33 of the $9.67 of accrued OID that was allocated to each of them.

*Example 2. Acceleration of deferred items during deferral period.* (i) On January 1, 2009, ABC partnership, a calendar-year partnership with three partners, issues a new debt instrument with OID and uses all of the proceeds to reacquire an outstanding applicable debt instrument of ABC partnership. ABC partnership realizes $150 of COD income and makes an election under section 108(i) to defer the $150 of COD income. A's deferred amount with respect to the applicable debt instrument is $75, while B and C each have a deferred amount of $37.50. In 2009, $28 of OID accrues on the new debt instrument and is allocated $7.00 to A and $10.50 to each of B and C. In 2010, $29 of OID accrues on the new debt instrument and is allocated $7.25 to A and $10.87 to each of B and C. In 2011, $30 of OID accrues on the new debt instrument and is allocated $7.50 to A and $11.25 to each of B and C. In 2012, $31 of OID accrues on the new debt instrument and is allocated $7.75 to A and $11.62 to each of B and C. On December 31, 2012, A's entire share of ABC partnership's deferred items is accelerated under paragraph (b)(6) of this section. For 2012, A includes $75 of COD income in income and is allowed a deduction of $21.75 for A's share of ABC partnership's deferred OID deduction for taxable years 2009 through 2011, and a deduction of $7.75 for A's share of ABC partnership's OID that accrues on the debt instrument in 2012.

(ii) Under paragraph (d)(2) of this section, ABC partnership's deferred OID deduction for 2012 is the lesser of: $23.35 ($31 of OID that accrues on the new debt instrument in 2012 less $7.75 of this OID that is allowed as a deduction to A in 2012) or $9.75 (the excess of $75 (ABC partnership's deferred COD income of $150 less A's share of ABC partnership's deferred COD income that is included in A's income for 2012 of $75) over $65.25 (the aggregate amount of OID that accrued in previous taxable years of $87 less the aggregate amount of such OID that has been allowed as a deduction by A in 2012 of $21.75)). Thus, of the $31 of OID that accrues in 2012, $9.75 is deferred under section 108(i).

(3) *Effect of an election under section 108(i) on recapture amounts under section 465(e)*—(i) *In general.* To the extent that a decrease in a partner's or shareholder's amount at risk (as defined in section 465) in an activity as a result of a reacquisition of an applicable debt instrument would cause a partner with a deferred amount or a shareholder with a share of the S corporation's deferred COD income to have income under section 465(e) in the taxable year of the reacquisition, such decrease (not to exceed the partner's deferred amount or the shareholder's share of the S corporation's deferred COD income with respect to that applicable debt instrument) (deferred section 465 amount) shall not be taken into account for purposes of determining the partner's or shareholder's amount at risk in an activity under section 465 as of the close of the taxable year of the reacquisition. A partner's or shareholder's deferred section 465 amount is treated as a decrease in the partner's or shareholder's amount at risk in an activity at the same time, and to the extent remaining in the same amount, as the partner recognizes its deferred amount or the S corporation shareholder recognizes its share of the S corporation's deferred COD income.

(ii) *Example.* The following example illustrates the rules in paragraph (d)(3) of this section:

*Example.* (i) PRS is a calendar-year partnership with two equal partners, individuals A and B. PRS is engaged in an activity described in section 465(c) (Activity). PRS has a $500 recourse applicable debt instrument outstanding. Each partner's amount at risk on January 1, 2009 is $50. On June 1, 2009, the creditor agrees to cancel the $500 indebtedness. PRS realizes $500 of COD income as a result of the reacquisition. The partners' share of the liabilities of PRS decreases by $500 under section 752(b), and each partner's amount at risk is decreased by $250. Other than the $500 of COD income, PRS's income and expenses for 2009 are equal. PRS makes an election under section 108(i) to defer $200 of the $500 COD income realized in connection with the reacquisition. PRS allocates the $500 of COD income equally between its partners, A and B. A and B each have a COD income amount of $250 with respect to the applicable debt instrument. PRS determines that, for both partners A and B, $100 of the $250 COD income amount is the deferred amount, and $150 is the included amount. Beginning in each taxable year 2014 through 2018, A and B each include $20 of the deferred amount in gross income.

(ii) Under paragraph (d)(3)(i) of this section, $50 of the $250 decrease in A's and B's amount at risk in Activity is the deferred section 465 amount for each of A and B and is not taken into account for purposes of determining A's and B's amount at risk in Activity at the close of 2009. In taxable year 2014, A's and B's amount at risk in Activity is decreased by $20 (deferred section 465 amount that equals the deferred amount included in A's and B's gross income in 2014). In taxable year 2015, A's and B's amount at risk in Activity is decreased by $20 for the deferred section 465 amount that equals the deferred amount included in A's and B's gross income in 2015. In taxable year 2016, A's and B's amount at risk in Activity is decreased by $10 (the remaining amount of the deferred section 465 amount).

(e) *Election procedures and reporting requirements*—(1) *Partnerships*—(i) *In general.* A partnership makes an election under section 108(i) by following procedures outlined in guidance and applicable forms and instructions issued by the Commissioner. An electing partnership (or its successor) must provide to its partners certain information as required by guidance and applicable forms and instructions issued by the Commissioner.

(ii) *Tiered passthrough entities.* A partnership that is a direct or indirect partner of an electing partnership (or its successor) or a related partnership or an S corporation partner must provide to its partners or shareholders, as the case may be, certain information as required by guidance and applicable forms and instructions issued by the Commissioner.

(iii) *Related partnerships.* A related partnership must provide to its partners certain information as required by guidance and applicable forms and instructions issued by the Commissioner.

(2) *S corporations*—(i) *In general.* An S corporation makes an election under section 108(i) by following procedures outlined in guidance and applicable forms and instructions issued by the Commissioner. An electing S corporation (or its successor) must provide to its shareholders certain information as required by guidance and applicable forms and instructions issued by the Commissioner.

(ii) *Related S corporations.* A related S corporation must provide to its shareholders certain information as required by guidance and applicable forms and instructions issued by the Commissioner.

(f) *Effective/applicability dates.* For the applicability dates of this section, see § 1.108(i)–0(b).

**§ 1.108(i)–2T [Removed]**

**Par. 3.** Section 1.108(i)–2T is removed.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 5.** In § 602.101, paragraph (b) is amended as follows:

1. The following entry to the table is removed:

**§ 602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control no. |
|---|---|
| * * * * * | |
| 1.108(i)–2T | 1545–2147 |
| * * * * * | |

2. The following entry is added in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control no. |
|---|---|
| * * * * * | |
| 1.108(i)–2 | 1545–2147 |
| * * * * * | |

**Beth Tucker,**

*Deputy Commissioner for Operations Support.*

Approved: June 25, 2013.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury.*

[FR Doc. 2013–15885 Filed 7–2–13; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

**[TD 9622]**

**RIN 1545–BI96**

## Guidance Regarding Deferred Discharge of Indebtedness Income of Corporations and Deferred Original Issue Discount Deductions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations under section 108(i) of the Internal Revenue Code (Code). These regulations primarily affect C corporations and provide necessary guidance regarding the accelerated inclusion of deferred discharge of indebtedness (also known as cancellation of debt (COD)) income (deferred COD income) and the accelerated deduction of deferred original issue discount (OID) (deferred OID deductions) under section 108(i)(5)(D) (acceleration rules), and the calculation of earnings and profits as a result of an election under section 108(i). In addition, these regulations provide rules applicable to all taxpayers regarding deferred OID deductions under section 108(i) as a result of a reacquisition of an applicable debt instrument by an issuer or related party.

**DATES:** *Effective Date:* These regulations are effective on July 2, 2013.

*Applicability Dates:* For dates of applicability, see § 1.108(i)–0(b).

**FOR FURTHER INFORMATION CONTACT:** Concerning the acceleration rules for deferred COD income and deferred OID deductions, and the rules for earnings and profits, Robert M. Rhyne (202) 622–7790; concerning the generally applicable rules for deferred OID deductions, William E. Blanchard (202) 622–3950 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these regulations has been

reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–2147. The collection of information in these final regulations is in § 1.108(i)–1(b)(3). Under § 1.108(i)–1(b)(3), an electing member (other than the common parent) of a consolidated group may elect to accelerate the inclusion of its remaining deferred COD income with respect to all applicable debt instruments by filing a statement.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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 return information are confidential, as required by 26 U.S.C. 6103.

**Background**

Section 108(i) was added to the Code by section 1231 of the American Recovery and Reinvestment Tax Act of 2009 (Pub. L. 111–5, 123 Stat. 338), enacted on February 17, 2009. Section 108(i)(1) provides an election for deferral of the inclusion of COD income arising in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument. If an election is made, a taxpayer's deferred COD income generally is includible in gross income ratably over a 5-taxable-year period, beginning with the taxpayer's fourth or fifth taxable year following the taxable year of the reacquisition (inclusion period).

Section 108(i)(2) provides that if, as part of a reacquisition to which section 108(i)(1) applies, a debt instrument is issued (or is treated as issued) for the applicable debt instrument and there is any OID with respect to the newly issued debt instrument, then the deduction for all or a portion of the OID may be deferred. A debt instrument is treated as issued for an applicable debt instrument if the proceeds of the debt instrument are used directly or indirectly by the issuer to reacquire the applicable debt instrument of the issuer. Section 108(i)(2)(B). In general, the aggregate amount of the deferred OID deductions is allowed ratably over the inclusion period.

Section 108(i)(5)(D) requires a taxpayer to accelerate the inclusion or deduction of any remaining items of deferred COD income or deferred (and otherwise allowable) OID (deferred items) under certain circumstances, including the death of the taxpayer, the liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), the cessation of business by the taxpayer, or similar circumstances. Section 108(i)(7) authorizes the Secretary to issue guidance necessary or appropriate for purposes of applying section 108(i), including extending the application of the rules of section 108(i)(5)(D) to other appropriate circumstances.

On August 17, 2009, the IRS and Treasury Department issued Rev. Proc. 2009–37, 2009–36 IRB 309, which outlined the procedures for making a section 108(i) election, and required annual reporting of additional information regarding the amount of deferred COD income included in income in the taxable year, the amount of deferred OID deducted in the taxable year, and the amount of any remaining deferred items. See § 601.601(d)(2)(ii)(*b*). On August 13, 2010, the IRS and Treasury Department published temporary regulations (TD 9497) in the **Federal Register** (75 FR 49394) addressing the acceleration rules for C corporations under section 108(i)(5)(D) and the calculation of a C corporation's earnings and profits as a result of an election under section 108(i). In addition, the temporary regulations addressed the deduction of deferred OID under section 108(i)(2). A notice of proposed rulemaking (REG–142800–09) cross-referencing the temporary regulations was published in the **Federal Register** on the same day (75 FR 49428). Comments responding to the notice of proposed rulemaking were received and are available for public inspection at *http://www.regulations.gov* or upon request. No public hearing was requested or held. After consideration of all comments, the proposed regulations are adopted without substantive change by this Treasury decision, and the corresponding temporary regulations are removed.

**Summary of Comments**

*A. Acceleration Rules for an Electing Corporation in Bankruptcy Proceedings*

One commenter requested clarification of the acceleration rules applicable to a C corporation in bankruptcy proceedings. Section 108(i)(5)(D) provides, in relevant part, that in the case of the liquidation or sale of substantially all of the assets of the taxpayer (including in a title 11 or similar case), the taxpayer must accelerate the inclusion or deduction of its remaining deferred items in the taxable year in which such event occurs (or in the case of a title 11 case, the day before the petition is filed). Section 108(i)(7)(A) further authorizes the Secretary to prescribe such regulations, rules, or other guidance as may be necessary or appropriate for purposes of applying section 108(i), including extending the application of the rules of section 108(i)(5)(D) to other circumstances, where appropriate.

The rules provided in the proposed regulations are intended to focus on the underlying purpose of section 108(i)(5)(D) to ensure that the government's ability to collect the tax liability associated with the deferred COD income is not impaired. Consistent with this interpretation, the proposed regulations provide for accelerated inclusion of deferred COD income in circumstances in which a C corporation has impaired its ability to pay the latent tax liability. Under the proposed regulations, any C corporation with deferred COD income by reason of a section 108(i) election (an electing corporation) must accelerate the inclusion of its remaining deferred COD income, whether in bankruptcy proceedings or not, immediately before the occurrence of any one of the following events: The electing corporation (i) changes its tax status, (ii) ceases its corporate existence in a transaction to which section 381(a) does not apply, or (iii) engages in a transaction that impairs its ability to pay the tax liability associated with its deferred COD income (the net value acceleration rule). The acceleration rules under § 1.108(i)–2 also apply to C corporations that are direct or indirect partners of an electing partnership. The proposed regulations do not provide any special acceleration rules for an electing corporation in a title 11 or similar case with regard to either (i) acceleration events or (ii) the time of inclusion of deferred COD income resulting from the occurrence of any acceleration event. Accordingly, all deferred COD income of any electing corporation is required to be taken into account by the electing corporation immediately before the occurrence of any acceleration event enumerated in the proposed regulations.

The IRS and Treasury Department believe that the acceleration rules provided in the proposed regulations, including with respect to the inclusion of deferred COD income immediately before the occurrence of an enumerated acceleration event, are sufficient to protect the collectability of tax relating to deferred COD income in the case of all electing corporations, whether or not in a title 11 or similar case. Accordingly,

consistent with the proposed regulations, these final regulations do not provide special acceleration rules for an electing corporation in bankruptcy proceedings. However, to remove any doubt, the final regulations include non-substantive changes to clearly provide that the acceleration rules contained therein apply with respect to any electing corporation regardless of whether the electing corporation is in a title 11 or similar case at the time a mandatory acceleration event occurs.

*B. Guidance on Built-in Items*

Commenters made requests for guidance on how the treatment of built-in items under section 382 interacts with section 108(i). The IRS and Treasury Department believe that this issue is better addressed in more general guidance regarding the treatment of built-in items under section 382. Accordingly, no guidance on this issue is provided in these final regulations.

*C. Adjustments to Earnings and Profits*

The proposed regulations provide that deferred COD income generally increases earnings and profits in the taxable year that it is realized, and deferred OID deductions generally decrease earnings and profits in the taxable year or years in which the deductions would be allowed without regard to the deferral rules of section 108(i). The approach adopted in the proposed regulations reflects the view that an electing corporation has recognized economic income in the year of the discharge, enhancing its dividend paying capacity, and has recognized an economic cost in the year the OID accrues, decreasing its dividend paying capacity. Therefore, earnings and profits are appropriately adjusted. The IRS and Treasury Department also recognized that it was important to provide general guidance regarding the timing for adjustments to earnings and profits so that an electing corporation would understand the consequences of making a section 108(i) election.

A question was raised concerning why the proposed regulations did not provide a rule similar to section 301(e) in conjunction with the general rule for earnings and profits. The IRS and Treasury Department do not believe that such a rule is necessary to achieve the purposes of section 108(i). In addition, because adjustments to earnings and profits for the relevant years have already been made in accordance with the proposed regulations (and Rev. Proc. 2009–37 (2009–36 IRB 309)), the IRS and Treasury Department believe that a change to the earnings and profits rules in these final regulations would be burdensome. Accordingly, these final regulations adopt these rules of the proposed regulations without change.

*D. Transitional Rules*

The proposed regulations provide that the rules for acceleration of deferred COD income and deferred OID deductions apply prospectively. However, electing corporations were given the option to apply these rules to acceleration events occurring prior to the effective date of the proposed regulations if applied consistently. Because certain provisions of the acceleration rules are time sensitive (for example, the time for restoring value under the net value acceleration rule), the proposed regulations included transitional rules extending the period of time in which an electing corporation needed to comply with the provision's requirements in order to allow electing corporations the ability to use and benefit from these provisions for prior periods.

These transitional rules are no longer necessary because additional time is no longer needed to comply with these provisions. Accordingly, these final regulations amend the proposed regulations by removing these transitional rules.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations merely provide more specific guidance for the timing of the inclusion of deferred COD income and the deduction of deferred original issue discount that is otherwise includible or deductible under the Code. Therefore, a Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received.

## Drafting Information

The principal author of these regulations is Robert M. Rhyne of the Office of Associate Chief Counsel (Corporate). Other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 and 602 are amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for § 1.108(i)–0T, § 1.108(i)–1T, and § 1.108(i)–3T, and adding the entries for § 1.108(i)–0, § 1.108(i)–1, and § 1.108(i)–3, to read, in part, as follows:

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

Section 1.108(i)–0 also issued under 26 U.S.C. 108(i)(7) and 1502. * * *

Section 1.108(i)–1 also issued under 26 U.S.C. 108(i)(7) and 1502. * * *

Section 1.108(i)–3 also issued under 26 U.S.C. 108(i)(7) and 1502. * * *

■ **Par. 2.** Section 1.108(i)–0 is added to read as follows:

### § 1.108(i)–0 Definitions and effective/applicability dates.

(a) *Definitions.* For purposes of regulations under section 108(i)—

(1) *Acquisition.* An *acquisition,* with respect to any applicable debt instrument, includes an acquisition of the debt instrument for cash or other property, the exchange of the debt instrument for another debt instrument (including an exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, the contribution of the debt instrument to capital, the complete forgiveness of the indebtedness by the holder of the debt instrument, and a direct or an indirect acquisition within the meaning of § 1.108–2.

(2) *Applicable debt instrument.* An *applicable debt instrument* is a debt instrument that was issued by a C corporation or any other person in connection with the conduct of a trade or business by such person. In the case of an intercompany obligation (as defined in § 1.1502–13(g)(2)(ii)),

*applicable debt instrument* includes only an instrument for which COD income is realized upon the instrument's deemed satisfaction under § 1.1502–13(g)(5).

(3) *C corporation issuer. C corporation issuer* means a C corporation that issues a debt instrument with any deferred OID deduction.

(4) *C corporation partner.* A *C corporation partner* is a C corporation that is a direct or indirect partner of an electing partnership or a related partnership.

(5) *COD income. COD income* means income from the discharge of indebtedness, as determined under sections 61(a)(12) and 108(a) and the regulations under those sections.

(6) *COD income amount.* A *COD income amount* is a partner's distributive share of COD income with respect to an applicable debt instrument of an electing partnership.

(7) *Debt instrument. Debt instrument* means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

(8) *Deferral period.* For a reacquisition that occurs in 2009, *deferral period* means the taxable year of the reacquisition and the four taxable years following such taxable year. For a reacquisition that occurs in 2010, *deferral period* means the taxable year of the reacquisition and the three taxable years following such taxable year.

(9) *Deferred amount.* A *deferred amount* is the portion of a partner's COD income amount with respect to an applicable debt instrument that is deferred under section 108(i).

(10) *Deferred COD income. Deferred COD income* means COD income that is deferred under section 108(i).

(11) *Deferred item.* A *deferred item* is any item of deferred COD income or deferred OID deduction that has not been previously taken into account under section 108(i).

(12) *Deferred OID deduction.* A *deferred OID deduction* means an otherwise allowable deduction for OID that is deferred under section 108(i)(2) with respect to a debt instrument issued (or treated as issued under section 108(e)(4)) in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)–3(a).

(13) *Deferred section 465 amount.* A *deferred section 465 amount* is described in paragraph (d)(3) of § 1.108(i)–2.

(14) *Deferred section 752 amount.* A *deferred section 752 amount* is described in paragraph (b)(3) of § 1.108(i)–2.

(15) *Direct partner.* A *direct partner* is a person that owns a direct interest in a partnership.

(16) *Electing corporation.* An *electing corporation* is a C corporation with deferred COD income by reason of a section 108(i) election.

(17) *Electing entity.* An *electing entity* is an entity that is a taxpayer that makes an election under section 108(i).

(18) *Electing member.* An *electing member* is an electing corporation that is a member of an affiliated group that files a consolidated return.

(19) *Electing partnership.* An *electing partnership* is a partnership that makes an election under section 108(i).

(20) *Electing S corporation.* An *electing S corporation* is an S corporation that makes an election under section 108(i).

(21) *Included amount.* An *included amount* is the portion of a partner's COD income amount with respect to an applicable debt instrument that is not deferred under section 108(i) and is included in the partner's distributive share of partnership income for the taxable year of the partnership in which the reacquisition occurs.

(22) *Inclusion period.* The *inclusion period* is the five taxable years following the last taxable year of the deferral period.

(23) *Indirect partner.* An *indirect partner* is a person that owns an interest in a partnership through an S corporation and/or one or more partnerships.

(24) *Issuing entity.* An *issuing entity* is any entity that is—

(i) A related partnership;

(ii) A related S corporation;

(iii) An electing partnership that issues a debt instrument (or is treated as issuing a debt instrument under section 108(e)(4)) in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)–3(a); or

(iv) An electing S corporation that issues a debt instrument (or is treated as issuing a debt instrument under section 108(e)(4)) in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)–3(a).

(25) *OID. OID* means original issue discount, as determined under sections 1271 through 1275 (and the regulations under those sections). If the amount of OID with respect to a debt instrument is less than a de minimis amount as determined under § 1.1273–1(d), the OID is treated as zero for purposes of section 108(i)(2).

(26) *Reacquisition.* A *reacquisition,* with respect to any applicable debt instrument, is any event occurring after December 31, 2008 and before January 1, 2011, that causes COD income with respect to such applicable debt instrument, including any acquisition of the debt instrument by the debtor that issued (or is otherwise the obligor under) the debt instrument or a person related to such debtor (within the meaning of section 108(i)(5)(A)).

(27) *Related partnership.* A *related partnership* is a partnership that is related to the electing entity (within the meaning of section 108(i)(5)(A)) and that issues a debt instrument in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)–3(a).

(28) *Related S corporation.* A *related S corporation* is an S corporation that is related to the electing entity (within the meaning of section 108(i)(5)(A)) and that issues a debt instrument in a debt-for-debt exchange described in section 108(i)(2)(A) or a deemed debt-for-debt exchange described in § 1.108(i)–3(a).

(29) *Separate interest.* A *separate interest* is a direct interest in an electing partnership or in a partnership or S corporation that is a direct or indirect partner of an electing partnership.

(30) *S corporation partner.* An *S corporation partner* is an S corporation that is a direct or indirect partner of an electing partnership or a related partnership.

(b) *Effective/Applicability dates*—(1) *In general.* The rules of this section, § 1.108(i)–1, and § 1.108(i)–2, apply on or after July 2, 2013 to reacquisitions of applicable debt instruments in taxable years ending after December 31, 2008. In addition, the rules of § 1.108(i)–3 apply on or after July 2, 2013 to debt instruments issued after December 31, 2008, in connection with reacquisitions of applicable debt instruments in taxable years ending after December 31, 2008.

(2) *Prior periods.* For rules applying before July 2, 2013 see § 1.108(i)–0T, § 1.108(i)–1T, § 1.108(i)–2T, and § 1.108(i)–3T, as contained in 26 CFR part 1, revised April 1, 2012.

**§ 1.108(i)–0T [Removed]**

■ **Par. 3.** Section 1.108(i)–0T is removed.

■ **Par. 4.** Section 1.108(i)–1 is added to read as follows:

**§ 1.108(i)–1 Deferred discharge of indebtedness income and deferred original issue discount deductions of C corporations.**

(a) *Overview.* Section 108(i)(1) provides an election for the deferral of COD income arising in connection with the reacquisition of an applicable debt

instrument. An electing corporation generally includes deferred COD income ratably over the inclusion period. Paragraph (b) of this section provides rules for the mandatory acceleration of an electing corporation's remaining deferred COD income, the mandatory acceleration of a C corporation issuer's deferred OID deductions, and for the elective acceleration of an electing member's (other than the common parent's) remaining deferred COD income. Paragraph (c) of this section provides examples illustrating the application of the mandatory and elective acceleration rules. Paragraph (d) of this section provides rules for the computation of an electing corporation's earnings and profits. Paragraph (e) of this section refers to the effective/applicability dates.

(b) *Acceleration events*—(1) *Deferred COD income.* Except as otherwise provided in paragraphs (b)(2) and (3) of this section, and § 1.108(i)–2(b)(6) (in the case of a corporate partner), an electing corporation's deferred COD income is taken into account ratably over the inclusion period.

(2) *Mandatory acceleration events.* An electing corporation takes into account all of its remaining deferred COD income, including its share of an electing partnership's deferred COD income, immediately before the occurrence of any one of the events described in this paragraph (b)(2) (mandatory acceleration events), regardless of whether the electing corporation is in a title 11 or similar case at the time the mandatory acceleration event occurs.

(i) *Changes in tax status.* The electing corporation changes its tax status. For purposes of the preceding sentence, an electing corporation is treated as changing its tax status if it becomes one of the following entities:

(A) A tax-exempt entity as defined in § 1.337(d)–4(c)(2).

(B) An S corporation as defined in section 1361(a)(1).

(C) A qualified subchapter S subsidiary as defined in section 1361(b)(3)(B).

(D) An entity operating on a cooperative basis within the meaning of section 1381.

(E) A regulated investment company (RIC) as defined in section 851 or a real estate investment trust (REIT) as defined in section 856.

(F) A qualified REIT subsidiary as defined in section 856(i), but only if the qualified REIT subsidiary was not a REIT immediately before it became a qualified REIT subsidiary.

(ii) *Cessation of corporate existence*—(A) *In general.* The electing corporation ceases to exist for Federal income tax purposes.

(B) *Exception for section 381(a) transactions*—(*1*) *In general.* The electing corporation is not treated as ceasing to exist and is not required to take into account its remaining deferred COD income solely because its assets are acquired in a transaction to which section 381(a) applies. In such a case, the acquiring corporation succeeds to the electing corporation's remaining deferred COD income and becomes subject to section 108(i) and the regulations thereunder, including all reporting requirements, as if the acquiring corporation were the electing corporation. A transaction is not treated as one to which section 381(a) applies for purposes of this paragraph (b)(2)(ii)(B) in the following circumstances—

(*i*) The acquisition of the assets of an electing corporation by an S corporation, if the acquisition is described in section 1374(d)(8);

(*ii*) The acquisition of the assets of an electing corporation by a RIC or REIT, if the acquisition is described in § 1.337(d)–7(a)(2)(ii);

(*iii*) The acquisition of the assets of a domestic electing corporation by a foreign corporation;

(*iv*) The acquisition of the assets of a foreign electing corporation by a domestic corporation, if as a result of the transaction, one or more exchanging shareholders include in income as a deemed dividend the all earnings and profits amount with respect to stock in the foreign electing corporation pursuant to § 1.367(b)–3(b)(3);

(*v*) The acquisition of the assets of an electing corporation by a tax-exempt entity as defined in § 1.337(d)–4(c)(2); or

(*vi*) The acquisition of the assets of an electing corporation by an entity operating on a cooperative basis within the meaning of section 1381.

(*2*) *Special rules for consolidated groups*—(*i*) *Liquidations.* For purposes of paragraph (b)(2)(ii)(B) of this section, the acquisition of assets by distributee members of a consolidated group upon the liquidation of an electing corporation is not treated as a transaction to which section 381(a) applies, unless immediately prior to the liquidation, one of the distributee members owns stock in the electing corporation meeting the requirements of section 1504(a)(2) (without regard to § 1.1502–34). See § 1.1502–80(g).

(*ii*) *Taxable years.* In the case of an intercompany transaction to which section 381(a) applies, the transaction does not cause the transferor or distributor to have a short taxable year for purposes of determining the taxable year of the deferral and inclusion period.

(iii) *Net value acceleration rule*—(A) *In general.* The electing corporation engages in an impairment transaction and, immediately after the transaction, the gross value of the electing corporation's assets (gross asset value) is less than one hundred and ten percent of the sum of its total liabilities and the tax on the net amount of its deferred items (the net value floor) (the net value acceleration rule). Impairment transactions are any transactions, however effected, that impair an electing corporation's ability to pay the amount of Federal income tax liability on its deferred COD income and include, for example, distributions (including section 381(a) transactions), redemptions, below-market sales, charitable contributions, and the incurrence of additional indebtedness without a corresponding increase in asset value. Value-for-value sales or exchanges (for example, an exchange to which section 351 or section 721 applies), or mere declines in the market value of the electing corporation's assets are not impairment transactions. In addition, an electing corporation's investments and expenditures in pursuance of its good faith business judgment are not impairment transactions. For purposes of determining an electing corporation's gross asset value, the amount of any distribution that is not treated as an impairment transaction under paragraph (b)(2)(iii)(D) of this section (distributions and charitable contributions consistent with historical practice) or under paragraph (b)(2)(iii)(E) of this section (special rules for RICs and REITs) is treated as an asset of the electing corporation. Solely for purposes of computing the amount of the net value floor, the tax on the deferred items is determined by applying the highest rate of tax specified in section 11(b) for the taxable year.

(B) *Transactions integrated.* Any transaction that occurs before the reacquisition of an applicable debt instrument, but that occurs pursuant to the same plan as the reacquisition, is taken into account in determining whether the gross asset value of the electing corporation is less than the net value floor.

(C) *Corrective action to restore net value.* An electing corporation is not required to take into account its deferred COD income under the net value acceleration rule of paragraph (b)(2)(iii)(A) of this section if, before the due date of the electing corporation's return (including extensions), value is

restored in a transaction in an amount equal to the lesser of—

(*1*) The amount of value that was removed from the electing corporation in one or more impairment transactions (net of amounts previously restored under this paragraph (b)(2)(iii)(C)); or

(*2*) The amount by which the electing corporation's net value floor exceeds its gross asset value.

For example, assume an electing corporation incurs $50 of debt, distributes the $50 of proceeds to its shareholder, and immediately after the distribution, the electing corporation's gross asset value is below the net value floor by $25. The electing corporation may avoid the inclusion of its remaining deferred COD income if value of at least $25 is restored to it before the due date of the electing corporation's tax return (including extensions) for the taxable year that includes the distribution. The value that must be restored is determined at the time of the impairment transaction on a net value basis (for example, additional borrowings by an electing corporation do not restore value).

(D) *Exceptions for distributions and charitable contributions that are consistent with historical practice.* An electing corporation's distributions are not treated as impairment transactions (and are not taken into account as a reduction of the electing corporation's gross asset value when applying the net value acceleration rule to any impairment transaction), to the extent that the distributions are described in section 301(c) and the amount of these distributions, in the aggregate, for the applicable taxable year (applicable distribution amount) does not exceed the annual average amount of section 301(c) distributions over the preceding three taxable years (average distribution amount). If an electing corporation's applicable distribution amount exceeds its average distribution amount (excess amount), then the amount of the impairment transaction equals the excess amount. Appropriate adjustments must be made to take into account any issuances or redemptions of stock, or similar transactions, occurring during the year of distribution or any of the three preceding years. If the electing corporation has a short taxable year for the year of the distribution or for any of the three preceding years, the amounts are determined on an annualized basis. If an electing corporation has been in existence for less than three years, the period during which the electing corporation has been in existence is substituted for the preceding three taxable years. For purposes of determining an electing corporation's average distribution amount, the electing corporation does not take into account the distribution history of a distributor or transferor in a transaction to which section 381(a) applies (other than a transaction described in section 368(a)(1)(F)). Rules similar to those prescribed in this paragraph (b)(2)(iii)(D) also apply to an electing corporation's charitable contributions (within the meaning of section 170(c)) that are consistent with its historical practice.

(E) *Special rules for RICs and REITs*—(*1*) *Distributions.* Notwithstanding paragraph (b)(2)(iii)(D) of this section, in the case of a RIC or REIT, any distribution with respect to stock that is treated as a dividend under section 852 or 857 is not treated as an impairment transaction (and is not taken into account as a reduction in gross asset value when applying the net value acceleration rule to any impairment transaction).

(*2*) *Redemptions by RICs.* Any redemption of a redeemable security, as defined in 15 U.S.C. section 80a-2(a)(32), by a RIC in the ordinary course of business is not treated as an impairment transaction (and is not taken into account as a reduction in gross asset value when applying the net value acceleration rule to any impairment transaction).

(F) *Special rules for consolidated groups*—(*1*) *Impairment transactions and net value acceleration rule.* In the case of an electing member, the determination of whether the member has engaged in an impairment transaction is made on a group-wide basis. An electing member is treated as engaging in an impairment transaction if any member's transaction impairs the group's ability to pay the tax liability associated with all electing members' deferred COD income. Accordingly, intercompany transactions are not impairment transactions. Similarly, the net value acceleration rule is applied by reference to the gross asset value of all members (excluding stock of members whether or not described in section 1504(a)(4)), the liabilities of all members, and the tax on all members' deferred items. For example, assume P is the common parent of the P–S consolidated group, S has a section 108(i) election in effect, and S makes a $100 distribution to P which, on a separate entity basis, would reduce S's gross asset value below the net value floor. S's intercompany distribution to P is not an impairment transaction. However, if P makes a $100 distribution to its shareholder, P's distribution is an impairment transaction (unless the distribution is consistent with its historical practice under paragraph (b)(2)(iii)(D) of this section), and the net value acceleration rule is applied by reference to the assets, liabilities, and deferred items of the P–S group.

(*2*) *Departing member.* If an electing member that previously engaged in one or more impairment transactions on a separate entity basis ceases to be a member of a consolidated group (departing member), the cessation is treated as an impairment transaction and the net value acceleration rule under paragraph (b)(2)(iii)(A) of this section is applied to the departing member on a separate entity basis immediately after ceasing to be a member (and taking into account the impairment transaction(s) that occurred on a separate entity basis). If the departing member's gross asset value is below the net value floor, the departing member's remaining deferred COD income is taken into account immediately before the departing member ceases to be a member (unless value is restored under paragraph (b)(2)(iii)(C) of this section). If the departing member's deferred COD income is not accelerated, the departing member is subject to the reporting requirements of section 108(i) on a separate entity basis. If the departing member becomes a member of another consolidated group, the cessation is treated as an impairment transaction and the net value acceleration rule under paragraph (b)(2)(iii)(A) of this section is applied by reference to the assets, liabilities, and the tax on deferred items of the members of the acquiring group immediately after the transaction. If the acquiring group's gross asset value is below the net value floor, the departing member's remaining deferred COD income is taken into account immediately before the departing member ceases to be a member (unless value is restored under paragraph (b)(2)(iii)(C) of this section). If the departing member's remaining deferred COD income is not accelerated, the common parent of the acquiring group succeeds to the reporting requirements of section 108(i) with respect to the departing member.

(3) *Elective acceleration for certain consolidated group members*—(i) *In general.* An electing member (other than the common parent) of a consolidated group may elect at any time to accelerate in full (and not in part) the inclusion of its remaining deferred COD income with respect to all applicable debt instruments by filing a statement described in paragraph (b)(3)(ii) of this section. Once made, an election to accelerate deferred COD income under this paragraph (b)(3) is irrevocable.

(ii) *Time and manner for making election*—(A) *In general.* The election to accelerate the inclusion of an electing member's remaining deferred COD income with respect to all applicable debt instruments is made on a statement attached to a timely filed tax return (including extensions) for the year in which the deferred COD income is taken into account. The election is made by the common parent on behalf of the electing member. See § 1.1502–77(a).

(B) *Additional information.* The statement must include—

(*1*) *Label.* A label entitled ''SECTION 1.108(i)–1 ELECTION AND INFORMATION STATEMENT BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF THE ELECTING MEMBER]''; and

(*2*) *Required Information.* An identification of each applicable debt instrument to which an election under this paragraph (b)(3) applies and the corresponding amount of—

(*i*) Deferred COD income that is accelerated under this paragraph (b)(3); and

(*ii*) Deferred OID deductions that are accelerated under paragraph (b)(4) of this section.

(4) *Deferred OID deductions*—(i) *In general.* Except as otherwise provided in paragraph (b)(4)(ii) of this section and § 1.108(i)–2(b)(6) (in the case of a C corporation partner), a C corporation issuer's deferred OID deductions are taken into account ratably over the inclusion period.

(ii) *OID acceleration events.* A C corporation issuer takes into account all of its remaining deferred OID deductions with respect to a debt instrument immediately before the occurrence of any one of the events described in this paragraph (b)(4)(ii), regardless of whether the C corporation issuer is in a title 11 or similar case.

(A) *Inclusion of deferred COD income.* An electing entity or its owners take into account all of the remaining deferred COD income to which the C corporation issuer's deferred OID deductions relate. If, under § 1.108(i)–2(b) or (c), an electing entity or its owners take into account only a portion of the deferred COD income to which the deferred OID deductions relate, then the C corporation issuer takes into account a proportionate amount of the remaining deferred OID deductions.

(B) *Changes in tax status.* The C corporation issuer changes its tax status within the meaning of paragraph (b)(2)(i) of this section.

(C) *Cessation of corporate existence*—(*1*) *In general.* The C corporation issuer ceases to exist for Federal income tax purposes.

(*2*) *Exception for section 381(a) transactions*—(*i*) *In general.* A C corporation issuer is not treated as ceasing to exist and does not take into account its remaining deferred OID deductions in a transaction to which section 381(a) applies, taking into account the application of § 1.1502–34, as appropriate. See § 1.1502–80(g). This exception does not apply to a transaction that is not treated as one to which section 381(a) applies under paragraph (b)(2)(iii)(B)(*1*) of this section.

(*ii*) *Taxable years.* In the case of an intercompany transaction to which section 381(a) applies, the transaction does not cause the transferor or distributor to have a short taxable year for purposes of determining the taxable year of the deferral and inclusion period.

(c) *Examples.* The application of this section is illustrated by the following examples. Unless otherwise stated, P, S, S1, and X are domestic C corporations, and each files a separate return on a calendar year basis:

*Example 1. Net value acceleration rule.* (i) *Facts.* On January 1, 2009, S reacquires its own note and realizes $400 of COD income. Pursuant to an election under section 108(i), S defers recognition of the entire $400 of COD income. Therefore, absent a mandatory acceleration event, S will take into account $80 of its deferred COD income in each year of the inclusion period. On December 31, 2010, S makes a $25 distribution to its sole shareholder, P, and this is the only distribution made by S in the past four years. Immediately following the distribution, S's gross asset value is $100, S has no liabilities, and the Federal income tax on S's $400 of deferred COD income is $140. Accordingly, S's net value floor is $154 (110% × $140).

(ii) *Analysis.* Under paragraph (b)(2)(iii)(A) of this section, S's distribution is an impairment transaction. Immediately following the distribution, S's gross asset value of $100 is less than the net value floor of $154. Accordingly, under the net value acceleration rule of paragraph (b)(2)(iii)(A) of this section, S takes into account its $400 of deferred COD income immediately before the distribution.

(iii) *Corrective action to restore value.* The facts are the same as in paragraph (i) of this *Example 1,* except that P contributes assets with a value of $25 to S before the due date of S's 2010 return (including extensions). Because P restores $25 of value to S (the lesser of the amount of value removed in the distribution ($25) or the amount by which S's net value floor exceeds its gross asset value ($54)), under paragraph (b)(2)(iii)(C) of this section, S does not take into account its $400 of deferred COD income.

*Example 2. Distributions consistent with historical practice.* (i) *Facts.* P, a publicly traded corporation, makes a valid section 108(i) election with respect to COD income realized in 2009. On December 31, 2009, P distributes $25 million on its 5 million shares of common stock outstanding. As of January 1, 2006, P has 10 million shares of common stock outstanding, and on March 31, 2006, P distributes $10 million on those 10 million shares. On September 15, 2006, P effects a 2:1 reverse stock split, and on December 31, 2006, P distributes $10 million on its 5 million shares of common stock outstanding. In each of 2007 and 2008, P distributes $5 million on its 5 million shares of common stock outstanding. All of the distributions are described in section 301(c).

(ii) *Amount of impairment transaction.* Under paragraph (b)(2)(iii)(D) of this section, P's 2009 distributions are not treated as impairment transactions (and are not taken into account as a reduction of P's gross asset value when applying the net value acceleration rule to any impairment transaction), to the extent that the aggregate amount distributed in 2009 (the applicable distribution amount) does not exceed the annual average amount of distributions (the average distribution amount) over the preceding three taxable years. Accordingly, P's applicable distribution amount for 2009 is $25 million, and its average distribution amount is $10 million ($20 million (2006) plus $5 million (2007) plus $5 million (2008) divided by 3). The reverse stock split in 2006 is not a transaction requiring an adjustment to the determination of the average distribution amount. Because P's applicable distribution amount of $25 million exceeds its average distribution amount of $10 million, under paragraph (b)(2)(iii)(D) of this section, the amount of P's 2009 distribution that is treated as an impairment transaction is $15 million. The balance of the 2009 distribution, $10 million, is not treated as an impairment transaction (and is not taken into account as a reduction in P's gross asset value when applying the net value acceleration rule to any impairment transaction).

(iii) *Distribution history.* The facts are the same as in paragraph (i) of this *Example 2,* except that in 2010, P merges into X in a transaction to which section 381(a) applies, with X succeeding to P's deferred COD income, and X makes a distribution to its shareholders. For purposes of determining whether X's distribution is consistent with its historical practice, the average distribution amount is determined solely with respect to X's distribution history.

*Example 3. Cessation of corporate existence.* (i) *Transaction to which section 381(a) applies.* P owns all of the stock of S. In 2009, S reacquires its own note and elects to defer recognition of its $400 of COD income under section 108(i). On December 31, 2010, S liquidates into P in a transaction that qualifies under section 332. Under paragraph (b)(2) of this section, S must take into account all of its remaining deferred COD income upon the occurrence of any one of the mandatory acceleration events. Although S ceases its corporate existence as a result of the liquidation, S is not required to take into account its remaining deferred COD income under the exception in paragraph (b)(2)(ii)(B) of this section because its assets are acquired in a transaction to which section 381(a) applies. However, under paragraph (b)(2)(iii)(A) of this section, S's distribution to P is an impairment

transaction and the net value acceleration rule is applied with respect to the assets, liabilities, and deferred items of P (S's successor) immediately following the distribution. If S's deferred COD income is not taken into account under the net value acceleration rule of (b)(2)(iii) of this section, P succeeds to S's remaining deferred COD income and to S's reporting requirements as if P were the electing corporation.

(ii) *Debt-laden distributee.* The facts are the same as in paragraph (i) of this *Example 3,* except that in the liquidation, S distributes $100 of assets to P, a holding company whose only asset is its stock in S. Assume that immediately following the distribution, P's gross asset value is $100, P has $60 of liabilities, and the Federal income tax on the $400 of deferred COD income is $140. Under paragraph (b)(2) of this section, S must take into account all of its remaining deferred COD income upon the occurrence of any one of the mandatory acceleration events. Although S ceases its corporate existence as a result of the liquidation, S is not required to take into account its remaining deferred COD income under the exception in paragraph (b)(2)(ii)(B) of this section because its assets are acquired in a transaction to which section 381(a) applies. However, under paragraph (b)(2)(iii)(A) of this section, S's distribution to X is an impairment transaction and the net value acceleration rule is applied with respect to the assets, liabilities, and deferred items of P (S's successor). Immediately following the distribution, P's gross asset value of $100 is less than the net value floor of $220 [110% × ($60 + $140)]. Accordingly, under the net value acceleration rule of paragraph (b)(2)(iii)(A) of this section, S is required to take into account its $400 of deferred COD income immediately before the distribution, unless value is restored to P pursuant to (b)(2)(iii)(C) of this section.

(iii) *Foreign acquirer.* The facts are the same as in paragraph (i) of this *Example 3,* except that P is a foreign corporation. Although S's assets are acquired in a transaction to which section 381(a) applies, under paragraph (b)(2)(ii)(B)(*1*)(*iii*) of this section, the exception to accelerated inclusion does not apply and S takes into account its remaining deferred COD income immediately before the liquidation. See also section 367(e)(2) and the regulations thereunder.

(iv) *Section 338 transaction.* P, the common parent of a consolidated group (P group), owns all the stock of S1, one of the members of the P group. In 2009, S1 reacquires its own indebtedness and realizes $30 of COD income. Pursuant to an election under section 108(i), S1 defers recognition of the entire $30 of COD income. In 2010, P sells all the stock of S1 to X, an unrelated corporation, for $300, and P and X make a timely section 338(h)(10) election with respect to the sale. Under paragraph (b)(2)(ii)(A) of this section, an electing corporation takes into account its remaining deferred COD income when it ceases its existence for Federal income tax purposes unless the exception in paragraph (b)(2)(ii)(B) of this section applies. Pursuant to section 338(h)(10) and the regulations, S1 is treated as transferring all of its assets to an unrelated person in exchange for consideration that includes the discharge of its liabilities. This deemed value-for-value exchange is not an impairment transaction. Following the deemed sale, while S1 is still a member of the P group, S1 is treated as distributing all of its assets to P and as ceasing its existence. Under these facts, the distribution of all of S1's assets constitutes a deemed liquidation, and is a transaction to which sections 332 and 381(a) apply. Although S1 ceases its corporate existence as a result of the liquidation, S1 is not required to take into account its remaining deferred COD income under the exception in paragraph (b)(2)(ii)(B) of this section because its assets are acquired in a transaction to which section 381(a) applies. P succeeds to S1's remaining deferred COD income and to S1's reporting requirements as if P were the electing corporation. Under paragraph (b)(2)(iii)(F)(*1*) of this section, the intercompany distribution from S1 to P is not an impairment transaction.

(d) *Earnings and profits*—(1) *In general.* Deferred COD income increases earnings and profits in the taxable year that it is realized and not in the taxable year or years that the deferred COD income is includible in gross income. Deferred OID deductions decrease earnings and profits in the taxable year or years in which the deduction would be allowed without regard to section 108(i).

(2) *Exceptions*—(i) *RICs and REITs.* Notwithstanding paragraph (d)(1) of this section, deferred COD income increases earnings and profits of a RIC or REIT in the taxable year or years in which the deferred COD income is includible in gross income and not in the year that the deferred COD income is realized. Deferred OID deductions decrease earnings and profits of a RIC or REIT in the taxable year or years that the deferred OID deductions are deductible.

(ii) *Alternative minimum tax.* For purposes of calculating alternative minimum taxable income, any items of deferred COD income or deferred OID deduction increase or decrease, respectively, adjusted current earnings under section 56(g)(4) in the taxable year or years that the item is includible or deductible.

(e) *Effective/applicability dates.* For *effective/applicability dates,* see § 1.108(i)–0(b).

**§ 1.108(i)–1T [Removed].**

■ **Par. 5.** Section 1.108(i)–1T is removed.

■ **Par. 6.** Section 1.108(i)–3 is added to read as follows:

**§ 1.108(i)–3 Rules for the deduction of OID.**

(a) *Deemed debt-for-debt exchanges*—(1) *In general.* For purposes of section 108(i)(2) (relating to deferred OID deductions that arise in certain debt-for-debt exchanges involving the reacquisition of an applicable debt instrument), if the proceeds of any debt instrument are used directly or indirectly by the issuer or a person related to the issuer (within the meaning of section 108(i)(5)(A)) to reacquire an applicable debt instrument, the debt instrument shall be treated as issued for the applicable debt instrument being reacquired. Therefore, section 108(i)(2) may apply, for example, to a debt instrument issued by a corporation for cash in which some or all of the proceeds are used directly or indirectly by the corporation's related subsidiary in the reacquisition of the subsidiary's applicable debt instrument.

(2) *Directly or indirectly.* Whether the proceeds of an issuance of a debt instrument are used directly or indirectly to reacquire an applicable debt instrument depends upon all of the facts and circumstances surrounding the issuance and the reacquisition. The proceeds of an issuance of a debt instrument will be treated as being used indirectly to reacquire an applicable debt instrument if—

(i) At the time of the issuance of the debt instrument, the issuer of the debt instrument anticipated that an applicable debt instrument of the issuer or a person related to the issuer would be reacquired by the issuer, and the debt instrument would not have been issued if the issuer had not so anticipated such reacquisition;

(ii) At the time of the issuance of the debt instrument, the issuer of the debt instrument or a person related to the issuer anticipated that an applicable debt instrument would be reacquired by a related person and the related person receives cash or property that it would not have received unless the reacquisition had been so anticipated; or

(iii) At the time of the reacquisition, the issuer or a person related to the issuer foresaw or reasonably should have foreseen that the issuer or a person related to the issuer would be required to issue a debt instrument, which it would not have otherwise been required to issue if the reacquisition had not occurred, in order to meet its future economic needs.

(b) *Proportional rule for accruals of OID.* For purposes of section 108(i)(2), if only a portion of the proceeds from the issuance of a debt instrument are used directly or indirectly to reacquire an applicable debt instrument, the rules of section 108(i)(2)(A) will apply to the portion of OID on the debt instrument that is equal to the portion of the proceeds from such instrument used to reacquire the outstanding applicable

debt instrument. Except as provided in the last sentence of section 108(i)(2)(A), the amount of deferred OID deduction that is subject to section 108(i)(2)(A) for a taxable year is equal to the product of the amount of OID that accrues in the taxable year under section 1272 or section 1275 (and the regulations under those sections), whichever section is applicable, and a fraction, the numerator of which is the portion of the total proceeds from the issuance of the debt instrument used directly or indirectly to reacquire the applicable debt instrument and the denominator of which is the total proceeds from the issuance of the debt instrument.

(c) *No acceleration*—(1) *Retirement.* Retirement of a debt instrument subject to section 108(i)(2) does not accelerate deferred OID deductions.

(2) *Cross-reference.* See § 1.108(i)–1 and § 1.108(i)–2 for rules relating to the acceleration of deferred OID deductions.

(d) *Examples.* The application of this section is illustrated by the following examples. Unless otherwise stated, all taxpayers in the following examples are calendar-year taxpayers, and P and S each file separate returns:

*Example 1.* (i) *Facts.* P, a domestic corporation, owns all of the stock of S, a domestic corporation. S has a debt instrument outstanding that has an adjusted issue price of $100,000. On January 1, 2010, P issues for $160,000 a four-year debt instrument that has an issue price of $160,000 and a stated redemption price at maturity of $200,000, resulting in $40,000 of OID. In P's discussion with potential lenders/holders, and as described in offering materials provided to potential lenders/holders, P disclosed that it planned to use all or a portion of the proceeds from the issuance of the debt instrument to reacquire outstanding debt of P and its affiliates. Following the issuance, P makes a $70,000 capital contribution to S. S then reacquires its debt instrument from X, a person not related to S within the meaning of section 108(i)(5)(A), for $70,000. At the time of the reacquisition, the adjusted issue price of S's debt instrument is $100,000. Under § 1.61–12(c), S realizes $30,000 of COD income. S makes a section 108(i) election for the $30,000 of COD income.

(ii) *Analysis.* Under the facts, at the time of P's issuance of its $160,000 debt instrument, P anticipated that the loan proceeds would be used to reacquire the debt of S, and P's debt instrument would not have been issued for an amount greater than $90,000 if P had not anticipated that S would use the proceeds to reacquire its debt. Pursuant to paragraph (a) of this section, the proceeds from P's issuance of its debt instrument are treated as being used indirectly to reacquire S's applicable debt instrument. Therefore, section 108(i)(2)(B) applies to P's debt instrument and P's OID deductions on its debt instrument are subject to deferral under section 108(i)(2)(A). However, because only a portion of the proceeds from P's debt instrument are used by S to reacquire its applicable debt instrument, only a portion of P's total OID deductions will be deferred under section 108(i)(2)(A). See section 108(i)(2)(B). Accordingly, a maximum of $17,500 ($40,000 × $70,000/$160,000) of P's $40,000 total OID deductions is subject to deferral under section 108(i)(2)(A). Under paragraph (b) of this section, the amount of P's deferred OID deduction each taxable year under section 108(i)(2)(A) is equal to the product of the amount of OID that accrues in the taxable year under section 1272 for the debt instrument and a fraction ($70,000/$160,000). As a result, P's deferred OID deductions are the following amounts: $4,015.99 for 2010 ($9,179.40 × $70,000/$160,000); $4,246.39 for 2011 ($9,706.04 × $70,000/$160,000); $4,490.01 for 2012 ($10,262.88 × $70,000/$160,000); and $4,747.61 for 2013 ($10,851.68 × $70,000/$160,000).

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1,* except that S makes a section 108(i) election for only $10,000 of the $30,000 of COD income.

(ii) *Analysis.* The maximum amount of P's deferred OID deductions under section 108(i)(2)(A) is $10,000 rather than $17,500 because S made a section 108(i) election for only $10,000 of the $30,000 of COD income. Under section 108(i)(2)(A), because the amount of OID that accrues prior to 2014 attributable to the portion of the debt instrument issued to indirectly reacquire S's applicable debt instrument under paragraph (b) of this section ($17,500) exceeds the amount of deferred COD income under section 108(i) ($10,000), P's deferred OID deductions are the following amounts: $4,015.99 for 2010; $4,246.39 for 2011; $1,737.62 for 2012; and $0 for 2013.

*Example 3.* (i) *Facts.* The facts are the same as in *Example 1,* except that P pays $200,000 in cash to the lenders/holders on December 31, 2012, to retire the debt instrument. P did not directly or indirectly obtain the funds to retire the debt instrument from the issuance of another debt instrument with OID.

(ii) *Analysis.* Under paragraph (c)(1) of this section, the retirement of P's debt instrument is not an acceleration event for the deferred OID deductions of $4,015.99 for 2010, $4,246.39 for 2011, and $4,490.01 for 2012. Except as provided in § 1.108(i)–1(b)(4), these amounts will be taken into account during the inclusion period. P, however, paid a repurchase premium of $10,851.68 in 2012 ($200,000 minus the adjusted issue price of $189,148.32) to retire the debt instrument. If otherwise allowable, P may deduct this amount in 2012 under § 1.163–7(c).

(e) *Effective/applicability dates.* For *effective/applicability dates,* see § 1.108(i)–0(b).

**§ 1.108(i)–3T [Removed]**

■ **Par. 7.** Section 1.108(i)–3T is removed.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 8.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 9.** In § 602.101, paragraph (b) is revised as follows:

■ 1. The following entry to the table is removed:

**§ 602.101 OMB Control Numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control no. |
|---|---|
| * * * * * | |
| 1.108(i)–1T | 1545–2147 |
| * * * * * | |

* * * * *

■ 2. The following entry is added in numerical order to the table:

**§ 602.101 OMB Control Numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control no. |
|---|---|
| * * * * * | |
| 1.108(i)–1 | 1545–2147 |
| * * * * * | |

**Beth Tucker,**

*Deputy Commissioner for Operations Support.*

Approved: June 11, 2013.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2013–15881 Filed 7–2–13; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2013–0238]**

**RIN 1625–AA00**

### Safety Zone; Feast of Lanterns Fireworks Display, Pacific Grove, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters near Lover's Point Park in the Pacific Grove, CA in support of The Feast of Lanterns Fireworks Event on July 27, 2013. This safety zone is established to ensure the safety of mariners and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

**DATES:** This rule is effective from 9 p.m. to 9:45 p.m. on July 27, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0238. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade Joshua Dykman, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585 or email at *D11–PF-MarineEvents@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## Table of Acronyms

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

## A. Regulatory History and Information

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

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because it is impracticable. The event would occur before the rulemaking process could be completed in the time remaining. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. It is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. As previously discussed, it is impracticable and contrary to the public interest to delay this regulation 30 days.

## B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

Feast of Lanterns will sponsor the Feast of Lanterns Fireworks Display on July 27, 2013, near Lover's Point Park in Pacific Grove, CA in approximate position 36°37′26″ N, 121°54′54″ W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18685. Upon the commencement of the 30 minute fireworks display, the safety zone will encompass the navigable waters around and under the land based launch site within a radius of 350 feet. The fireworks display is meant for entertainment purposes. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

## C. Discussion of the Final Rule

The proposed safety zone will encompass the navigable waters around the land based launch site near Lover's Point Park in Pacific Grove, CA. Upon the commencement of the fireworks display, scheduled to take place from 9:00 p.m. to 9:30 p.m. on July 27, 2013, the safety zone will encompass the navigable waters around the fireworks launch site within a radius 350 feet from position 36°37′26″ N, 121°54′54″ W (NAD 83) for the Feast of Lanterns Fireworks Display. At the conclusion of the fireworks display the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the launch site until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the launch site to ensure the safety of participants, spectators, and transiting vessels.

## D. Regulatory Analyses

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

### *1. Regulatory Planning and Review*

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

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

### *2. Impact on Small Entities*

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

This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft

engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for a limited duration. When the safety zone is activated, vessel traffic could pass safely around the safety zone. The maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) and 35(b) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–571 to read as follows:

**§ 165.T11–571 Safety Zone; Feast of Lanterns Fireworks Display, Pacific Grove, CA.**

(a) *Location.* This safety zone is established in the navigable waters near the Lover's Point Park in Pacific Grove, CA, as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18685. The temporary safety zone will encompass the navigable waters around the land based fireworks launch site in approximate position 36°37′26″ N, 121°54′54″ W (NAD 83) within a radius of 350 feet.

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be enforced from 9 p.m. until 9:45 p.m. on July 27, 2013. The Captain of the Port San Francisco

(COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

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

(d) *Regulations.* (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

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

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

Dated: June 13, 2013.

**Gregory G. Stump,**

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

[FR Doc. 2013–16064 Filed 7–2–13; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2013–0494]**

**RIN 1625–AA00**

## Safety Zone; Margate Mother's Association Fireworks Display, Atlantic Ocean; Margate, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Atlantic Ocean in Margate, NJ. The safety zone will restrict vessel traffic on a portion of the Atlantic Ocean from operating while a fireworks event is taking place. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with a fireworks display.

**DATES:** This rule is effective on July 4, 2013, from 8:45 p.m. until 10:05 p.m.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0494]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Veronica Smith, Chief Waterways Management, Sector Delaware Bay, U.S. Coast Guard; telephone (215)271–4851, email *veronica.l.smith@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202)366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

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

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Immediate action is necessary to provide for the safety of life and property in the navigable water. Publishing an NPRM is impracticable given that the final details for this event were not received by the Coast Guard with sufficient time for a notice and comment period to run before the start of the event. Delaying this rule to wait for a notice and comment period to run would be impracticable as it would inhibit the Coast Guard's ability to protect the public from the hazards associated with maritime fireworks displays.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the establishment of the safety zone could result in mariners approaching the fireworks location, creating a hazardous scenario with potential for loss of life and property. For the same reasons discussed in the preceding paragraph, a 30 day notice period would be impracticable and contrary to the public interest.

### B. Basis and Purpose

On the evening of July 4, 2013, fireworks will be launched from a barge with a fall out zone that covers part of the Atlantic Ocean. Margate Mother's Association has contracted with Schaefer Pyrotechnics to arrange for this display. The Captain of the Port, Sector Delaware Bay, has determined that the Margate Mother's Association Fireworks Display will pose significant risks to the public. The purpose of the rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway during the event.

### C. Discussion of the Final Rule

To mitigate the risks associated with the Margate Mother's Association Fireworks Display, the Captain of the Port, Sector Delaware Bay will enforce a temporary safety zone in the vicinity of the launch site. The safety zone will encompass all waters of the Atlantic Ocean within a 350 yard radius of the fireworks launch platform in approximate position 39°19′27.7389″ N, 074°29′45.7367″ W in Margate, NJ. The safety zone will be effective and enforced from 8:45 p.m. to 10:05 p.m. on July 4, 2013. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Delaware Bay, or her on-scene representative. The Captain of the Port, Sector Delaware Bay, or her on-scene representative may be contacted via VHF channel 16.

### D. Regulatory Analyses

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

based on these statutes or executive orders.

*1. Regulatory Planning and Review*

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

Although this regulation will restrict vessel traffic from operating within the safety zone on the navigable waters of the Atlantic Ocean, Margate, NJ, the effect of this regulation will not be significant due to the limited duration that the safety zone will be in effect. The enforcement window lasts for 1 hour and 20 minutes in an open area that does not conflict with transiting commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities:

(1) This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate, transit, or anchor on the Atlantic Ocean in Margate, NJ between 8:45 p.m. and 10:05 p.m. on July 4, 2013.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced for a short period of time. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Delaware Bay, to transit through the safety zone. Before activation of the zone, we will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0494, to read as follows:

**§ 165.T05–0494 Safety Zone; Margate Mother's Association Fireworks Display, Atlantic Ocean, Margate, NJ.**

(a) *Regulated Area.* The following area is a safety zone: The safety zone will encompass all waters of the Atlantic Ocean within a 350 yard radius of the fireworks launch platform in approximate position 39°19′27.7389″ N, 074°29′45.7367″ W in Margate, NJ.

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this § 165.T05–0494.

(1) All persons and vessels are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port or her designated representative.

(2) All persons or vessels wishing to transit through the Safety Zone must request authorization to do so from the Captain of the Port or her designated representative one hour prior to the intended time of transit.

(3) Vessels granted permission to transit through the Safety Zone must do so in accordance with the directions provided by the Captain of the Port or her designated representative to the vessel.

(4) To seek permission to transit this safety zone, the Captain of the Port or her designated representative can be contacted via Sector Delaware Bay Command Center (215) 271–4940.

(5) This section applies to all vessels wishing to transit through the safety zone except vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation, and

(iii) Emergency response vessels.

(6) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(7) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(8) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(9) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(c) *Definitions.*

(1) *Captain of the Port* means the Commander, Coast Guard Sector Delaware Bay, or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State, and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 8:45 p.m. until 10:05 p.m. on July 4, 2013.

Dated: June 24, 2013.

**K. Moore,**

*Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.*

[FR Doc. 2013–16038 Filed 7–2–13; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2013–0366]**

## Safety Zone; Fourth of July Fireworks Display, Tahoe City, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the Fourth of July Fireworks Display, Tahoe City, CA in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191, Table 1, number 18, will be enforced from 7 a.m. through 10 p.m. on July 4, 2013.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Lieutenant Junior Grade William Hawn, Sector San Francisco Waterways Safety Division, U.S. Coast Guard; telephone 415–399–7442, email *D11-PF-MarineEvents@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce a safety zone in navigable waters around and under the fireworks barge within a radius of 100 feet during the loading, transit, and arrival of the fireworks barge to the display location and until the start of the fireworks display. From 7 a.m. until 8 a.m. on July 4, 2013, the fireworks barge will be loaded off of Tahoe Keys Marina in South Lake Tahoe, CA in approximate position 38°56′05″ N, 120°00′09″ W (NAD 83). From 8 a.m. to 12 a.m. on July 4, 2013, the loaded barge will transit from Tahoe Keys Marina to the launch site off of Tahoe City, CA in approximate position 39°10′09″ N, 120°08′16″ W (NAD 83) where it will remain until the commencement of the fireworks display. Upon the commencement of the 21 minute fireworks display, scheduled to begin at 9:30 p.m. on July 4, 2013, the safety zone will increase in size to encompass the navigable waters around and under the fireworks barge within a radius 1,000 feet in approximate position 39°10′09″ N, 120°08′16″ W (NAD 83) for the Fourth of July Fireworks Display, Tahoe City, CA in 33 CFR 165.1191, Table 1, Item number 18. This safety zone will be in effect from 7 a.m. until 10 p.m. on July 4, 2013.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry

into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 13, 2013.

**Gregory G. Stump,**

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

[FR Doc. 2013–16040 Filed 7–2–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2013–0547]**

**RIN 1625–AA00**

## Safety Zone; Grand Haven 4th of July Fireworks; Grand River; Grand Haven, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Grand River in Grand Haven, Michigan. This safety zone is intended to restrict vessels from a portion of the Grand River due to a fireworks display. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the fireworks display.

**DATES:** This rule is effective from 9:30 p.m. until 11:30 p.m. on July 4, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0547. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule
CFR Code of Federal Regulations

### A. Regulatory History and Information

This annual fireworks display is codified in 33 CFR 165.929(a)(19). However, the Coast Guard was informed by the event organizer that this year's fireworks will be shot from a different location than what is shown in 33 CFR 165.929(a)(19). This temporary final rule reflects the new launch site for this year's event.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because it is impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

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

### B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

On July 4, 2013, the City of Grand Haven will host a fireworks display. Fireworks will be launched from a position on the west bank of the Grand River in Grand Haven, Michigan. The Coast Guard, after speaking with the event organizer, anticipates that a large number of spectator vessels will be present in the Grand River on the night of the display. As such, the Captain of the Port, Lake Michigan, has determined that this fireworks display will pose a significant risk to public safety and property. Such hazards include falling debris, flaming debris, and collisions among spectator vessels.

### C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port, Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the fireworks display in Grand Haven, Michigan. This rule is effective and will be enforced from 9:30 p.m. until 11:30 p.m. on July 4, 2013. The safety zone will encompass all waters of the Grand River within the arc of a circle with an 800 foot radius with a center in position 43°3′ 55.7″ N and 86°14′ 13.8″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

### D. Regulatory Analyses

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

#### *1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and

does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be small and enforced for only two hours on a single day in July. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Grand River on July 4, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons noted in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we would issue local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

**List of Subjects in 33 CFR Part 165**

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0547 to read as follows:

**§ 165.T09–0547 Safety Zone; Grand Haven 4th of July fireworks; Grand River, Grand Haven, MI.**

(a) *Location.* All waters of the Grand River within the arc of a circle with an 800 foot radius with a center in position 43° 3′ 55.7″ N and 86° 14′ 13.8″ W (NAD 83).

(b) *Effective and Enforcement Period.* This rule is effective and will be enforced from 9:30 p.m. until 11:30 p.m. on July 4, 2013.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Lake Michigan or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Lake Michigan, or his on-scene representative.

Dated: June 21, 2013.

**M.W. Sibley,**

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

[FR Doc. 2013–16043 Filed 7–2–13; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2013–0331]**

**RIN 1625–AA00**

## Eighth Coast Guard District Annual Safety Zones; Riverfront Independence Festival Fireworks; Ohio River 607.0–609.0; New Albany, KY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a Safety Zone for the Riverfront Independence Festival Fireworks on the Ohio River 607.0 to 609.0 from 9:30 p.m. until 10:30 p.m. on July 3, 2013. This action is necessary for the safeguard of participants and spectators, including all crews, vessels, and persons on navigable waters during the Riverfront Independence Festival Fireworks. During the enforcement period, in accordance with a previously established Safety Zone, entry into, transiting through or anchoring in the Safety Zone is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

**DATES:** The regulations in 33 CFR 165.801 will be enforced from 9:30 p.m. until 10:30 p.m. on July 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of enforcement, call Petty Officer Second Class Catherine M. Lawson, Coast Guard Sector Ohio Valley at 502–779–5432, or by email at *Catherine.M.Lawson@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Safety Zone for the annual Riverfront Independence Festival Fireworks listed in 33 CFR 165.801 Table 1, Table No. 18; Sector Ohio Valley, No. 21 on July 3, 2013 from 9:30 p.m. until 10:30 p.m.

Under the provisions of 33 CFR 165.801, entry into the Safety Zone listed in Table 1, Table No. 18; Sector Ohio Valley, No. 21 is prohibited unless authorized by the Captain of the Port or a designated representative. Persons or vessels desiring to enter into or pass through the Safety Zone must request permission from the Captain of the Port or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative.

This notice is issued under authority of 5 U.S.C. 552(a); 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and Marine Information Broadcasts.

If the Captain of the Port Ohio Valley or Patrol Commander determines that the Safety Zone need not be enforced for the full duration stated in this notice of enforcement, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 13, 2013.

**L.W. Hewett,**

*Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.*

[FR Doc. 2013–16046 Filed 7–2–13; 8:45 am]

BILLING CODE 9110–04–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 50

**[EPA–HQ–OAR–2012–0210; FRL–9822–1]**

**RIN 2060–AP89**

## Method for the Determination of Lead in Total Suspended Particulate Matter

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is establishing a new Federal Reference Method (FRM) for measuring Lead (Pb) in total suspended particulate matter (TSP) collected from ambient air. This method is intended for use by analytical laboratories performing the analysis of Pb in TSP to support data collection for the Pb National Ambient Air Quality Standard (NAAQS). The existing FRM for Pb is designated as a new Federal Equivalent Method (FEM), and the currently designated FEMs are retained. This action avoids any disruption to existing Pb monitoring networks and data collection and does not affect the FRM

for TSP sample collection (High-Volume Method).

**DATES:** This final rule is effective on August 2, 2013.

**ADDRESSES:** The EPA has established a docket for this action under Docket No. EPA–HQ–OAR–2012–0210. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Air Docket and the Public Reading Room are 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 Air Docket is (202) 566–1742. For additional information about EPA's public docket visit the EPA Docket Center homepage at: *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Joann Rice, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Ambient Air Monitoring Group (C304–06), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3372; fax number: (919) 541–1903; email address: *rice.joann@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Background

### *A. Purpose of the New Reference Method*

On November 12, 2008, the EPA substantially strengthened the NAAQS for Pb (73 FR 66964). The EPA revised the level of the primary (health-based) standard from 1.5 micrograms per cubic meter (μg/m$^3$) of Pb to 0.15 μg/m$^3$ of Pb measured in TSP and revised the secondary (welfare-based) standard to be identical in all respects to the primary standard. The current Pb in TSP FRM is based on Flame Atomic Absorption Spectroscopy (FAAS) as specified in 40 CFR part 50, Appendix G. The FRM in Appendix G was originally promulgated in 1978 when FAAS was widely used and considered the best available method to support Pb NAAQS data collection at a level of 1.5 μg/m$^3$. A new Pb in TSP FRM is needed to: (1) Take advantage of improved extraction methods that are now available with improved precision, sample throughput, and extraction efficiency; (2) address advances in measurement technology that have occurred since promulgation of the original FRM; and (3) address the improved measurement sensitivity (detection limits) needed in response to the tightened Pb NAAQS.

The reference method for Pb in TSP includes two parts: the analysis method for Pb in TSP as specified in 40 CFR 50, Appendix G, and the reference method for high-volume sampling of TSP as specified in 40 CFR 50, Appendix B. The new FRM is for the analysis of Pb in TSP based on Inductively Coupled Plasma Mass Spectrometry (ICP–MS). The FRM serves as the definitive method for routinely analyzing Pb for comparison to the NAAQS and also serves as the standard of comparison for determining equivalence of candidate FEMs. This method replaces the existing method in 40 CFR 50, Appendix G. The FRM that was promulgated in 1978 as Appendix G becomes an approved FEM and the currently designated FEMs are retained. The EPA believes this is appropriate because the new FRM is based on two methods that were tested and approved as FEMs (EQL–0510–191 and EQL–0710–192) to ensure comparability with the FAAS method. This approach permits continued use of the legacy FRM (as an FEM) and the existing FEMs. This avoids any disruption to state and local air monitoring agencies using these methods for Pb monitoring. The reference method for high volume sampling of TSP will continue to be performed in accordance with the FRM described in Appendix B, and, therefore, is not included as part of this FRM.

With the tightened NAAQS in 2008 and the need for increased measurement sensitivity, an improved measurement technology has become available to meet the needs of the current NAAQS. The FAAS method is less frequently used in the Pb ambient monitoring network (about 10 percent of the sites reported Pb in TSP data to the EPA's Air Quality System in 2012 using the FAAS method) and ICP-based methods have increased in popularity. Recently, the FAAS method has mainly been used as the reference method for testing and designation of candidate FEMs for Pb in accordance with 40 CFR 53.33. With the lowered Pb concentration testing range in Part 53 and new requirement for a Method Detection Limit (MDL) of 0.0075 μg/m$^3$ (described below), the FAAS method sensitivity and availability of laboratories with FAAS capability have created some challenges for comparability testing of new FEMs.

In 2008, the EPA also revised the performance-based requirements for Pb FEMs in Part 53. The performance requirements were revised to be consistent with the revised Pb NAAQS level. Specifically, the Pb concentration range at which the FEM comparability testing is conducted was lowered to a range of 0.045 to 0.375 μg/m$^3$ and the requirement for a minimum method detection limit was established at 0.0075 μg/m$^3$. The detection limit of the new FRM is more than adequate to meet the reduced testing range and detection limit requirements. The FRM's average detection limit for Pb-spiked filters is estimated at 0.00009 μg/m$^3$, which is well below the requirement of 0.0075 μg/m$^3$.

### *B. Rationale for Selection of the New Reference Method*

The FRM is based on two recently approved FEMs for extracting Pb from glass fiber filters for subsequent analysis by ICP–MS: (1) Method EQL–0510–191 which uses a heated (80 ± 5°C) ultrasonic water bath with 1.03M nitric ($HNO_3$)/2.23M hydrochloric (HCl) acids, and (2) Method EQL–0710–192 which uses a heated (95 ± 5°C) graphite block (hot block) with 3.5 percent volume/

volume (v/v) $HNO_3$. In selecting this methodology, the EPA's primary considerations were: methods that have already been tested and approved against the FAAS method; use of equipment that is commonly used; a method that is practical (use of a single vessel for the entire extraction process and storage); and a method with improved sensitivity and throughput to increase efficiency and cost effectiveness over the legacy FRM. ICP–MS was chosen as the analytical technique because it has improved sensitivity, selectivity, linear range, and is more readily available than FAAS in laboratories today.

The FRM uses methods from two existing FEMs that have been proven comparable to FAAS and, therefore, retains consistency with the legacy FRM (Rice, 2013). The FRM is only intended for the analysis of Pb in TSP and allows for the use of glass fiber, quartz, or polytetrafluoroethylene (PTFE) filters. $HNO_3$ alone is sufficient for the extraction of Pb; however, the ultrasonic extraction method includes HCl to allow monitoring agencies some flexibility for future needs that may include the extraction of other metals. HCl is needed to aid the extraction of other metals that are not easily brought into solution with $HNO_3$ alone. The FRM was evaluated for the extraction of Pb only. If the FRM is used for metals other than Pb, the user must evaluate the FRM's applicability before use. The hot block extraction method uses only $HNO_3$ and must also be evaluated by the user before use to extract metals other than Pb.

The approach and key specifications of the method were submitted for peer review to the Clean Air Scientific Advisory Committee (CASAC) Ambient Air Monitoring and Methods Subcommittee. Public meetings were held to discuss the method and related monitoring issues on September 15, 2010. Comments on the method and approach were provided in writing in a letter dated November 30, 2010 (EPA–CASAC–11–002),[1] forwarded by CASAC to the Administrator.

The CASAC was supportive of the ICP–MS analytical method and found the approach to be appropriate with superior sensitivity and specificity for Pb. The CASAC recommended a strategy, using a performance-based FRM, to provide flexibility for use of non-FRM or FEM measurement methods and recommended that a third extraction method (microwave) be added to the FRM for its greater sample throughput and potential for reduced sample-to-sample variability. The CASAC viewed the comprehensiveness of the FRM test plan to be appropriate, and recommended that the EPA consider separating the extraction methods from the analytical methods so that any of the FRM extraction methods can be used with any of the FRM analytical measurement methods.

The federal reference and equivalence testing method for Pb in 40 CFR 53.33 serves as the performance-based method approach for the FEM approval process. Candidate methods are tested using the performance specifications of part 40 CFR part 53 for acceptance and approval as equivalent methods. Users also have the flexibility to test and submit additional extraction and analysis methods for review and approval as equivalent methods. The EPA believes that microwave extraction is a viable option and is already available as an approved FEM.[2] The ultrasonic and hot block approaches are sufficient for the extraction of Pb and provide high sample throughput, low consumable costs, and lower equipment costs while minimizing the risk of cross contamination and sample loss. In addition, the EPA believes that the existing FEMs[3] currently provide a wide variety of extraction and analytical methods and the EPA strongly encourages monitoring agencies to consider adopting one of the already approved FEMs in lieu of submitting new FEM applications. The FRM has two extraction methods (heated ultrasonic and hot block) and one analytical method (ICP–MS). The FRM allows for the use of either of the two extraction methods specified with the ICP–MS analytical method. The method also allows for the use of glass fiber, PTFE, or quartz filter media for the collection of Pb in TSP.

### *C. Comments on the Proposed Rule*

On February 5, 2013, the EPA proposed a new FRM for determination of Pb in TSP (78 FR 8066) and solicited comment on the proposed method. The EPA received one public comment by the close of the public comment period on March 7, 2013. The commenter questioned the meaning of the MDLs estimated from the analysis of blanks. The commenter recommended that an MDL estimated from blanks include the mean of the blanks and be consistent with the Report of the Federal Advisory Committee on Detection and Quantitation (FACDQ) Approaches and Uses in Clean Water Act Programs (FACDQ, 2007). The Federal Advisory Committee recommended that EPA adopt a new procedure for estimated method sensitivity and replace 40 CFR 136, Appendix B (Definition and Procedure for the Determination of the Method Detection Limit) with the new procedure. The FACDQ procedure described an approach for calculating MDLs and quantitation limits. The EPA conducted a pilot study to assess whether the procedure recommended by the FACDQ could generate reliable estimates of the lowest concentration at which measurement quality objectives could be achieved (U.S. EPA, 2011). Based on the pilot study results, the EPA concluded that none of the procedures tested consistently generated accurate estimates of the lowest concentration at which the study measurement quality objectives were achieved. The EPA believes that more development and testing of the FACDQ procedure are warranted.[4] Accordingly, based on the currently available information, the EPA believes that the procedures identified in 40 CFR 135, Appendix B are a more appropriate basis for estimating MDLs for the FRM.

The EPA provided estimates in the proposed rule for MDLs based on reagent/filter blanks and reagent/filter blanks spiked with a Pb solution. The EPA estimated MDLs based on 40 CFR 136, Appendix B which recommends that MDLs be determined using a concentration value that is between 1 and 5 times the estimated MDL. However, 40 CFR 136, Appendix B does not specify the use of reagent/filter blanks for estimating the detection limit. The estimate of MDLs based on reagent/filter blanks is not consistent with 40 CFR 136, Appendix B; therefore, the MDL estimates from reagent/filter blanks have been removed. The remaining MDL estimates in Tables 1, 3, and 5 were determined using reagent/filter blanks that were spiked with Pb at three times the estimated detection limit of 0.001 μg/mL. The MDLs were estimated to demonstrate method performance that is more than adequate to meet the MDL requirements of 0.0075 μg/m$^3$ for Pb in TSP. It is recommended that laboratories performing this method initially estimate MDLs in accordance with 40 CFR Part 136, Appendix B and

[1] CASAC's final report on the Approach for the Development of a New Federal Reference Method (FRM) for Lead in Total Suspended Particulates (Pb–TSP) can be found at: *http://yosemite.epa.gov/sab/sabproduct.nsf/DA39026E54BAF46E8525781D00606633/$File/EPA-CASAC-11-002-unsigned.pdf.*

[2] FEM EQL–0400–0140 (65 FR 26603, May 8, 2000).

[3] The list of current FEMs is located at: *http://epa.gov/ttn/amtic/files/ambient/criteria/reference-equivalent-methods-list.pdf.*

[4] Refer to: *http://water.epa.gov/scitech/methods/cwa/det/index.cfm* for EPA's Procedures for Detection and Quantitation.

confirm the MDLs annually. In addition, the EPA recommends that laboratories consider performing the optional iterative procedure in Part 136, Appendix B to verify the reasonableness of the initially estimated MDL and subsequent MDL determinations.

*D. Conclusions*

After consideration of the public comment on the estimate of MDL from reagent/filter blanks, the EPA has concluded that the rule should be consistent with the provisions of 40 CFR Part 136, Appendix B. Accordingly, any language referring to the estimate of MDLs using reagent/filter blanks and the MDLs estimated from reagent/filter blanks in Tables 1, 3, and 5 have been removed. The MDLs estimated from the Pb-spiked reagent/filter blanks remain and demonstrate that the method has more than adequate sensitivity to support the Pb-TSP MDL requirement of 0.0075 $\mu g/m^3$. No other comments were received nor revisions made to the proposed rule. The rule is otherwise finalized as proposed.

## II. Summary of Method

The FRM uses the ambient air sample collection procedures of the high-volume TSP method (40 CFR Part 50, Appendix B) and the analytical procedure for the measurement of Pb based on ICP–MS. Two extraction methods are used: One using heated ultrasonic and one using hot block digestion. The extraction methods and ICP–MS analysis method have been tested and found acceptable for extraction of Pb from glass fiber, PTFE, or quartz filter media. This method also met the precision and bias goals for Pb in TSP (Rice 2013). This method replaces the previous FRM specified in 40 CFR Part 50, Appendix G. Although the previous FRM in Appendix G is adequate, this method offers advantages over the previous FRM by providing improved sensitivity or detection limits, precision, sample throughput, and extraction efficiency.

## III. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This rule is to promulgate a new FRM for Pb in TSP, and to designate the existing FRM as an FEM, and does not add any information collection requirements beyond those imposed by the existing Pb monitoring requirements.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any additional monitoring requirements beyond those specified in the current regulations, nor will it require any changes in approved monitoring methods. As such, it will not impose any requirements on small entities.

*D. Unfunded Mandates Reform Act*

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action establishes a new FRM for state and local air monitoring agencies to use as one of the approved methods for measurement of Pb in TSP and to designate the existing FRM as an FEM. It does not create any additional monitoring requirements or require changes in approved monitoring methods.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action establishes a new FRM for state and local air monitoring agencies to use as one of the approved methods for measurement of Pb in TSP and designates the existing FRM as an FEM. This action does not create any new monitoring requirements or require any changes in approved monitoring methods. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule imposes no requirements on tribal governments. This action establishes a new FRM for state and local air monitoring agencies to use as one of the approved methods for measurement of Pb in TSP and designates the existing FRM as an FEM. This action does not create any new monitoring requirements, nor require any changes in approved monitoring methods. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets EO 13045 (62 F.R. 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113 (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This rule involves environmental monitoring and measurement consistent with the agency's Performance Based Measurement System (PBMS). The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. Specifically, this rule establishes a new FRM for Pb in TSP measurements. The EPA used voluntary consensus standards in the preparation of this FRM. The FRM is the benchmark against which all ambient monitoring methods are compared. The FRM is not a voluntary consensus standard.

The FEM equivalency criteria contained in 40 CFR part 53 constitute performance criteria. Therefore, the EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the specified performance criteria in 40 CFR part 53 and is approved by the EPA pursuant to those regulations.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action establishes a new FRM for state and local air monitoring agencies to use as one of the approved methods for measurement of Pb in TSP and designates the existing FRM as an FEM.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective August 2, 2013.

**List of Subjects in 40 CFR Part 50**

Environmental protection, Air pollution control, and Lead.

Dated: June 26, 2013.

**Bob Perciasepe,**

*Acting Administrator.*

For reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations sets forth the following.

## PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Appendix G to part 50 is revised to read as follows:

## Appendix G to Part 50—Reference Method for the Determination of Lead in Total Suspended Particulate Matter

1.0 Scope and Applicability

Based on review of the air quality criteria and national ambient air quality standard (NAAQS) for lead (Pb) completed in 2008, the EPA made revisions to the primary and secondary NAAQS for Pb to protect public health and welfare. The EPA revised the level from 1.5 μg/m$^3$ to 0.15 μg/m$^3$ while retaining the current indicator of Pb in total suspended particulate matter (Pb-TSP).

Pb-TSP is collected for 24 hours on a TSP filter as described in Appendix B of part 50, the Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method). This method is for the analysis of Pb from TSP filters by Inductively Coupled Plasma Mass Spectrometry (ICP–MS) using a heated ultrasonic bath with nitric acid ($HNO_3$) and hydrochloric acid (HCl) or a heated block (hot block) digester with $HNO_3$ for filter extraction.

This method is based on the EPA's Office of Solid Waste (SW–846) Method 6020A—Inductively Coupled Plasma Mass Spectrometry (U.S. EPA, 2007). Wording in certain sections of this method is paraphrased or taken directly from Method 6020A.

1.1 ICP–MS is applicable for the sub-μg/mL (ppb) determination of Pb in a wide variety of matrices. Results reported for monitoring or compliance purposes are calculated in μg/m$^3$ at local conditions (LC). This procedure describes a method for the acid extraction of Pb in particulate matter collected on glass fiber, quartz, or PTFE filters and measurement of the extracted Pb using ICP–MS.

1.2 Due to variations in the isotopic abundance of Pb, the value for total Pb must be based on the sum of the signal intensities for isotopic masses, 206, 207, and 208. Most instrument software packages are able to sum the primary isotope signal intensities automatically.

1.3 ICP–MS requires the use of an internal standard. $^{115}$In (Indium), $^{165}$Ho (Holmium), and $^{209}$Bi (Bismuth) are recommended internal standards for the determination of Pb.

1.4 Use of this method is restricted to use by, or under supervision of, properly trained and experienced laboratory personnel. Requirements include training and experience in inorganic sample preparation, including acid extraction, and also knowledge in the recognition and in the correction of spectral, chemical and physical interference in ICP–MS.

2.0 Summary of Method

2.1 This method describes the acid extraction of Pb in particulate matter collected on glass fiber, quartz, or PTFE ambient air filters with subsequent measurement of Pb by ICP–MS. Estimates of the Method Detection Limit (MDL) or sensitivity of the method are provided in Tables 1, 3 and 5 and determined using Pb-spiked filters or filter strips analyzed in accordance with the guidance provided in 40

CFR 136, Appendix B—Determination and procedures for the Determination of the Method Detection Limit—Revision 1.1. The analytical range of the method is 0.00024 µg/m³ to 0.60 µg/m³, and based on the low and high calibration curve standards and a nominal filter sample volume of 2000 m³.

2.2 This method includes two extraction methods. In the first method, a solution of $HNO_3$ and HCl is added to the filters or filter strips in plastic digestion tubes and the tubes are placed in a heated ultrasonic bath for one hour to facilitate the extraction of Pb. Following ultrasonication, the samples are brought to a final volume of 40 mL (50 mL for PTFE filters), vortex mixed or shaken vigorously, and centrifuged prior to aliquots being taken for ICP–MS analysis. In the second method, a solution of dilute $HNO_3$ is added to the filter strips in plastic digestion tubes and the tubes placed into the hot block digester. The filter strip is completely covered by the solution. The tubes are covered with polypropylene watch glasses and refluxed. After reflux, the samples are diluted to a final volume of 50 mL with reagent water and mixed before analysis.

2.3 Calibration standards and check standards are prepared to matrix match the acid composition of the samples. ICP–MS analysis is then performed. With this method, the samples are first aspirated and the aerosol thus created is transported by a flow of argon gas into the plasma torch. The ions produced (*e.g.,* $Pb^{+1}$) in the plasma are extracted via a differentially-pumped vacuum interface and are separated on the basis of their mass-to-charge ratio. The ions are quantified by a channel electron multiplier or a Faraday detector and the signal collected is processed by the instrument's software. Interferences must be assessed and corrected for, if present.

3.0 Definitions

Pb—Elemental or ionic lead
$HNO_3$—Nitric acid
HCl—Hydrochloric acid
ICP–MS—Inductively Coupled Plasma Mass Spectrometer
MDL—Method detection limit
RSD—Relative standard deviation
RPD—Relative percent difference
CB—Calibration Blank
CAL—Calibration Standard
ICB—Initial calibration blank
CCB—Continuing calibration blank
ICV—Initial calibration verification
CCV—Continuing calibration verification
LLCV—Lower Level Calibration Verification, serves as the lower level ICV and lower level CCV
RB—Reagent blank
RBS—Reagent blank spike
MSDS—Material Safety Data Sheet
NIST—National Institute of Standards and Technology
D.I. water—Deionized water
SRM—NIST Standard Reference Material
CRM—Certified Reference Material
EPA—Environmental Protection Agency
v/v—Volume to volume ratio

4.0 Interferences

4.1 Reagents, glassware, plasticware, and other sample processing hardware may yield artifacts and/or interferences to sample analysis. If reagent blanks, filter blanks, or quality control blanks yield results above the detection limit, the source of contamination must be identified. All containers and reagents used in the processing of the samples must be checked for contamination prior to sample extraction and analysis. Reagents shall be diluted to match the final concentration of the extracts and analyzed for Pb. Labware shall be rinsed with dilute acid solution and the solution analyzed. Once a reagent or labware article (such as extraction tubes) from a manufacturer has been successfully screened, additional screening is not required unless contamination is suspected.

4.2 Isobaric elemental interferences in ICP–MS are caused by isotopes of different elements forming atomic ions with the same nominal mass-to-charge ratio (m/z) as the species of interest. There are no species found in ambient air that will result in isobaric interference with the three Pb isotopes (206, 207, and 208) being measured. Polyatomic interferences occur when two or more elements combine to form an ion with the same mass-to-charge ratio as the isotope being measured. Pb is not subject to interference from common polyatomic ions and no correction is required.

4.3 The distribution of Pb isotopes is not constant. The analysis of total Pb should be based on the summation of signal intensities for the isotopic masses 206, 207, and 208. In most cases, the instrument software can perform the summation automatically.

4.4 Physical interferences are associated with the sample nebulization and transport processes as well as with ion-transmission efficiencies. Dissolved solids can deposit on the nebulizer tip of a pneumatic nebulizer and on the interface skimmers of the ICP–MS. Nebulization and transport processes can be affected if a matrix component causes a change in surface tension or viscosity. Changes in matrix composition can cause significant signal suppression or enhancement. These interferences are compensated for by use of internal standards. Sample dilution will reduce the effects of high levels of dissolved salts, but calibration standards must be prepared in the extraction medium and diluted accordingly.

4.5 Memory interferences are related to sample transport and result when there is carryover from one sample to the next. Sample carryover can result from sample deposition on the sample and skimmer cones and from incomplete rinsing of the sample solution from the plasma torch and the spray chamber between samples. These memory effects are dependent upon both the analyte being measured and sample matrix and can be minimized through the use of suitable rinse times.

5.0 Health and Safety Cautions

5.1 The toxicity or carcinogenicity of reagents used in this method has not been fully established. Each chemical should be regarded as a potential health hazard and exposure to these compounds should be as low as reasonably achievable. Each laboratory is responsible for maintaining a current file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of material safety data sheets (MSDSs) should be available to all personnel involved in the chemical analysis. Specifically, concentrated $HNO_3$ presents various hazards and is moderately toxic and extremely irritating to skin and mucus membranes. Use this reagent in a fume hood whenever possible and if eye or skin contact occurs, flush with large volumes of water. Always wear safety glasses or a shield for eye protection, protective clothing, and observe proper mixing when working with these reagents.

5.2 Concentrated $HNO_3$ and HCl are moderately toxic and extremely irritating to the skin. Use these reagents in a fume hood, and if eye and skin contact occurs, flush with large volumes of water. Always wear safety glasses or a shield for eye protection when working with these reagents. The component of this procedure requiring the greatest care is $HNO_3$. $HNO_3$ is a strong, corrosive, oxidizing agent that requires protection of the eyes, skin, and clothing. Items to be worn during use of this reagent include:

1. Safety goggles (or safety glasses with side shields),
2. Acid resistant rubber gloves, and
3. A protective garment such as a laboratory apron. $HNO_3$ spilled on clothing will destroy the fabric; contact with the skin underneath will result in a burn.

It is also essential that an eye wash fountain or eye wash bottle be available during performance of this method. An eye wash bottle has a spout that covers the eye. If acid or any other corrosive gets into the eye, the water in this bottle is squirted onto the eye to wash out the harmful material. Eye washing should be performed with large amounts of water immediately after exposure. Medical help should be sought immediately after washing. If either acid, but especially $HNO_3$, is spilled onto the skin, wash immediately with large amounts of water. Medical attention is not required unless the burn appears to be significant. Even after washing and drying, $HNO_3$ may leave the skin slightly brown in color; this will heal and fade with time.

5.3 Pb salts and Pb solutions are toxic. Great care must be taken to ensure that samples and standards are handled properly; wash hands thoroughly after handling.

5.4 Care must be taken when using the ultrasonic bath and hot block digester as they are capable of causing mild burns. Users should refer to the safety guidance provided by the manufacturer of their specific equipment.

5.5 Analytical plasma sources emit radio frequency radiation in addition to intense ultra violet (UV) radiation. Suitable precautions should be taken to protect personnel from such hazards. The inductively coupled plasma should only be viewed with proper eye protection from UV emissions.

6.0 Equipment

6.1 Thermo Scientific X-Series ICP–MS or equivalent. The system must be capable of providing resolution better or equal to 1.0 atomic mass unit (amu) at 10 percent peak height. The system must have a mass range from at least 7 to 240 amu that allows for the application of the internal standard technique. For the measurement of Pb, an

instrument with a collision or reaction cell is not required.

6.2 Ultrasonic Extraction Equipment

6.2.1 Heated ultrasonic bath capable of maintaining a temperature of 80 °C; VWR Model 750HT, 240W, or equivalent. Ultrasonic bath must meet the following performance criteria:

1. Cut a strip of aluminum foil almost the width of the tank and double the depth.

2. Turn the ultrasonic bath on and lower the foil into the bath vertically until almost touching the bottom of the tank and hold for 10 seconds.

3. Remove the foil from the tank and observe the distribution of perforations and small pin prick holes. The indentations should be fine and evenly distributed. The even distribution of indentations indicates the ultrasonic bath is acceptable for use.

6.2.2 Laboratory centrifuge, Beckman GS–6, or equivalent.

6.2.3 Vortex mixer, VWR Signature Digital Vortex Mixer, VWR Catalog No. 14005–824, or equivalent.

6.3 Hot block extraction equipment

6.3.1 Hot block digester, SCP Science DigiPrep Model MS, No. 010–500–205 block digester capable of maintaining a temperature of 95 °C, or equivalent.

6.4 Materials and Supplies

- Argon gas supply, 99.99 percent purity or better. National Welders Microbulk, or equivalent.
- Plastic digestion tubes with threaded caps for extraction and storage, SCP Science DigiTUBE® Item No. 010–500–063, or equivalent.
- Disposable polypropylene ribbed watch glasses (for heated block extraction), SCP Science Item No. 010–500–081, or equivalent.
- Pipette, Rainin EDP2, 100 µL, ± 1 percent accuracy, ≤1 percent RSD (precision), with disposable tips, or equivalent.
- Pipette, Rainin EDP2, 1000 µL, ± 1 percent accuracy, ≤1 percent RSD (precision), with disposable tips, or equivalent.
- Pipette, Rainin EDP2, 1–10 mL, ± 1 percent accuracy, ≤1 percent RSD (precision), with disposable tips, or equivalent.
- Pipette, Thermo Lab Systems, 5 mL, ± 1 percent accuracy, ≤1 percent RSD (precision), with disposable tips, or equivalent.
- Plastic tweezer, VWR Catalog No. 89026–420, or equivalent.
- Laboratory marker.
- Ceramic knife, Kyocera LK–25, and non-metal ruler or other suitable cutting tools for making straight cuts for accurately measured strips.
- Blank labels or labeling tape, VWR Catalog No. 36425–045, or equivalent.
- Graduated cylinder, 1 L, VWR 89000–260, or equivalent.
- Volumetric flask, Class A, 1 L, VWR Catalog No. 89025–778, or equivalent.
- Millipore Element deionized water system, or equivalent, capable of generating water with a resistivity of ≥17.9 MΩ-cm).
- Disposable syringes, 10-mL, with 0.45 micron filters (must be Pb-free).
- Plastic or PTFE wash bottles.
- Glassware, Class A—volumetric flasks, pipettes, and graduated cylinders.
- Glass fiber, quartz, or PTFE filters from the same filter manufacturer and lot used for sample collection for use in the determination of the MDL and for laboratory blanks.

7.0 Reagents and Standards

7.1 Reagent—or trace metals-grade chemicals must be used in all tests. Unless otherwise indicated, it is intended that all reagents conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available.

7.2 Concentrated nitric acid, 67–70 percent, SCP Science Catalog No. 250–037–177, or equivalent.

7.3 Concentrated hydrochloric acid (for the ultrasonic extraction method), 33–36 percent, SCP Science Catalog No. 250–037–175, or equivalent.

7.4 Deionized water—All references to deionized water in the method refer to deionized water with a resistivity ≥17.9 MΩ-cm.

7.5 Standard stock solutions may be commercially purchased for each element or as a multi-element mix. Internal standards may be purchased as a mixed multi-element solution. The manufacturer's expiration date and storage conditions must be adhered to.

7.5.1 Lead standard, 1000 µg/mL, NIST traceable, commercially available with certificate of analysis. High Purity Standards Catalog No. 100028–1, or equivalent.

7.5.2 Indium (In) standard, 1000 µg/mL, NIST traceable, commercially available with certificate of analysis. High Purity Standards Catalog No. 100024–1, or equivalent.

7.5.3 Bismuth (Bi) standard, 1000 µg/mL, NIST traceable, commercially available with certificate of analysis. High Purity Standards Catalog No. 100006–1, or equivalent.

7.5.4 Holmium (Ho) standard, 1000 µg/mL, NIST traceable, commercially available with certificate of analysis. High Purity Standards Catalog No. 100023–1, or equivalent.

7.5.5 Second source lead standard, 1000 µg/mL, NIST traceable, commercially available with certificate of analysis. Must be from a different vendor or lot than the standard described in 7.5.1. Inorganic Ventures Catalog No. CGPB–1, or equivalent.

7.5.6 Standard Reference Materials, NIST SRM 2583, 2586, 2587 or 1648, or equivalent.[5]

Note: The In, Bi, and Ho internal standards may also be purchased as 10 µg/mL standards. Calibration standards are prepared by diluting stock standards to the appropriate levels in the same acid concentrations as in the final sample volume. The typical range for calibration standards is 0.001 to 2.00 µg/mL. At a minimum, the curve must contain a blank and five Pb containing calibration standards. The calibration standards are stored at ambient laboratory temperature. Calibration standards must be prepared weekly and verified against a freshly prepared ICV using a NIST-traceable source different from the calibration standards.

7.6 Internal standards may be added to the test solution or by on-line addition. The nominal concentration for an internal standard is 0.010 µg/mL (10 ppb). Bismuth (Bi) or holmium (Ho) are the preferred internal standards for Pb, but indium (In) may be used in the event the sample contains Bi and high recoveries are observed.

7.7 Three laboratory blank solutions are required for analysis: (1) The calibration blank is used in the construction of the calibration curve and as a periodic check of system cleanliness (ICB and CCB); (2) the reagent blank (RB) is carried through the extraction process to assess possible contamination; and (3) the rinse blank is run between samples to clean the sample introduction system. If RBs or laboratory blanks yield results above the detection limit, the source of contamination must be identified. Screening of labware and reagents is addressed in Section 4.1.

7.7.1 The calibration blank is prepared in the same acid matrix as the calibration standards and samples and contains all internal standards used in the analysis.

7.7.2 The RB contains all reagents used in the extraction and is carried through the extraction procedure at the same time as the samples.

7.7.3 The rinse blank is a solution of 1 to 2 percent $HNO_3$ (v/v) in reagent grade water. A sufficient volume should be prepared to flush the system between all standards and samples analyzed.

7.7.4 The EPA currently provides glass fiber, quartz, and PTFE filters to air monitoring agencies as requested annually. As part of the procurement process, these filters are tested for acceptance by the EPA. The current acceptance criteria for glass fiber and quartz filters is 15 µg per filter or 0.0075 µg/m$^3$ using a nominal sample volume of 2000 m$^3$ and 4.8 ng/cm$^2$ or 0.0024 µg/m$^3$ for PTFE filters using a nominal sample volume of 24 m$^3$. Acceptance test results for filters obtained by the EPA are typically well below the criterion specified and also below the recently revised Pb method performance detection limit of 0.0075 µg/m$^3$; therefore, blank subtraction should not be performed.

7.7.5 If filters are not provided by the EPA for sample collection and analysis, filter lot blanks should be analyzed for Pb content. For large filter lots (≤500 filters), randomly select 20 to 30 filters from the lot and analyze the filter or filter strips for Pb. For smaller filter lots, a lesser number of filters can be analyzed. Glass, quartz and PTFE filters must not have levels of Pb above the criteria specified in section 7.7.4 and, therefore, blank correction should not be performed. If acceptance testing shows levels of Pb above the criteria in Section 7.7.4, corrective action must be taken to reduce the levels before proceeding.

7.8 The Initial Calibration Verification (ICV), Lower Level Calibration Verification (LLCV), and Continuing Calibration Verification (CCV) solutions are prepared from a different Pb source than the calibration curve standards and at a concentration that is either at or below the midpoint on the calibration curve, but within the calibration range. Both are prepared in the same acid matrix as the calibration standards. Note that the same solution may be used for both the ICV and CCV. The ICV/

[5] Certificates of Analysis for these SRMs can be found at: *http://www.nist.gov/srm/index.cfm.*

CCV and LLCV solutions must be prepared fresh daily.

7.9 Tuning Solution. Prepare a tuning solution according to the instrument manufacturer's recommendations. This solution will be used to verify the mass calibration and resolution of the instrument.

8.0 Quality Control (QC)

8.1 Standard QC practices shall be employed to assess the validity of the data generated, including: MDL, RB, duplicate samples, spiked samples, serial dilutions, ICV, CCV, LLCV, ICB, CCB, and SRMs/CRMs.

8.2 MDLs must be calculated in accordance with 40 CFR part 136, Appendix B. RBs with low-level standard spikes are used to estimate the MDL. The low-level standard spike is added to at least 7 individual filter strips and then carried through the entire extraction procedure. This will result in at least 7 individual samples to be used for the MDL. The recommended range for spiking the strips is 1 to 5 times the estimated MDL.

8.3 For each batch of samples, one RB and one reagent blank spike (RBS) that is spiked at the same level as the sample spike (see Section 8.6) must be prepared and carried throughout the entire process. The results of the RB must be below 0.001 µg/mL. The recovery for the RBS must be within ± 20 percent of the expected value. If the RB yields a result above 0.001 µg/mL, the source of contamination must be identified and the extraction and analysis repeated. Reagents and labware must be suspected as sources of contamination. Screening of reagents and labware is addressed in Section 4.1.

8.4 Any samples that exceed the highest calibration standard must be diluted and rerun so that the concentration falls within the curve. The minimum dilution will be 1 to 5 with matrix matched acid solution.

8.5 The internal standard response must be monitored during the analysis. If the internal standard response falls below 70 percent or rises above 120 percent of expected due to possible matrix effects, the sample must be diluted and reanalyzed. The minimum dilution will be 1 to 5 with matrix matched acid solution. If the first dilution does not correct the problem, additional dilutions must be run until the internal standard falls within the specified range.

8.6 For every batch of samples prepared, there must be one duplicate and one spike sample prepared. The spike added is to be at a level that falls within the calibration curve, normally the midpoint of the curve. The initial plus duplicate sample must yield a relative percent difference ≤ 20 percent. The spike must be within ± 20 percent of the expected value.

8.7 For each batch of samples, one extract must be diluted five-fold and analyzed. The corrected dilution result must be within ±10 percent of the undiluted result. The sample chosen for the serial dilution shall have a concentration at or above 10X the lowest standard in the curve to ensure the diluted value falls within the curve. If the serial dilution fails, chemical or physical interference should be suspected.

8.8 ICB, ICV, LLCV, CCB and CCV samples are to be run as shown in the following table.

| Sample | Frequency | Performance specification |
|---|---|---|
| ICB | Prior to first sample | Less than 0.001 µg/mL. |
| ICV | Prior to first sample | Within 90 to 110 percent of the expected value. |
| LLCV | Daily, before first sample and after last sample | ±10 percent of the expected value. |
| CCB | After every 10 extracted samples | Less than 0.001 µg/mL. |
| CCV | After every 10 extracted samples | Within 90–110 percent of the expected value. |

If any of these QC samples fails to meet specifications, the source of the unacceptable performance must be determined, the problem corrected, and any samples not bracketed by passing QC samples must be reanalyzed.

8.9 For each batch of samples, one certified reference material (CRM) must be combined with a blank filter strip and carried through the entire extraction procedure. The result must be within ±10 percent of the expected value.

8.10 For each run, a LLCV must be analyzed. The LLCV must be prepared at a concentration not more than three times the lowest calibration standard and at a concentration not used in the calibration curve. The LLCV is used to assess performance at the low end of the curve. If the LLCV fails (±10 percent of the expected value) the run must be terminated, the problem corrected, the instrument recalibrated, and the analysis repeated.

8.11 Pipettes used for volumetric transfer must have the calibration checked at least once every 6 months and pass ± 1 percent accuracy and ≤ 1 percent RSD (precision) based on five replicate readings. The pipettes must be checked weekly for accuracy with a single replicate. Any pipette that does not meet ± 1 percent accuracy on the weekly check must be removed from service, repaired, and pass a full calibration check before use.

8.12 Samples with physical deformities are not quantitatively analyzable. The analyst should visually check filters prior to proceeding with preparation for holes, tears, or non-uniform deposit which would prevent representative sampling. Document any deformities and qualify the data with flags appropriately. Care must be taken to protect filters from contamination. Filters must be kept covered prior to sample preparation.

9.0 ICP MS Calibration

Follow the instrument manufacturer's instructions for the routine maintenance, cleaning, and ignition procedures for the specific ICP–MS instrument being used.

9.1 Ignite the plasma and wait for at least one half hour for the instrument to warm up before beginning any pre-analysis steps.

9.2 For the Thermo X-Series with Xt cones, aspirate a 10 ng/mL tuning solution containing In, Bi, and Ce (Cerium). Monitor the intensities of In, Bi, Ce, and CeO (Cerium oxide) and adjust the instrument settings to achieve the highest In and Bi counts while minimizing the CeO/Ce oxide ratio. For other instruments, follow the manufacturer's recommended practice. Tune to meet the instrument manufacturer's specifications. After tuning, place the sample aspiration probe into a 2 percent $HNO_3$ rinse solution for at least 5 minutes to flush the system.

9.3 Aspirate a 5 ng/mL solution containing Co, In, and Bi to perform a daily instrument stability check. Run 10 replicates of the solution. The percent RSD for the replicates must be less than 3 percent at all masses. If the percent RSD is greater than 3 percent, the sample introduction system, pump tubing, and tune should be examined, and the analysis repeated. Place the sample aspiration probe into a 2 percent $HNO_3$ rinse solution for at least 5 minutes to flush the system.

9.4 Load the calibration standards in the autosampler and analyze using the same method parameters that will be used to analyze samples. The curve must include one blank and at least 5 Pb-containing calibration standards. The correlation coefficient must be at least 0.998 for the curve to be accepted. The lowest standard must recover ± 15 percent of the expected value and the remaining standards must recover ± 10 percent of the expected value to be accepted.

9.5 Immediately after the calibration curve is completed, analyze an ICV and an ICB. The ICV must be prepared from a different source of Pb than the calibration standards. The ICV must recover 90–110 percent of the expected value for the run to continue. The ICB must be less than 0.001 µg/mL. If either the ICV or the ICB fails, the run must be terminated, the problem identified and corrected, and the analysis re-started.

9.6 A LLCV, CCV and a CCB must be run after the ICV and ICB. A CCV and CCB must be run at a frequency of not less than every 10 extracted samples. A typical analytical run sequence would be: Calibration blank, Calibration standards, ICV, ICB, LLCV, CCV, CCB, Extracts 1–10, CCV, CCB, Extracts 11–20, CCV, CCB, Extracts 21–30, CCV, CCB, LLCV, CCV, CCB. Extracts are any field sample or QC samples that have been carried through the extraction process. The CCV solution is prepared from a different source than the calibration standards and may be the same as the ICV solution. The LLCV must be within ± 10 percent of expected value. The CCV value must be within ± 10 percent of expected for the run to continue. The CCB must be less than 0.001 µg/mL. If either the CCV, LLCV, or CCB fails, the run must be terminated, the problem identified and

corrected, and the analysis re-started from the last passing CCV/LLCV/CCB set.

9.7 A LLCV, CCV, and CCB set must be run at the end of the analysis. The LLCV must be within ± 30 percent of expected value. If either the CCV, LLCV, or CCB fails, the run must be terminated, the problem identified and corrected, and the analysis re-started from the last passing CCV/LLCV/CCB set.

10.0 Heated Ultrasonic Filter Strip Extraction

All plasticware (*e.g.,* Nalgene) and glassware used in the extraction procedures is soaked in 1 percent $HNO_3$ (v/v) for at least 24 hours and rinsed with reagent water prior to use. All mechanical pipettes used must be calibrated to ±1 percent accuracy and ≤ 1 percent RSD at a minimum of once every 6 months.

10.1 Sample Preparation—Heated Ultrasonic Bath

10.1.1 Extraction solution (1.03M $HNO_3$ + 2.23M HCl). Prepare by adding 500 mL of deionized water to a 1000 mL flask, adding 64.4 mL of concentrated $HNO_3$ and 182 mL of concentrated HCl, shaking to mix, allowing solution to cool, diluting to volume with reagent water, and inverting several times to mix. Extraction solution must be prepared at least weekly.

10.1.2 Use a ceramic knife and non-metal ruler, or other cutting device that will not contaminate the filter with Pb. Cut a ¾ inch X 8 inch strip from the glass fiber or quartz filter by cutting a strip from the edge of the filter where it has been folded along the 10 inch side at least 1 inch from the right or left side to avoid the un-sampled area covered by the filter holder. The filters must be carefully handled to avoid dislodging deposits.

10.1.3 Using plastic tweezers, roll the filter strip up in a coil and place the rolled strip in the bottom of a labeled 50 mL extraction tube. In a fume hood, add 15.00 ± 0.15 mL of the extraction solution (see Section 10.1.1) using a calibrated mechanical pipette. Ensure that the extraction solution completely covers the filter strip.

10.1.4 Loosely cap the 50 mL extraction tube and place it upright in a plastic rack. When all samples have been prepared, place the racks in an uncovered heated ultrasonic water bath that has been preheated to 80 ± 5°C and ensure that the water level in the ultrasonic is above the level of the extraction solution in the tubes but well below the level of the extraction tube caps to avoid contamination. Start the ultrasonic bath and allow the unit to run for 1 hour ± 5 minutes at 80 ± 5°C.

10.1.5 Remove the rack(s) from the ultrasonic bath and allow the racks to cool.

10.1.6 Add 25.00 ± 0.25 mL of D.I. water with a calibrated mechanical pipette to bring the sample to a final volume of 40.0 ± 0.4 mL. Tightly cap the tubes, and vortex mix or shake vigorously. Place the extraction tubes in an appropriate holder and centrifuge for 20 minutes at 2500 revolutions per minute (RPM).

CAUTION—Make sure that the centrifuge holder has a flat bottom to support the flat bottomed extraction tubes.

10.1.7 Pour an aliquot of the solution into an autosampler vial for ICP–MS analysis to avoid the potential for contamination. Do not pipette an aliquot of solution into the autosampler vial.

10.1.8 Decant the extract to a clean tube, cap tightly, and store the sample extract at ambient laboratory temperature. Extracts may be stored for up to 6 months from the date of extraction.

10.2 47 mm PTFE Filter Extraction—Heated Ultrasonic Bath

10.2.1 Extraction solution (1.03M $HNO_3$ + 2.23M HCl). Prepare by adding 500 mL of D.I. water to a 1000mL flask, adding 64.4 mL of concentrated $HNO_3$ and 182 mL of concentrated HCl, shaking to mix, allowing solution to cool, diluting to volume with reagent water, and inverting several times to mix. Extraction solution must be prepared at least weekly.

10.2.2 Using plastic tweezers, bend the PTFE filter into a U-shape and insert the filter into a labeled 50 mL extraction tube with the particle loaded side facing the center of the tube. Gently push the filter to the bottom of the extraction tube. In a fume hood, add 25.00 ± 0.15 mL of the extraction solution (see Section 10.2.1) using a calibrated mechanical pipette. Ensure that the extraction solution completely covers the filter.

10.2.3 Loosely cap the 50 mL extraction tube and place it upright in a plastic rack. When all samples have been prepared, place the racks in an uncovered heated ultrasonic water bath that has been preheated to 80 ± 5°C and ensure that the water level in the ultrasonic is above the level of the extraction solution in the tubes, but well below the level of the extraction tube caps to avoid contamination. Start the ultrasonic bath and allow the unit to run for 1 hour ± 5 minutes at 80 ± 5°C.

10.2.4 Remove the rack(s) from the ultrasonic bath and allow the racks to cool.

10.2.5 Add 25.00 ± 0.25 mL of D.I. water with a calibrated mechanical pipette to bring the sample to a final volume of 50.0 ± 0.4 mL. Tightly cap the tubes, and vortex mix or shake vigorously. Allow samples to stand for one hour to allow complete diffusion of the extracted Pb. The sample is now ready for analysis.

Note: Although PTFE filters have only been extracted using the ultrasonic extraction procedure in the development of this FRM, PTFE filters are inert and have very low Pb content. No issues are expected with the extraction of PTFE filters using the heated block digestion method. However, prior to using PTFE filters in the heated block extraction method, extraction method performance test using CRMs must be done to confirm performance (see Section 8.9).

11.0 Hot Block Filter Strip Extraction

All plasticware (*e.g.,* Nalgene) and glassware used in the extraction procedures is soaked in 1 percent $HNO_3$ for at least 24 hours and rinsed with reagent water prior to use. All mechanical pipettes used must be calibrated to ±1 percent accuracy and ≤ 1 percent RSD at a minimum of once every 6 months.

11.1 Sample Preparation—Hot Block Digestion

11.1.1 Extraction solution (1:19, v/v $HNO_3$). Prepare by adding 500 mL of D.I. water to a 1000 mL flask, adding 50 mL of concentrated $HNO_3$, shaking to mix, allowing solution to cool, diluting to volume with reagent water, and inverting several times to mix. The extraction solution must be prepared at least weekly.

11.1.2 Use a ceramic knife and non-metal ruler, or other cutting device that will not contaminate the filter with Pb. Cut a 1-inch X 8-inch strip from the glass fiber or quartz filter. Cut a strip from the edge of the filter where it has been folded along the 10-inch side at least 1 inch from the right or left side to avoid the un-sampled area covered by the filter holder. The filters must be carefully handled to avoid dislodging particle deposits.

11.1.3 Using plastic tweezers, roll the filter strip up in a coil and place the rolled strip in the bottom of a labeled 50 mL extraction tube. In a fume hood, add 20.0 ± 0.15 mL of the extraction solution (see Section 11.1.1) using a calibrated mechanical pipette. Ensure that the extraction solution completely covers the filter strip.

11.1.4 Place the extraction tube in the heated block digester and cover with a disposable polyethylene ribbed watch glass. Heat at 95 ± 5°C for 1 hour and ensure that the sample does not evaporate to dryness. For proper heating, adjust the temperature control of the hot block such that an uncovered vessel containing 50 mL of water placed in the center of the hot block can be maintained at a temperature approximately, but no higher than 85°C. Once the vessel is covered with a ribbed watch glass, the temperature of the water will increase to approximately 95°C.

11.1.5 Remove the rack(s) from the heated block digester and allow the samples to cool.

11.1.6 Bring the samples to a final volume of 50 mL with D.I. water. Tightly cap the tubes, and vortex mix or shake vigorously for at least 5 seconds. Set aside (with the filter strip in the tube) for at least 30 minutes to allow the $HNO_3$ trapped in the filter to diffuse into the extraction solution.

11.1.7 Shake thoroughly (with the filter strip in the digestion tube) and let settle for at least one hour. The sample is now ready for analysis.

12.0 Measurement Procedure

12.1 Follow the instrument manufacturer's startup procedures for the ICP–MS.

12.2 Set instrument parameters to the appropriate operating conditions as presented in the instrument manufacturer's operating manual and allow the instrument to warm up for at least 30 minutes.

12.3 Calibrate the instrument per Section 9.0 of this method.

12.4 Verify the instrument is suitable for analysis as defined in Sections 9.2 and 9.3.

12.5 As directed in Section 8.0 of this method, analyze an ICV and ICB immediately after the calibration curve followed by a LLCV, then CCV and CCB. The acceptance requirements for these parameters are presented in Section 8.8.

12.6 Analyze a CCV and a CCB after every 10 extracted samples.

12.7 Analyze a LLCV, CCV and CCB at the end of the analysis.

12.8 A typical sample run will include field samples, field sample duplicates, spiked field sample extracts, serially diluted samples, the set of QC samples listed in Section 8.8 above, and one or more CRMs or SRMs.

12.9 Any samples that exceed the highest standard in the calibration curve must be diluted and reanalyzed so that the diluted concentration falls within the calibration curve.

13.0 Results

13.1 The filter results must be initially reported in µg/mL as analyzed. Any additional dilutions must be accounted for. The internal standard recoveries must be included in the result calculation; this is done by the ICP–MS software for most commercially-available instruments. Final results should be reported in µg Pb/m³ to three significant figures as follows:

C = ((µg Pb/mL * Vf * A)* D))/Vs

Where:

C = Concentration, µg Pb/m³

µg Pb/mL = Lead concentration in solution

Vf = Total extraction solution volume

A = Area correction; ¾″ × 8'' strip = 5.25 in² analyzed, A = 12.0 or 1'' × 8″ strip = 7 in² analyzed, A = 9.0

D = dilution factor (if required)

Vs = Actual volume of air sampled

The calculation assumes the use of a standard 8-inch × 10-inch TSP filter which has a sampled area of 9-inch × 7-inch (63.0 in²) due to the ½-inch filter holder border around the outer edge. The ¾-inch × 8-inch strip has a sampled area of ¾-inch × 7-inch (5.25 in²). The 1-inch × 8-inch strip has a sampled area of 1-inch × 7-inch (7.0 in²). If filter lot blanks are provided for analysis, refer to Section 7.7.5 of this method for guidance on testing.

14.0 Method Performance

Information in this section is an example of typical performance results achieved by this method. Actual performance must be demonstrated by each individual laboratory and instrument.

14.1 Performance data have been collected to estimate MDLs for this method. MDLs were determined in accordance with 40 CFR 136, Appendix B. MDLs were estimated for glass fiber, quartz, and PTFE filters using seven reagent/filter blank solutions spiked with low level Pb at three times the estimated MDL of 0.001 µg/mL. Tables 1, 3, and 5 shows the MDLs estimated using both the ultrasonic and hot block extraction methods for glass fiber and quartz filters and the ultrasonic method for PTFE filters. The MDLs are well below the EPA requirement of five percent of the current Pb NAAQS or 0.0075 µg/m³. These MDLs are provided to demonstrate the adequacy of the method's performance for Pb in TSP. Each laboratory using this method should determine MDLs in their laboratory and verify them annually. It is recommended that laboratories also perform the optional iterative procedure in 40 CFR 136, Appendix B to verify the reasonableness of the estimated MDL and subsequent MDL determinations.

14.2 Extraction method recovery tests with glass fiber and quartz filter strips, and PTFE filters spiked with NIST SRMs were performed using the ultrasonic/$HNO_3$ and HCl filter extraction methods and measurement of the dissolved Pb with ICP–MS. Tables 2, 4, and 6 show recoveries obtained with these SRM. The recoveries for all SRMs were ≥90 percent at the 95 percent confidence level.

TABLE 1—METHOD DETECTION LIMITS DETERMINED BY ANALYSIS OF REAGENT/GLASS FIBER FILTER BLANKS SPIKED WITH LOW-LEVEL PB SOLUTION

| | Ultrasonic extraction method | Hotblock extraction method |
|---|---|---|
| | µg/m³* | µg/m³* |
| n = 1 | 0.0000702 | 0.000533 |
| n = 2 | 0.0000715 | 0.000482 |
| n = 3 | 0.0000611 | 0.000509 |
| n = 4 | 0.0000587 | 0.000427 |
| n = 5 | 0.0000608 | 0.000449 |
| n = 6 | 0.0000607 | 0.000539 |
| n = 7 | 0.0000616 | 0.000481 |
| Average | 0.0000635 | 0.000489 |
| Standard Deviation | 0.0000051 | 0.000042 |
| MDL** | 0.0000161 | 0.000131 |

* Assumes 2000 m³ of air sampled.
** MDL is 3.143 times the standard deviation of the results for seven sample replicates analyzed.

TABLE 2—RECOVERIES OF LEAD FROM NIST SRMS SPIKED ONTO GLASS FIBER FILTERS

| Extraction method | Recovery, ICP–MS, (percent) | | | |
|---|---|---|---|---|
| | NIST 1547 plant | NIST 2709 soil | NIST 2583 dust | NIST 2582 paint |
| Ultrasonic Bath | 100 ± 4 | 98 ± 1 | 103 ± 8 | 101 ± 0 |
| Block Digestion | 92 ± 7 | 98 ± 3 | 103 ± 4 | 94 ± 4 |

TABLE 3—METHOD DETECTION LIMITS DETERMINED BY ANALYSIS OF REAGENT/QUARTZ FILTER BLANKS SPIKED WITH LOW-LEVEL PB SOLUTION

| | Ultrasonic extraction method | Hotblock extraction method |
|---|---|---|
| | µg/m³* | µg/m³* |
| n = 1 | 0.000533 | 0.000274 |
| n = 2 | 0.000552 | 0.000271 |
| n = 3 | 0.000534 | 0.000281 |
| n = 4 | 0.000684 | 0.000269 |

TABLE 3—METHOD DETECTION LIMITS DETERMINED BY ANALYSIS OF REAGENT/QUARTZ FILTER BLANKS SPIKED WITH LOW-LEVEL PB SOLUTION—Continued

| | Ultrasonic extraction method | Hotblock extraction method |
|---|---|---|
| | µg/m³* | µg/m³* |
| n = 5 | 0.000532 | 0.000278 |
| n = 6 | 0.000532 | 0.000272 |
| n = 7 | 0.000552 | 0.000261 |
| Average | 0.000560 | 0.000272 |
| Standard Deviation | 0.000055 | 0.000007 |
| MDL** | 0.000174 | 0.000021 |

* Assumes 2000 m³ of air sampled.
** MDL is 3.143 times the standard deviation of the results for seven sample replicates analyzed.

TABLE 4—RECOVERIES OF LEAD FROM NIST SRMS SPIKED ONTO QUARTZ FIBER FILTERS

| Extraction method | Recovery, ICP–MS, (percent) | | | |
|---|---|---|---|---|
| | NIST 1547 plant | NIST 2709 soil | NIST 2583 dust | NIST 2582 paint |
| Ultrasonic Bath | 101 ± 6 | 95 ± 1 | 91 ± 5 | 93 ± 1 |
| Block Digestion | 106 ± 3 | 104 ± 3 | 92 ± 6 | 95 ± 2 |

TABLE 5—METHOD DETECTION LIMITS DETERMINED BY ANALYSIS OF REAGENT/PTFE FILTER BLANKS SPIKED WITH LOW-LEVEL PB SOLUTION

| | Ultrasonic extraction method |
|---|---|
| | µg/m³* |
| n = 1 | 0.001775 |
| n = 2 | 0.001812 |
| n = 3 | 0.001773 |
| n = 4 | 0.001792 |
| n = 5 | 0.001712 |
| n = 6 | 0.001767 |
| n = 7 | 0.001778 |
| Average | 0.001773 |
| Standard Deviation | 0.000031 |
| MDL** | 0.000097 |

* Assumes 24 m³ of air sampled.
** MDL is 3.143 times the standard deviation of the results for seven sample replicates analyzed.

TABLE 6—RECOVERIES OF LEAD FROM NIST SRMS SPIKED ONTO PTFE FILTERS

| Extraction method | Recovery, ICP–MS, (percent) | | | |
|---|---|---|---|---|
| | NIST 1547 plant | NIST 2709 soil | NIST 2583 dust | NIST 2582 paint |
| Ultrasonic Bath | 104 ± 5 | 93 ± 1 | 108 ± 11 | 96 ± 3 |

15.0 Pollution Prevention

15.1 Pollution prevention encompasses any technique that reduces or eliminates the quantity and/or toxicity of waste at the point of generation. Numerous opportunities for pollution prevention exist in laboratory operations. Whenever feasible, laboratory personnel should use pollution prevention techniques to address their waste generation. The sources of pollution generated with this procedure are waste acid extracts and Pb-containing solutions.

15.2 For information about pollution prevention that may be applicable to laboratories and research institutions, consult Less is Better: Laboratory Chemical Management for Waste Reduction, available from the American Chemical Society's Department of Government Relations and Science Policy, 1155 16th St. NW., Washington, DC 20036, *www.acs.org*.

16.0 Waste Management

16.1 Laboratory waste management practices must be conducted consistent with all applicable rules and regulations. Laboratories are urged to protect air, water, and land by minimizing all releases from hood and bench operations, complying with the letter and spirit of any sewer and discharge permits and regulations, and by complying with all solid and hazardous waste regulation. For further information on waste management, consult The Waste Management Manual for Laboratory Personnel available from the American Chemical Society listed in Section 15.2 of this method.

16.2 Waste $HNO_3$, HCl, and solutions containing these reagents and/or Pb must be placed in labeled bottles and delivered to a commercial firm that specializes in removal of hazardous waste.

17.0 References

FACDQ (2007). Report of the Federal Advisory Committee on Detection and Quantitation Approaches and Uses in Clean Water Act Programs, submitted to the U.S. EPA December 2007. Available: *http://water.epa.gov/scitech/methods/cwa/det/upload/final-report-200712.pdf*.

Rice J (2013). Results from the Development of a New Federal Reference Method (FRM) for Lead in Total Suspended Particulate (TSP) Matter. Docket # EPA–HQ–OAR–2012–0210.

U.S. EPA (2007). Method 6020A—Inductively Coupled Plasma Mass Spectrometry. U.S. Environmental Protection Agency. Revision 1, February 2007. Available: *http://www.epa.gov/osw/hazard/testmethods/sw846/pdfs/6020a.pdf*.

U.S. EPA (2011). A Laboratory Study of Procedures Evaluated by the Federal Advisory Committee on Detection and Quantitation Approaches and Uses in Clean Water Act Programs. December 2011. Available: *http://water.epa.gov/scitech/methods/cwa/det/upload/fac_report_2009.pdf*.

[FR Doc. 2013–15880 Filed 7–2–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[EPA–R03–OAR–2013–0376]; FRL–9828–2

## Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of Consumer and Commercial Products Rules

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revisions remove four articles located in chapter 9VAC5–40 (Existing Stationary Sources) from the Virginia SIP. These articles are being removed from the Virginia SIP because they were repealed in their entirety and have been replaced by the updated corresponding articles in chapter 9VAC5–45 (Consumer and Commercial Products). The provisions of chapter 9VAC5–45 are not affected by the removal of these regulations. EPA is approving these revisions to remove the above mentioned articles in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on September 3, 2013 without further notice, unless EPA receives adverse written comment by August 2, 2013. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0376 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0376, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2013–0376. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Summary of SIP Revision

On April 2, 2013, the Commonwealth of Virginia submitted formal revisions to its SIP. These revisions consist of removing the following articles located in chapter 9VAC5–40 (Existing Stationary Sources), part II (Emission Standards) from the Virginia SIP: Article 39 (Emission Standards for Asphalt Paving Operations), article 42 (Emission Standards for Portable Fuel Container Spillage), article 49 (Emission Standards for Architectural and Industrial Maintenance Coatings), and article 50 (Emission Standards for Consumer Products). These articles are being removed from the Virginia SIP because they were repealed in their entirety from Virginia's state-enforceable air pollution control regulations. They have been replaced by corresponding articles in chapter 9VAC5–45 (Consumer and Commercial Products), part II (Emission Standards), articles 1, 3, 5, and 7, which was approved by EPA and published as a final rule on January 26, 2012 (*See* 77 FR 3928). This rule became effective on February 27, 2012 and contains the required elements for a Federally enforceable rule, including emission limitations, compliance procedures and test methods, compliance dates, and record keeping provisions.

### II. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain

conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.'' Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

## III. Final Action

EPA is approving Virginia's SIP revisions to remove the following articles located in chapter 9VAC5–40, part II, from the Virginia SIP: articles 39, 42, 49, and 50. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 3, 2013 without further notice unless EPA receives adverse comment by August 2, 2013. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

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

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

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

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small

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

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action, removing articles 39, 42, 49, and 50 of chapter 9VAC5–40, part II (Existing Stationary Sources) from the Virginia SIP, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: June 7, 2013.

**W. C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart VV—Virginia

**§ 52.2420 [Amended]**

■ 2. In § 52.2420, the table in paragraph (c) is amended by removing the entries for articles under ''9VAC5, Chapter 40, Part II'' for ''Article 39 Emission Standards for Asphalt Paving Operations (Rule 4–39)'', ''Article 42 Emissions Standards for Portable Fuel Container Spillage (Rule 4–42)'', ''Article 49 Emission Standards for Architectural and Maintenance Coatings (Rule 4–49)'', and ''Article 50 Emission Standards for Consumer Products (Rule 4–50)'', in their entirety.

[FR Doc. 2013–15728 Filed 7–2–13; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R05–OAR–2013–0343; FRL–9824–9]**

## Approval and Promulgation of Air Quality Implementation Plans; Illinois

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a request submitted by the Illinois Environmental Protection Agency (Illinois EPA) on April 11, 2013, to revise the Illinois state implementation plan (SIP). The submission revises Title 35 of the Illinois Administrative Code (IAC) Part 254, Annual Emissions Report. The revision provides clarification regarding greenhouse gases (GHGs) as it relates to the annual emissions report. The rationale for approval and other information are provided in this rulemaking action.

**DATES:** This direct final rule will be effective September 3, 2013, unless EPA receives adverse comments by August 2, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0343, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2013–0343. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, (312) 886–6031 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**

Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)886–6031, *hatten.charles@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

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

I. What is the background for this action?
II. What revision did the state request?
III. What action is EPA taking today?
IV. Statutory and Executive Order Reviews.

## I. What is the background for this action?

On April 11, 2013, the Illinois EPA submitted a request to EPA to revise the SIP to provide clarification regarding GHGs as it relates to the provisions at 35 IAC Part 254, Annual Emissions Report.

On December 28, 2012, the Illinois EPA published a ''Notice of Public Information'' in the Illinois Register providing a 30-day public comment period on the proposed revision to its SIP for GHGs relating to the annual emissions report program. The notice also provided for a public hearing if a request for a hearing was received by January 28, 2013. The Illinois EPA received no requests for a public hearing, and placed a ''no public hearing request'' notice on the Illinois EPA Web site at *http://www.epa.state.il.us/public-notices* on February 6, 2013.

## II. What revision did the state request?

The state has requested that EPA approve revisions to 35 IAC Part 254, which requires facilities to submit an annual emissions report to Illinois EPA. This revision is a non-substantive technical change that clarifies that the type of annual emissions report that a source needs to submit to Illinois EPA will not be based upon GHG emissions.

Prior to this revision, section 254.102(a)(1) of Subpart A, General Provisions, 35 IAC Part 254, provided that Subpart B, Reporting Requirements for Large Sources, applied to owners or operators of any source required to have an operating permit in accordance with 35 IAC 201 that is permitted to emit 25 tons per year or more of any combination of regulated air pollutants. In 2011, the Illinois General Assembly revised the definition of ''regulated air pollutant'' in section 39.5 of the Illinois Environmental Protection Act [415 Illinois Compiled Statutes 5/39.5] to include GHGs. As a result, Illinois EPA revised section 254.102(a)(1) of Subpart A, General Provisions, 35 IAC Part 254, to clarify that the type of annual emissions report, i.e., a long form or a short form, that a source is required to submit will not be based on its GHG emissions. The revised applicability provisions at 35 IAC 254.102(a)(1) provide that Subpart B, Reporting Requirements for Large Sources, applies to owners or operators of any source required to have an operating permit in accordance with 35 IAC 201 that is permitted to emit 25 tons per year or more of any combination of regulated air pollutants, excluding greenhouse gases. Illinois EPA anticipates that the revised rule will avoid additional costs for small businesses, small municipalities and not-for-profit corporations who would otherwise be required to complete a long-form annual emissions report absent the revised rule.

EPA finds that the revision to the applicability provisions of 35 IAC Part 254 as they relate to GHGs is acceptable.

## III. What action is EPA taking today?

EPA is approving the revision to the Illinois SIP at 35 IAC Part 254, regarding GHGs as it relates to the annual emissions report.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective September 3, 2013 without further notice unless we receive relevant adverse written comments by August 2, 2013. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective September 3, 2013.

## IV. Statutory and Executive Order Reviews

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

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

be inconsistent with the Clean Air Act; and

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Emissions Reporting, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: June 6, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.720 is amended by adding paragraph (c)(196) to read as follows:

**§ 52.720 Identification of plan.**

* * * * *

(c) * * *

(196) On April 11, 2013, Illinois submitted a revision to 35 IAC Part 254, Annual Emissions Report. The revision amends the applicability provisions as they relate to greenhouse gases.

(i) Incorporation by reference.

Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution; Chapter II: Environmental Protection Agency; Part 254: Annual Emission Report, Section 254.102: Applicability, effective April 20, 2012.

[FR Doc. 2013–15611 Filed 7–2–13; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 62

**[EPA–R03–OAR–2013–0434; FRL–9829–6]**

## Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; District of Columbia; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator Units

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a negative declaration for hospital/medical/infectious waste incinerator (HMIWI) units within the District of Columbia. This negative declaration certifies that HMIWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist within the jurisdictional boundaries of the District Department of the Environment (DDOE). EPA is accepting the negative declaration in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on September 3, 2013 without further notice, unless EPA receives adverse written comment by August 2, 2013. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0434 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: cox.kathleen@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0434, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2013–0434. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., Fifth Floor, Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Mike Gordon, (215) 814–2039, or by email at *gordon.mike@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

On October 6, 2009 (74 FR 51368), EPA promulgated HMIWI unit new source performance standards, 40 CFR part 60, subpart Ec, and emission guidelines, subpart Ce. These regulations were amended in an April 4, 2011 final rule (76 FR 18407).

The designated facilities to which the EG apply are existing HMIWI units that: (1) Commenced construction on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998; or (2) commenced construction after June 20, 1996 but no later than December 1, 2008, or for which modification commenced after March 16, 1998 but no later than April 6, 2010, with limited exceptions as provided in paragraphs 40 CFR 60.32e(b) through (h).

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (i.e., negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan.

## II. Final EPA Action

The DDOE has determined that there are no HMIWI units subject to CAA 111(d)/129 requirements in their respective air pollution control jurisdiction. Accordingly, DDOE submitted a negative declaration letter to EPA on July 26, 2012.

In this direct final action, EPA is amending part 62 to reflect receipt of the negative declaration letter from DDOE. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 3, 2013 without further notice unless EPA receives adverse comment by August 2, 2013. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## III. Statutory and Executive Order Reviews

### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely notifies the public of EPA receipt of a negative declaration from an air pollution control agency without any existing HMIWI units in their jurisdiction. This action imposes no requirements. Accordingly, EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves the negative declaration for existing HMIWI units from the DDOE and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

With regard to negative declarations for designated facilities received by EPA from states, EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to approve or disapprove a CAA section 111(d)/129 plan negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a CAA section 111(d)/129 negative declaration, to use VCS in place of a section 111(d)/129 negative declaration that otherwise satisfies the provisions of the Clean Air Act. Thus, the

requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*B. Submission to Congress and the Comptroller General*

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

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 3, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action approving the DDOE's negative declaration for HMIWI units may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: June 13, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 62 is amended as follows:

## PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

### Subpart J—District of Columbia

■ 2. Section 62.2150 is amended by designating the existing paragraph as (a) and adding paragraph (b) to read as follows:

**§ 62.2150 Identification of plan—negative declaration.**

* * * * *

(b) Letter from the District Department of the Environment, submitted to EPA on July 26, 2012, certifying that there are no known existing HMIWI units in the District of Columbia.

[FR Doc. 2013–15874 Filed 7–2–13; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2012–0303; FRL–9391–7]**

### Ethalfluralin; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of ethalfluralin in or on rapeseed subgroup 20A and sunflower subgroup 20B. This regulation additionally removes the established tolerances in or on mustard, seed; rapeseed, seed; safflower, seed; and sunflower, seed, as they will be superseded by the tolerances established by this final rule. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective July 3, 2013. Objections and requests for hearings must be received on or before September 3, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0303, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; email address: *nollen.laura@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0303 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 3, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0303, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 25, 2012 (77 FR 43562) (FRL–9353–6), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8007) by IR–4, 500 College Rd. East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR 180.416 be amended by establishing tolerances for residues of the herbicide ethalfluralin, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine, in or on rapeseed subgroup 20A and sunflower subgroup 20B at 0.05 parts per million (ppm). That document referenced a summary of the petition prepared on behalf of IR–4 by Dow AgroSciences, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the tolerance expression for all established commodities to be consistent with current Agency policy. The reason for this change is explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for ethalfluralin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with ethalfluralin follows.

*A. Reliance on Previous Rulemaking Safety Finding and Risk Assessment*

In the **Federal Register** of December 5, 2007 (72 FR 68529) (FRL–8342–2), EPA published a final rule (2007 rulemaking) establishing tolerances for residues of the herbicide ethalfluralin, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine, in or on dry and fresh dill leaves, mustard seed, potato, and rapeseed, seed at 0.05 ppm, based on EPA's conclusion that aggregate exposure to ethalfluralin is safe for the general population, including infants and children. Since 2007, there have been no additional tolerance actions for ethalfluralin. The toxicity profile of ethalfluralin has not changed since the 2007 rulemaking.

Except as supplemented by the information described in this unit, EPA is relying on the risk assessment underlying the 2007 rulemaking to establish tolerances of ethalfluralin in or on rapeseed subgroup 20A and sunflower subgroup 20B. Further information about EPA's risk assessment and determination of safety supporting the 2007 rulemaking can be found at *http://www.regulations.gov* in the document entitled: ''Ethalfluralin: Human Health Risk Assessment for (IR–4) Proposed Uses on Dill and Potato,'' document ID number EPA–HQ–OPP–2005–0195–0003. The final rule for the 2007 rulemaking can be found in document ID number EPA–HQ–OPP–2005–0195–0002. Currently, there are tolerances established for residues of ethalfluralin in or on the representative commodities of crop subgroups 20A (rapeseed) and 20B (sunflower seed).

These tolerances were based on adequate residue field trial data. The results of these residue data indicate that no ethalfluralin residues were detected in or on rapeseed and sunflower; therefore, tolerances were established at the limit of quantitation (LOQ) of 0.05 ppm for these commodities. Additionally, ethalfluralin tolerances are established at the LOQ of 0.05 ppm for mustard seed (subgroup 20A) and safflower seed (subgroup 20B). The ''no detected residues'' finding is further supported by review of the Pesticide Database Program (PDP), where no residues of ethalfluralin were found on any crop from 2007 to 2010. Since the proposed use rates for all commodities in crop subgroup 20A and 20B are the same as what is currently permitted for application to rapeseed and sunflower seed under the existing registrations, the Agency expects similar ethalfluralin residues to be present on other commodities in subgroups 20A and 20B.

Moreover, rapeseed and sunflower seed, in addition to safflower seed, are by far the most consumed commodities in crop subgroups 20A and 20B; other commodities in crop subgroup 20A and 20B have low rates of consumption, as

supported by the fact that all members of subgroups 20A and 20B except sesame, safflower, and mustard are not included in the National Health and Nutrition Examination Survey/''What We Eat in America'' (NHANES/WWEIA) dietary survey. EPA does not expect that adding sesame exposures to the ethalfluralin risk assessment to change the overall risk since consumption of sesame and exposure to ethalfluralin residues on sesame are expected to be so minor compared to all the representative crops. As a result, EPA does not expect the establishment of tolerances for the rapeseed subgroup 20A and the sunflower subgroup 20B to increase food exposure from what was assessed in the 2007 risk assessment.

Further, residues from drinking water are not expected to change from the 2007 risk assessment because the application rate for subgroup 20A and 20B will be the same as the currently registered application rate for rapeseed and sunflower. As a result, the addition of the new crops in subgroups 20A and 20B would not change the estimated drinking water concentrations used in the 2007 risk assessment. In addition, since the 2007 risk assessment relied on monitoring data for the cancer assessment, EPA has reviewed the most recent water monitoring data to ensure that the conclusions of 2007 risk assessment are still valid. Data from the U.S. Department of Agriculture's (USDA) PDP and U.S. Geological Survey, National Water-Quality Assessment Program (USGS/NAWQA) still show that there have been no detectable or very limited detectable residues of ethalfluralin in sampled drinking water and surface/ground water. PDP sampled 3,515 samples of drinking water between 2006 and 2011, and there were no detects at a limit of detection (LOD) between 30 and 400 parts per trillion (ppt). Likewise, there has been a very low detection frequency (0.8%) of ethalfluralin in the USGS/NAWQA monitoring data in the last search. Therefore, the assumptions in the 2007 risk assessment regarding drinking water are still valid.

Since the dietary risk depends on both consumption (which the Agency does not expect to vary significantly from the 2007 risk assessment) and residue levels (which the Agency expects to remain the same as the 2007 risk assessment), the Agency does not expect the risk from ethalfluralin to change from the 2007 risk assessment.

*B. Safety Factor for Infants and Children*

1. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Ptotection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. In the preamble to the 2007 rulemaking, EPA explained the decision to reduce the FQPA SF to 1X based on reliable data. For this action, EPA is reducing the FQPA SF to 1X for the following reasons:

a. For the 2007 rulemaking, the toxicity database was considered complete. However, changes to 40 CFR part 158 since the 2007 rulemaking imposed new data requirements for immunotoxicity testing and acute and subchronic neurotoxicity testing for pesticide registration. In 2012, EPA determined that the acute and subchronic neurotoxicity studies are not required for ethalfluralin based on a weight-of-evidence approach, considering all of the available hazard and exposure information. However, the immunotoxicity study remains a data requirement at this time.

Although an immunotoxicity study has not been received by the Agency, there is relatively little concern as there are no indications of immunotoxicity in the toxicology database; it does not appear that ethalfluralin directly targets the immune system. Additionally, ethalfluralin does not belong to a class of chemicals (e.g., the organotins, heavy metals, halogenated aromatic hydrocarbons) that would be expected to be immunotoxic. Therefore, the Agency does not believe that conducting an immunotoxicity study will result in a lower point of departure (POD) than that currently used for overall risk assessment, and the 10X FQPA SF (in the form of a database uncertainty factor ($UF_{DB}$)) is not needed to account for the lack of the study.

b. EPA has fully evaluated the toxicity database of ethalfluralin with respect to the potential for special sensitivity of infants and children, and concludes that there is low concern for pre- and postnatal susceptibility for infants and children. The FQPA SF has been reduced to 1X because:

i. The toxicity database is adequate to characterize potential pre- and postnatal risk for infants and children.

ii. No reproductive or developmental effects were observed in rats.

iii. Although there were slight developmental effects observed (skeletal malformations) in rabbits (fetuses), they were seen in the presence of maternal toxicity. Additionally, the dose chosen for acute dietary risk assessment is protective of the slight developmental effects observed in the rabbit developmental toxicity studies.

c. Based on the discussion in Unit III.A., EPA does not expect dietary exposure to ethalfluralin or residues in drinking water to be underestimated.

*C. Conclusion*

Based upon the findings supporting the 2007 rulemaking and the information discussed in Unit III., EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children, from aggregate exposures to ethalfluralin residues as a result of establishing the tolerances for rapeseed subgroup 20A and sunflower subgroup 20B. Refer to the 2007 rulemaking, available at *http://www.regulations.gov,* for a detailed discussion of the aggregate risk assessments and determination of safety.

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodologies, two gas chromatography with electron capture detection (GC/ECD) methods, are available to enforce the tolerance expression. These methods are available in the Pesticide Analytical Manual Volume II, section 180.416.

*B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for ethalfluralin.

*C. Revisions to Petitioned-For Tolerances*

The Agency has revised the tolerance expression to clarify:

1. That, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of ethalfluralin not specifically mentioned.

2. That compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

**V. Conclusion**

Therefore, tolerances are established for residues of the herbicide ethalfluralin, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)-benzenamine, in or on rapeseed subgroup 20A at 0.05 ppm and sunflower subgroup 20B at 0.05 ppm. This regulation additionally removes established tolerances in or on mustard, seed; rapeseed, seed; safflower, seed; and sunflower, seed.

**VI. Statutory and Executive Order Reviews**

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 21, 2013.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.416:

■ i. Revise the introductory text of paragraph (a).

■ ii. Remove the commodities, ''Mustard, seed;'' ''Rapeseed, seed;'' ''Safflower, seed;'' and ''Sunflower, seed'' from the table in paragraph (a).

■ iii. Add alphabetically the following commodities to the table in paragraph (a).

The amendments read as follows:

**§ 180.416 Ethalfluralin; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the herbicide ethalfluralin, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only the residues of ethalfluralin, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine.

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Rapeseed subgroup 20A ..... | 0.05 |
| * * * * * | |
| Sunflower subgroup 20B ..... | 0.05 |
| * * * * * | |

* * * * *

[FR Doc. 2013–15710 Filed 7–2–13; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2012–0520; FRL–9390–5]**

## Fenbuconazole; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of fenbuconazole in or on pepper. Dow AgroSciences LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective July 3, 2013. Objections and requests for hearings must be received on or before September 3, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0520, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Erin Malone, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0253; email address: *malone.erin@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

### *B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

### *C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0520 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 3, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0520, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 28, 2012 (77 FR 59578) (FRL–9364–6), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F8034) by Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, Indiana 46268. The petition requested that 40 CFR 180.480 be amended by modifying the tolerance for residues of the fungicide fenbuconazole, alpha-[2-(4-chlorophenyl)-ethyl]-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile, and its metabolites RH-9129, cis-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3 H-furanone, and RH-9130, trans-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3 H-furanone, in or on pepper from 0.4 parts per million (ppm) to 1.0 ppm. That document referenced a summary of the petition prepared by Dow AgroSciences LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* A comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fenbuconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fenbuconazole follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The main target organ of fenbuconazole is the liver. Increased liver weight, hepatocellular hypertrophy, and clinical chemistry changes were observed in the rat, dog,

and mouse following subchronic and chronic exposure. In the rat (but not the dog or mouse), effects on the thyroid were also observed. A mechanistic study demonstrated that these findings are secondary to changes in liver metabolic enzyme activities, which result in alterations to levels of circulating thyroid hormone due to increased clearance via increased liver metabolism and, eventually, thyroid hyperplasia. The rat is significantly more sensitive to these effects than other species. Clear NOAELs and LOAELs were established for these findings, and the endpoints selected for human health risk assessment are protective of the thyroid effects. The endpoints are also protective of potential thyroid perturbation to offspring, as the developmental NOAELs were significantly higher than the NOAELs for thyroid and liver effects in adults (e.g., chronic dietary endpoint based on rat chronic/carcinogenicity NOAEL of 3 mg/kg/day vs. rat developmental NOAEL of 30 mg/kg/day), and no increased quantitative susceptibility was observed for thyroid and liver effects among the offspring relative to the parental animals. Kidney and adrenal weights were increased in dogs after chronic exposure. Although acute and subchronic neurotoxicity have not been submitted, EPA concluded that these studies are not required, taking into consideration the lack of observed neurotoxic effects in the available studies for fenbuconazole as well as many other triazole fungicides. There was no evidence of increased quantitative or qualitative susceptibility to *in utero* or post-natal exposure to fenbuconazole. Since the previous assessment, new rabbit developmental toxicity and rat metabolism studies were submitted; the findings of these studies are consistent with the data EPA assessed previously and do not affect the overall characterization of hazard or selection of doses and endpoints for risk assessment. Fenbuconazole is classified as a ''Group C,'' or possible human carcinogen, based on an increased incidence of liver tumors in male and female mice. A cancer potency factor has been used to quantify potential cancer risk associated with fenbuconazole uses.

Specific information on the studies received and the nature of the adverse effects caused by fenbuconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Fenbuconazole: Human Health Risk Assessment for an Increased Tolerance for Residues in Peppers and a Label Amendment for the Enable 2F Product'' at page 14 in docket ID number EPA–HQ–OPP–2012–0520.

*B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.* A summary of the toxicological endpoints for fenbuconazole used for human risk assessment is shown in Table 1 of this unit.

A summary of the toxicological endpoints for fenbuconazole used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FENBUCONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

| Exposure/scenario | Point of departure and uncertainty/safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary (Females 13–49 years of age). | NOAEL = 30 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 0.3 mg/kg/day.<br>aPAD = 0.3mg/kg/day | Developmental rat study<br>LOAEL = 75 mg/kg/day based on increased resorptions, postimplantation loss and decreased live fetuses per dam. |
| Acute dietary (General population including infants and children). | None ..... | None ..... | Not selected<br>No appropriate single dose and endpoint could be identified for these population groups. |
| Chronic dietary (All populations) ..... | NOAEL = 3 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.03 mg/kg/day.<br>cPAD = 0.03 mg/kg/day | Combined chronic toxicity/carcinogenicity—Rat<br>LOAEL = 30.6/43.1 (M/F) mg/kg/day based on decreased body weight gain, increased thyroid weight, and hispathological lesions in the liver and thyroid gland. |

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FENBUCONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

| Exposure/scenario | Point of departure and uncertainty/ safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Cancer (Oral, dermal, inhalation) ..... | Under the 1986 cancer classification scheme, fenbuconazole was classified as a Group C—Possible Human Carcinogen, with a low dose extrapolation model applied to the animal data for the quantification of human risk ($Q_1$*). This classification was based on a statistically significant increase in combined hepatocellular adenomas and/or carcinomas by pair-wise comparison with concurrent controls, and significantly increasing trend in both the incidences of adenomas, and combined adenomas/carcinomas, in female mice. The upper bound estimate of unit risk, $Q_1$* (mg/kg/day)$^{-1}$ is 3.59 × $^{-3}$ in human equivalents. | | |

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. mg/kg/day = milligrams/kilogram/day. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. $UF_A$ = extrapolation from animal to human (interspecies). $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies).

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fenbuconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing fenbuconazole tolerances in 40 CFR 180.480. For the acute, chronic, and cancer dietary exposure assessments, EPA used food consumption information from the United States Department of Agriculture's (USDA) National Health and Nutrition Examination Survey/ What We Eat In America (NHANES/ WWEIA) collected from 2003–2008. In addition, EPA assessed dietary exposures from fenbuconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for fenbuconazole only for females age 13–49. As to residue levels in food, EPA used tolerance-level residues and assumed 100% crop treated for all commodities in the acute dietary exposure assessment.

ii. *Chronic exposure.* As to residue levels in food, EPA used a combination of tolerance-level residues and, for many foods, average residue levels from crop field trials. One-hundred percent crop treated was assumed for all commodities in the chronic dietary exposure assessment.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. If quantitative cancer risk assessment is appropriate, cancer risk may be quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that fenbuconazole should be classified as ''Possibly Carcinogenic to Humans'' and a linear approach has been used to quantify cancer risk.

In its assessment of dietary cancer risk, EPA used the same residue levels as described for the chronic assessment. EPA also assumed 100% crop treated, except for the percent crop treated estimates described in Unit III.C.1.iv., below.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows for the cancer assessment: Almonds: 5%; apples: 5%; apricots: 5%; blueberries: 55%; cherries: 15%; grapefruit: 40%; nectarines: 5%; oranges: 5%; peaches: 15%; pecans: 10%; plums/prunes: 1%; sugar beets: 1%; tangelos: 10%; tangerines: 1%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data

for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations are taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which fenbuconazole may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for fenbuconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fenbuconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of fenbuconazole for acute exposures are estimated to be 24.1 parts per billion (ppb) for surface water and 0.031 ppb for ground water, for chronic exposures for non-cancer assessments are estimated to be 16.5 ppb for surface water and 0.031 ppb for ground water, and for chronic exposures for cancer assessments are estimated to be 11.7 ppb for surface water and 0.031 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 24.1 ppb was used to assess the contribution from drinking water. For chronic dietary risk assessment, the water concentration of value 16.5 ppb was used to assess the contribution from drinking water. For cancer dietary risk assessment, the water concentration of value 11.7 ppb was used to assess the contribution from drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fenbuconazole is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Fenbuconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in fungi by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found: Some conazoles are hepatotoxic and hepatocarcinogenic in mice, some induce thyroid tumors in rats, and some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

Fenbuconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole as well as the common triazole conjugates (triazolylalanine, triazolylacetic acid, and triazolylpyrivic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including fenbuconazole, EPA conducted human health risk assessments for exposure to 1,2,4-triazole and the common triazole conjugates resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov,* docket identification (ID) number EPA–HQ–OPP–2005–0497.

Aggregate risk from exposure to the common triazole metabolites were recently estimated by the Agency (1 May 2013) and found to be not of concern. An updated dietary exposure and risk analysis for the common triazole metabolites 1,2,4-triazole (T), triazolylalanine (TA), triazolylacetic acid (TAA), and triazolylpyruvic acid (TP), reflecting the revised tolerance for residues of fenbuconazole in/on pepper was completed on May 21, 2013. Given that the updated dietary risk estimate increased by less than 1% relative to the previous assessment, new aggregate risk estimates were not made, and aggregate risk estimates for the common triazole metabolites remain below the Agency's level of concern. These documents may be found on *http://www.regulations.gov* by searching for the following titles and docket numbers: ''*Common Triazole Metabolites: Updated Aggregate Human Health Risk Assessment to Address The New Section 3 Registrations For Use of Prothioconazole on Bushberry Crop Subgroup 13–07B, Low Growing Berry, Except Strawberry, Crop Subgroup 13–07H, and Cucurbit Vegetables Crop Group 9; Use of Flutriafol on Coffee; and Ipconazole on Crop Group 6*'' (located in docket ID number EPA–HQ–OPP–2012–0876) and ''*Common Triazole Metabolites: Updated Dietary (Food + Water) Exposure and Risk Assessment to Address the Revised*

*Tolerance for Residues of Fenbuconazole in Peppers''* (docket ID number EPA–HQ–OPP–2012–0520).

*D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* In the rat and rabbit developmental toxicity studies and the 2-generation study in rats, all effects in the pups occurred in the presence of maternal toxicity, including changes in body weight and body weight gains in rats and decreased food consumption and clinical signs in rabbits. Developmental effects included increased post-implantation loss and decreased live fetuses per dam in the rat developmental study; increased early resorptions in the rabbit developmental study; and decreased mean pup body weight, increased number of stillborn pups, decreased number of total offspring delivered, and decreased viability index of pups in the two generation study in rats. No increased qualitative or quantitative susceptibility was observed in any of the studies. In the rat developmental toxicity study, although a decrease in the number of live fetuses per litter was observed at the LOAEL, this effect was due largely to reduced implantation sites, which may reflect maternal toxicity. Additionally, the increases in postimplantation loss and early resorptions were marginal at the LOAEL. Therefore, the findings in this study were not considered indicative of increased offspring susceptibility. In the rabbit developmental study, developmental effects were observed at a higher dose than maternal effects. In the rat reproduction study, effects on pup viability were observed at a dose that resulted in maternal mortality during delivery. There was no evidence of neurotoxicity in any of the studies available in the toxicology database. Therefore, a developmental neurotoxicity study is not required.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database is complete, except for an immunotoxicity study; however, due to the lack of any evidence of immunotoxicity based upon the available studies, EPA does not believe that an immunotoxicity study will result in a lower point-of-departure than those being relied upon for the present risk assessments. Therefore, an uncertainty factor is not required to account for the lack of this study.

ii. There is no evidence of neurotoxicity in the available database, and a developmental neurotoxicity study is not required.

iii. There is no evidence that fenbuconazole results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary exposure assessment is a screening-level assessment, utilizing tolerance-level residues and assuming 100% crop treated. The chronic dietary exposure assessment is slightly refined, utilizing some tolerance-level residues and some average residue levels from crop field trials and assuming 100% crop treated. The cancer dietary exposure assessment is also slightly refined, utilizing the same residue estimates as for the chronic assessment and some percent crop treated estimates. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to fenbuconazole in drinking water. There are no registered residential uses for fenbuconazole. These assessments will not underestimate the exposure and risks posed by fenbuconazole.

*E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. The only population subgroup that is relevant for an acute assessment is females of child-bearing age (i.e., females 13–49 years old). The acute risk estimate that results from this analysis is 2.9% of the acute population adjusted dose (aPAD) at the 95th percentile of exposure. This risk estimate is considerably lower than EPA's level of concern (100% of the aPAD).

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fenbuconazole from food and water will utilize 6.7% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for fenbuconazole.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). For fenbuconazole, there are no residential uses and therefore a short-term aggregate risk assessment was not needed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). There are no residential uses for fenbuconazole at this time, therefore an intermediate-term risk assessment was not needed.

5. *Aggregate cancer risk for U.S. population.* Fenbuconazole is classified as a Group C (possible human) carcinogen under the Agency's 1986 Cancer Guidelines, based on increased incidences of liver tumors in male and female mice and thyroid tumors in male rats. Using the conservative exposure assumptions described in this unit for cancer risk from chronic exposure and an upper bound estimate of unit risk ($Q_1$*) of $3.59 \times 10^{-3}$ (mg/kg/day)$^{-1}$, EPA has derived a cancer risk estimate of $2.2 \times 10^{-6}$ from dietary exposure to fenbuconazole.

EPA generally considers cancer risks (expressed as the probability of an increased cancer case) in the range of 1 in 1 million (or $1 \times 10^{-6}$) or less to be negligible. The precision which can be assumed for cancer risk estimates is best described by rounding to the nearest integral order of magnitude on the logarithmic scale; for example, risks falling between $3 \times 10^{-7}$ and $3 \times 10^{-6}$ are expressed as risks in the range of $10^{-6}$. Considering the precision with

which cancer hazard can be estimated, the conservativeness of low-dose linear extrapolation, and the rounding procedure described in this unit, cancer risk should generally not be assumed to exceed the benchmark level of concern of the range of $10^{-6}$ until the calculated risk exceeds approximately $3 \times 10^{-6}$. This is particularly the case where some conservatism is maintained in the exposure assessment. Although the fenbuconazole exposure risk assessment is somewhat refined, it retains significant conservatism in that the analysis relies on field trial data and assumes 100% crop treated for many commodities. Accordingly, EPA has concluded the aggregate cancer risk for all existing fenbuconazole uses and the uses associated with the tolerances established in this action fall within the range of $1 \times 10^{-6}$ and are thus negligible.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to fenbuconazole residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (GC/NPD method, TR 34–940–47 and TR34–90–47R) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established an MRL for fenbuconazole in or on pepper at 0.6 ppm. This MRL is different than the tolerance established for fenbuconazole in the United States. The Codex MRL for pepper was most likely established before the Enable® 2F formulation was proposed for use on peppers and includes only residues of the parent compound. This new formulation has higher residues values ranging up to 0.7 ppm, and the U.S. tolerance includes the two lactone metabolites. Harmonization with the 0.6 ppm tolerance is not feasible given the proposed new use pattern/formulation and the observed residue levels.

### *C. Response to Comments*

EPA received a comment to the notice of filing which said that residue levels of fenbuconazole should not be raised. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned on agricultural corps. However, the existing legal framework provided by section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

## V. Conclusion

Therefore, tolerances are modified to establish residues of fenbuconazole in or on pepper at 1.0 ppm. Consistent with the petition and EPA's policy for clarifying its tolerance expressions, EPA is revising the tolerance expression for fenbuconazole to clarify that the tolerance includes metabolites and degradates of fenbuconazole and that compliance with the tolerance levels specified in the table is to be determined by measuring only the sum of fenbuconazole, alpha-[2-(4-chlorophenyl)-ethyl]-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile, and its metabolites RH-;9129, cis-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3 H-furanone, and RH-9130, trans-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3 H-furanone, calculated as the stoichiometric equivalent of fenbuconazole,

## VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate

as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

### VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 21, 2013.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.480 revise paragraph (a) introductory text and revise the entry ''Pepper'' in the table in paragraph (a) to read as follows:

**§ 180.480 Fenbuconazole; tolerances for residues.**

(a) Tolerances are established for residues of the fungicide fenbuconazole, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of fenbuconazole, alpha-[2-(4-chlorophenyl)-ethyl]-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile, and its metabolites RH-9129, cis-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3 H-furanone, and RH-9130, trans-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1H-1,2,4-triazole-1-ylmethyl)-2-3 H-furanone, calculated as the stoichiometric equivalent of fenbuconazole, in or on the following agricultural commodities.

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Pepper | 1.0 |
| * * * * * | |

* * * * *

[FR Doc. 2013–15867 Filed 7–2–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2012–0291; FRL–9389–7]**

## Novaluron; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of novaluron in or on peanut and soybean, seed. Makhteshim-Agan of North America requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation additionally deletes the time-limited tolerance for strawberry, as that tolerance expired on December 31, 2011.

**DATES:** This regulation is effective July 3, 2013. Objections and requests for hearings must be received on or before September 3, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0291, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Jennifer Gaines, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5967; email address: *gaines.jennifer@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0291 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 3, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified

by docket ID number EPA–HQ–OPP–2012–0291, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Summary of Petitioned-for Tolerance

In the **Federal Register** of July 25, 2012 (77 FR 43562) (FRL–9353–6), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F7999) by Makhteshim-Agan of North America, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. The petition requested that 40 CFR 180.598 be amended by establishing tolerances for residues of the insecticide novaluron, *N*-[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy) ethoxy]phenyl]amino]carbonyl]-2,6-difluorobenzamide, in or on peanuts at 0.01 parts per million (ppm) and soybean, seed at 0.06 ppm. That document referenced a summary of the petition prepared by Makhteshim-Agan of North America, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the tolerance level for soybean, seed. The reason for this change is explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for novaluron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with novaluron follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Novaluron has low acute toxicity via the oral, dermal, and inhalation routes of exposure. It is not an eye or skin irritant and is not a dermal sensitizer. In subchronic and chronic toxicity studies, novaluron primarily produced hematotoxic effects such as methemoglobinemia, decreased hemoglobin, decreased hematocrit, and decreased red blood cells (RBCs) (or erythrocytes) associated with increased erythropoiesis. Increased spleen weights and/or hemosiderosis in the spleen were considered to be due to enhanced removal of damaged erythrocytes and not to a direct immunotoxic effect.

There was no maternal or developmental toxicity seen in the rat and rabbit developmental toxicity studies up to the limit doses. In the 2-generation reproductive toxicity study in rats, both parental and offspring toxicity (increased spleen weights) were observed at the same dose. Reproductive toxicity (decreases in epididymal sperm counts and increased age at preputial separation in the F1 generation) was observed at a higher dose than the increased spleen weights and were consistent with the primary effects in the database.

Signs of neurotoxicity (piloerection, irregular breathing), changes in functional observational batter parameters (increased head swaying, abnormal gait), and neuropathology (sciatic and tibial nerve degeneration) were seen in the rat acute neurotoxicity study at the limit dose. However, no signs of neurotoxicity or neuropathology were observed in the subchronic neurotoxicity study in rats at similar doses or in any other subchronic or chronic toxicity study in rats, mice, or dogs. Therefore, there is no concern for neurotoxicity resulting from exposure to novaluron.

There was no evidence of carcinogenic potential in either the rat or mouse carcinogenicity studies. There was no concern for genotoxicity or mutagenicity. Therefore novaluron was classified as ''not likely to be carcinogenic to humans.''

Specific information on the studies received and the nature of the adverse effects caused by novaluron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document Novaluron: Human-Health Risk Assessment for Proposed Section 3 Uses on Peanut and Soybean at pp. 37–40 in docket ID number EPA–HQ–OPP–2012–0291.

### *B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are indentified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles

EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for novaluron used for human risk assessment is shown in Table 1. of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR NOVALURON FOR USE IN HUMAN HEALTH RISK ASSESSMENT

| Exposure/scenario | Point of departure and uncertainty/safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary (General population including infants and children). | None | None | An endpoint of concern attributable to a single dose was not identified. An acute RfD was not established. |
| Chronic dietary (All populations) | NOAEL = 1.1 mg/kg/day.<br>$UF_A$ = 10X<br>$UF_H$ = 10X<br>FQPA SF = 1X | Chronic RfD = 0.011 mg/kg/day.<br>cPAD = 0.011 mg/kg/day | Combined chronic toxicity/carcinogenicity feeding in rat.<br>LOAEL = 30.6 mg/kg/day based on erythrocyte damage resulting in a compensatory regenerative anemia. |
| Incidental oral short-term (1 to 30 days) and Intermediate-Term (1 to 6 months). | NOAEL = 4.38 mg/kg/day.<br>$UF_A$ = 10X<br>$UF_H$ = 10X<br>FQPA SF = 1X | LOC for MOE = 100. | 90-day feeding study in rat.<br>LOAEL = 8.64 mg/kg/day based on clinical chemistry (decreased hemoglobin, hematocrit, and RBC counts) and histopathology (increased hematopoiesis and hemosiderosis in spleen and liver). |
| Dermal short-term (1 to 30 days) | Not applicable and none. | None | No toxicity was observed at the limit dose in the dermal study and there were no developmental toxicity concerns at the limit-dose; therefore, quantification of short-term dermal risk is not necessary. |
| Dermal intermediate-term (1 to 6 months). | Dermal (or oral) study NOAEL = 4.38 mg/kg/day (dermal absorption rate = 10% when appropriate).<br>$UF_A$ = 10X<br>$UF_H$ = 10X<br>FQPA SF = 1X | LOC for MOE = 100. | 90-day feeding study in rat.<br>LOAEL = 8.64 mg/kg/day based on clinical chemistry (decreased hemoglobin, hematocrit, and RBC counts) and histopathology (increased hematopoiesis and hemosiderosis in spleen and liver). |
| Inhalation short-term (1 to 30 days) and Intermediate Term (1 to 6 months). | Inhalation (or oral) study NOAEL = 4.38 mg/kg/day (inhalation absorption rate = 100%).<br>$UF_A$ = 10X<br>$UF_H$ = 10X<br>FQPA SF = 1X | LOC for MOE = 100. | 90-day feeding study in rat.<br>LOAEL = 8.64 mg/kg/day based on clinical chemistry (decreased hemoglobin, hematocrit, and RBC counts) and histopathology (increased hematopoiesis and hemosiderosis in spleen and liver). |
| Cancer (Oral, dermal, inhalation) | Classification: Not likely to be carcinogenic to humans. | | |

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. $UF_A$ = extrapolation from animal to human (interspecies). $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies).

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to novaluron, EPA considered exposure under the petitioned-for tolerances as well as all existing novaluron tolerances in 40 CFR 180.598. EPA assessed dietary exposures from novaluron in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for novaluron; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA under the National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA); 2003–2008. As to residue levels in food, EPA incorporated average percent crop treated (PCT) data for apples, cabbage, cauliflower, cotton, pears, potatoes, strawberries, and tomatoes and utilized estimates for PCT for recently registered uses for grain sorghum and sweet corn. 100 PCT was assumed for the remaining food commodities. Anticipated residues (ARs) for meat, milk, hog, and poultry commodities were calculated based on the proposed/registered uses, and incorporated average field trial residues, percent crop treated for new uses (PCTn) data for grain sorghum and sweet corn, average PCT data for apple and cotton, and an assumption of 100 PCT for sugarcane, aspirated grain fractions (AGF), and cowpea seed.

The chronic analysis also incorporated average field trial residues, tolerance-level residues for the proposed commodities, average greenhouse trial residue for tomatoes, and half-limit of quantitation (LOQ) residues for food commodities other than those covered by a higher tolerance

as a result of use on growing crops from the registered use in food and feed handling establishments. Additionally, empirical processing factors for apple juice (translated to pear and stone fruit juice), cottonseed oil, dried plums, and tomato paste and purée, and Dietary Exposure Evaluation Model (DEEM) (ver. 7.81) default processing factors for the remaining processed commodities, where provided were incorporated.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that novaluron does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition A: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition B: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition C: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows: Apples at 10%; cabbage at 10%; cauliflower at < 2.5%, cotton at < 2.5%, pears at 15%, potatoes at < 2.5%, strawberries at 35%, and tomatoes at < 1%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency estimated the PCT for recently approved uses as follows: Sweet corn at 36% and grain sorghum at 2%.

EPA estimates PCTn for novaluron based on the PCT of the dominant pesticide (i.e., the one with the greatest PCT) on that site over the three most recent years of available data. Comparisons are only made among pesticides of the same pesticide types (i.e., the dominant insecticide on the use site is selected for comparison with a new insecticide). The PCTs included in the analysis may be for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year. Typically, EPA uses USDA/NASS as the source for raw PCT data because it is publicly available and doesn not have to be calculated from available data sources. When a specific use site is not surveyed by USDA/NASS, EPA uses proprietary data and calculates the estimated PCT.

The estimated PCT for new uses, based on the average PCT of the market leader, is appropriate for use in the chronic dietary risk assessment. This method of estimating a PCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial five years of actual use. The predominant factors that bear on whether the estimated PCT for new uses could be exceeded are:

1. The extent of pest pressure on the crops in question;

2. The pest spectrum of the new pesticide in comparison with the market leaders as well as whether the market leaders are well-established for this use; and

3. Resistance concerns with the market leaders. Novaluron specifically targets lepidopterous insects, which are not key pests of sorghum but are key pests of sweet corn. However, novaluron has a relatively narrow spectrum of pest activity when compared to the market leader insecticides.

All information currently available has been considered for novaluron use on sorghum and sweet corn, and it is the opinion of the Agency that it is unlikely that actual PCT for novaluron will exceed the estimated PCT for new uses during the next 5 years.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition A, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which novaluron may be applied in a particular area.

2. *Dietary exposure from drinking water.* The residues of concern in drinking water are novaluron and it chlorophenyl urea and chloroaniline degradates. The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for novaluron and its degradates in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of novaluron. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

EPA utilized the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) for estimating

parent novaluron in surface water, the Tier 1 FQPA Index Reservoir Screening Tool (FIRST) model for surface water estimates for chlorophenyl urea and chloroaniline degradates, and the Screening Concentration in Ground Water (SCI–GROW) model for novaluron, chorophenyl urea, and chloroaniline in ground water. Based on these models, the estimated drinking water concentrations (EDWCs) of novaluron, chlorophenyl urea, and chloroaniline for chronic exposures for non-cancer assessments are estimated to be 0.41 parts per billion (ppb), 0.375 ppb, and 3.301 ppb respectively, for surface water and 0.00137 ppb, 0.00149 ppb, and 0.00658 ppb respectively for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. The highest 1-in-10 year annual mean surface water EDWCs were combined to estimate drinking water exposures. For chronic dietary risk assessment, the water concentration of value 4.086 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Novaluron is currently registered for the following uses that could result in residential exposures: Indoor and outdoor uses for the control of crickets (cracks and crevice and spot treatments) in residential areas such as homes and apartment buildings, and their immediate surroundings, and on modes of transportation. There is a potential for exposure in residential settings during the application process for homeowners who use products containing novaluron.

Additionally, exposure routes were assessed for post-application exposures for adults and children via inhalation routes and post-application incidental oral (hand-to-mouth) exposure for children (1 to < 2 years old). Additionally, a combined residential assessment that consisted of children (1 to < 2 years old) inhalation and oral (hand-to-mouth) post-application exposure was included. Details of the residential risk exposure and risk assessment are contained in the EPA public docket EPA–HQ–OPP–2010–0466 at *http://www.regulations.gov* in document ''Novaluron: Human-Health Risk Assessment for Proposed Section 3 Uses on Sweet Corn and in Food-or Feed-Handling Establishments'' on pp. 21–26.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found novaluron to share a common mechanism of toxicity with any other substances, and novaluron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that novaluron does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

### *D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicology database for novaluron includes rat and rabbit prenatal developmental toxicity studies and a 2-generation reproduction toxicity study in rats. There was no evidence of increased quantitative or qualitative susceptibility following *in utero* exposure to rats or rabbits in the developmental toxicity studies and no evidence of increased quantitative or qualitative susceptibility of offspring in the reproduction study. Neither maternal nor developmental toxicity was seen in the developmental studies up to the limit doses. In the 2-generation reproductive study in rats, offspring and parental toxicity (increased absolute and relative spleen weights) were similar and occurred at the same dose; additionally, reproductive effects (decreases in epididymal sperm counts and increased age at preputial separation in the F1 generation) occurred at a higher dose than that which resulted in parental toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for novaluron is complete.

ii. There is minimal indication that novaluron is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that novaluron results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment was performed using anticipated residues derived from reliable residue field trials, tolerance-level residues for proposed commodities, average PCT data for some commodities, and PCTn data for grain sorghum and sweet corn. For the remaining food commodities, 100 PCT was assumed. The registered food handling use was also incorporated into the dietary assessment. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to novaluron in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by novaluron.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate

PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, novaluron is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to novaluron from food and water will utilize 55% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. The residential exposure assessment was conducted using high-end estimates of use and potential exposure providing a conservative, health protective estimate of risk.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Novaluron is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to novaluron.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 2,520 for adults and 480 for children 1–2 years old. Because EPA's level of concern for novaluron is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term aggregate exposure (food+drinking water+residential) assessment was not conducted since residential intermediate-term exposures are not likely due to the intermittent nature of applications by homeowners.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, novaluron is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to novaluron residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (gas chromatography/electron-capture detection (GC/ECD) method and a high-performance liquid chromatography/ultraviolet (HPLC/UV) method) are available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established an MRL for residues of novaluron in or on immature soybean seed at 0.01 ppm. Immature soybean seed (edamame) is not covered by soybean, seed; therefore, harmonization is not an issue for the proposed soybean use. There is no Codex MRL for peanut.

### *C. Revisions to Petitioned-for Tolerances*

Based on analysis from the residue field trial data supporting the petition and use of the Organization for Economic Cooperation and Development tolerance calculation procedures, EPA revised the proposed tolerance on soybean, seed from 0.06 ppm to 0.07 ppm. Additionally, the commodity term for peanuts is being revised.

## V. Conclusion

Therefore, tolerances are established for residues of novaluron, *N*-[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy) ethoxy]phenyl]amino]carbonyl]-2,6-difluorobenzamide, in or on peanut and soybean, seed at 0.01 and 0.07 ppm, respectively.

This regulation additionally deletes the time-limited tolerance for strawberry, as that tolerance expired on December 31, 2011.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled

''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 25, 2013.

**G. Jeffrey Herndon,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.598:

■ a. Add alphabetically the commodities to the table in paragraph (a).

■ b. Remove and reserve paragraph (b).

**§ 180.598 Novaluron; tolerances for residues.**

(a) *General.* * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Peanut | 0.01 |
| * * * * * | |
| Soybean, seed | 0.07 |
| * * * * * | |

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

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[FR Doc. 2013–15869 Filed 7–2–13; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 121

**RIN 0906–AA73**

### Organ Procurement and Transplantation Network

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** HHS is issuing this final rule (herein referred to as ''this rule'') to add vascularized composite allografts (VCAs) as specified herein to the definition of organs covered by the rules governing the operation of the Organ Procurement and Transplantation Network (OPTN) (herein referred to as the OPTN final rule). When it enacted the National Organ Transplant Act in 1984, Congress included a definition of the term organ and authorized the Secretary to expand this definition by regulation. The Secretary has previously exercised this authority and expanded the statutory definition of organ. Prior to this rule, the OPTN final rule defined covered organs as ''a human kidney, liver, heart, lung, or pancreas, or intestine (including the esophagus, stomach, small and/or large intestine, or any portion of the gastrointestinal tract). Blood vessels recovered from an organ donor during the recovery of such organ(s) are considered part of an organ with which they are procured for purposes of this part if the vessels are intended for use in organ transplantation and labeled 'For use in organ transplantation only.' '' This rule also includes a corresponding change to the definition of human organs covered by section 301 of the National Organ Transplant Act of 1984, as amended (NOTA).

**DATES:** The final rule is effective July 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** James Bowman, M.D., Medical Director, Division of Transplantation, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857, or by telephone (301) 443–7577.

**SUPPLEMENTARY INFORMATION:** On December 16, 2011, HHS published a notice of proposed rulemaking (NPRM) in the **Federal Register** (76 FR 78216) to include VCAs within the definition of organs covered by the OPTN final rule and to make a corresponding change to the definition of human organs covered by section 301 of NOTA. The NPRM provided for a 60-day comment period and HHS received 29 comment letters raising a variety of issues. HHS has carefully considered all comments in developing this rule, as outlined in Section III below, presenting a summary of all major comments and Departmental responses.

**I. Background**

As discussed in the NPRM, the transplant community has referred to the transplants of intact vascularized body parts such as hands and faces as composite tissue allograft transplants. As tissues, these components have been under the regulatory jurisdiction of the Food and Drug Administration (FDA). For the reasons outlined in the NPRM, the Secretary believes that these components, based on their clinical characteristics, are more characteristic of organs as defined specifically in NOTA and subsequently by regulation in the case of intestines and blood vessels used in conjunction with organ transplantation. For the purpose of this regulation, these components are described as vascularized composite allografts (VCAs).

Human cells or tissue intended for implantation, transplantation, infusion, or transfer into a human recipient are regulated as human cells, tissues, and cellular and tissue-based products (or HCT/Ps). FDA regulates HCT/Ps under section 361 of the Public Health Service Act (42 U.S.C. 264) and 21 CFR parts 1270 and 1271. Examples of such tissues are bone, skin, corneas, ligaments, tendons, dura mater, heart valves, hematopoietic stem/progenitor cells derived from peripheral and cord blood, oocytes, and semen. FDA does not regulate the transplantation of vascularized human organ transplants such as kidney, liver, heart, lung, or pancreas. FDA regulations provide that ''vascularized human organs for transplantation'' are not considered HCT/Ps. 21 CFR 1271.3(d)(1). HRSA oversees the transplantation of vascularized human organs.

At present, face and hand allografts, and other body parts meeting the proposed definition of VCAs, are not

explicitly excluded from the definition of HCT/Ps under FDA regulations. Conversely, vascularized human organs for transplantation are excluded from FDA's tissue regulations and are under HRSA's purview.

On March 3, 2008, HRSA published a Request for Information (RFI) in the **Federal Register** (73 FR 11420) seeking feedback from stakeholders and the public as to whether VCAs should be included within the OPTN final rule's definition of organs, and whether VCAs should be added to the definition of human organs covered by section 301 of NOTA. HRSA also sought feedback concerning the best way to specify VCAs if either definition were implemented. HRSA considered the 11 comments received in response to the RFI.

On December 16, 2011, HHS published a notice of proposed rulemaking (NPRM) in the **Federal Register** (76 FR 78216) to include VCAs within the definition of organs in the OPTN rule, and to make a corresponding change to the definition of human organs covered by section 301 of NOTA. The NPRM provided for a 60-day comment period and HHS received 29 comment letters raising a variety of issues. HHS has carefully considered all comments in developing this rule, as outlined in Section III below, presenting a summary of all major comments and agency responses.

## II. Summary of This Rule

### *Adding VCAs to the Definition of Organs Covered by the OPTN Final Rule*

Based upon a review of the characteristics of VCAs and the comments submitted by the public, the Secretary believes that VCAs should be included within the definition of organs covered by the OPTN final rule (42 CFR part 121). This rule also includes a change to the definition of human organs covered by section 301 of NOTA to include VCAs. Once a body part is defined as an organ under the OPTN final rule, such body parts are excluded from the coverage of FDA regulations governing HCT/Ps, 21 CFR 1271.3(d)(1).

Pursuant to this rule, for a body part to be defined as a VCA, it must have all the following characteristics: A body part that is (1) Vascularized and requires blood flow by surgical connection of blood vessels to function after transplantation; (2) containing multiple tissue types; (3) recovered from a human donor as an anatomical/structural unit; (4) transplanted into a human recipient as an anatomical/structural unit; (5) minimally manipulated (i.e., processing that does not alter the original relevant characteristics of the organ relating to the organ's utility for reconstruction, repair, or replacement—examples of minimal manipulation include cutting, grinding, and shaping of a VCA); (6) for homologous use (i.e., the replacement or supplementation of a recipient's organ with an organ that performs the same basic function or functions in the recipient as in the donor, *e.g.,* a hand from the donor is to be used as a hand in the recipient); (7) not combined with another article such as a device; (8) susceptible to ischemia and, therefore, only stored temporarily (*e.g.,* cold storage in preservation medium and intended for implantation into a recipient within hours of the recovery) and not cryopreserved; and (9) susceptible to allograft rejection, generally requiring immunosuppression that may increase infectious disease risk to the recipient.

This definition identifies which body parts are now covered, while providing flexibility to allow other body parts to be covered as the field of VCA transplantation advances. Since the proposed rule, the word ''generally'' has been added to the ninth criterion for technical accuracy (e.g., in the case of identical twins where immunosuppression may not occur). A non-exclusive list of body parts that meet the definition for VCAs implemented in this rule include faces; limbs (e.g., arms, hands, fingers, legs, toes); larynges; and abdominal walls. Periodically, HRSA may publish an updated list of VCAs in the **Federal Register**. In addition, this definition established those body parts as organs under the OPTN final rule from other body parts that are regulated as HCT/Ps under FDA's regulatory authority.

Additionally, a body part allocated as a VCA is intended to be used ''intact'' as a VCA until the transplant center receiving the VCA determines that a portion or piece of the VCA is not needed for transplantation. If portions of a VCA are not used in connection with the same transplant (e.g., leftover bone or tendons from a limb allocated as a VCA), such body parts must not be used for other purposes including transplantation in a different anatomical location in the recipient who received the VCA or in a different recipient. As explained in the NPRM, disposition of such VCA remnants would be subject to OPTN policies and state regulations. Because the definition in this rule does not identify specific VCAs by name, we are amending 42 CFR 121.4(e) to make clear that the OPTN must identify the specific body parts covered by any OPTN policy specific to VCAs. The purpose of this rule is to ensure that all OPTN members and stakeholders understand the body parts covered by OPTN policies specific to VCAs. Once this rule goes into effect, revised 42 CFR 121.4 (e)(3) will require the OPTN to ''identify all covered body parts in any policies specific to vascularized composite allografts, defined in § 121.2.'' Thus, before the OPTN adopts any VCA-specific policies, the OPTN will need to list all covered body parts for clarity. This will not require a regulatory process. Under this rule, any OPTN policy that applies broadly to organs would apply to all body parts meeting the definition for VCAs unless otherwise specified.

HRSA oversees transplantation of vascularized human organs through the OPTN, which sets policies related to the procurement, transplantation, and allocation of human organs. The OPTN serves the critical role of matching donor organs to potential recipients on a national basis. Issues concerning allocation and recipient safety are similar for VCAs and for organs currently under the OPTN's auspices. Additionally, the membership of the OPTN, which is charged with developing policies consistent with the OPTN final rule, includes professionals with expertise in the field. Therefore, the Secretary believes that the OPTN, with HRSA's oversight, is able to effectively address issues involving the regulation of the emerging field of VCA transplantation.

The nature of the regulatory framework governing the operation of the OPTN underlies the importance of including VCAs within the definition of organs covered by the OPTN final rule. Under the OPTN final rule, the OPTN must submit proposed policies for review and approval by the Secretary (42 CFR 121.4). Upon consideration of public comments on proposed policies that are considered significant, the Secretary will determine whether to make such proposed policies enforceable in accordance with section 121.4 of the OPTN final rule. The Secretary may direct the OPTN to develop individual policies for specific body parts that are defined as VCAs in addition to OPTN policies that apply to all VCAs. Any transplant hospital that fails to comply with any policy approved as enforceable by the Secretary under this process may be subject to the enforcement sanctions delineated in section 121.10 of the OPTN final rule, including possible termination from the Medicare and Medicaid programs.

The Secretary has the following additional authorities provided by the OPTN final rule (42 CFR 121.4(b)(2)),

which she may exercise in the case of policies extending to VCAs: The Secretary may require the OPTN Board of Directors to provide to the Secretary, at least 60 days prior to their proposed implementation, proposed policies on matters that the Secretary directs. The Secretary will refer such significant proposed policies to the Advisory Committee on Organ Transplantation (ACOT), established under 42 CFR 121.12, and publish them in the **Federal Register** for public comment. This is in addition to the public comment process that is engaged in by the OPTN.

The Secretary also may seek the advice of the ACOT on other proposed policies and publish them in the **Federal Register** for public comment.

The Secretary will determine whether proposed policies are consistent with NOTA and the OPTN final rule, taking into account the views of the ACOT and public comments. Based on this review, the Secretary may provide comments to the OPTN.

If the Secretary concludes that a proposed policy is inconsistent with NOTA or the OPTN final rule, the Secretary may direct the OPTN to revise the proposed policy consistent with the Secretary's direction. If the OPTN does not revise the proposed policy in a timely manner, or if the Secretary concludes that the proposed revision is inconsistent with NOTA or the OPTN final rule, the Secretary may take such other action as the Secretary determines appropriate, but only after additional consultation with the ACOT on the proposed action.

Also, the Secretary has the authority under the OPTN final rule (42 CFR 121.4(a)(6)) to require the OPTN to develop policies on such matters as the Secretary directs.

By including VCAs within the OPTN final rule's definition of organs, transplants involving VCA will be subject to the requirements of the OPTN final rule. For example, entities performing transplants with covered organs must receive designation as an organ-specific designated transplant program (in this case, a designation as a VCA-specific transplant program) within an OPTN member institution. Members must comply with data submission requirements of the OPTN final rule and are subject to oversight by the OPTN for compliance with OPTN policies, OPTN bylaws, and the OPTN final rule. Members may be subject to federal enforcement actions for violations of federal regulations or enforceable policies (those approved by the Secretary of Health and Human Services) or for actions or inactions that indicate a risk to the health of patients or to public safety. Also, OPTN members can be subject to OPTN sanctions for violating OPTN bylaws and non-enforceable OPTN policies (*e.g.,* being declared a member not in good standing). The OPTN will need to devise certain policies with respect to VCAs, including allocation policies meeting the requirements set forth in the OPTN final rule.

The Secretary is legally obliged, as part of her responsibilities in administering the Medicare and Medicaid programs, to require hospitals that transplant organs to comply with the rules and requirements of the OPTN as a condition of their participation in Medicare and Medicaid. (42 U.S.C. 1320b–8(a)(1)(B)). Because VCAs currently are not included within the OPTN final rule's definition of organs, the Secretary could not currently make any VCA allocation policy enforceable. The inclusion of VCAs as covered organs under the OPTN final rule will allow the Secretary to take appropriate enforcement actions against an Organ Procurement Organization (OPO) or transplant hospital for failing to comply with any OPTN retrieval and allocation policy for VCAs, if such a policy has been approved as enforceable by the Secretary under the process outlined above. It is necessary to ensure that VCA organ allocation, whether pertaining to isolated VCA transplants or combined/multi-organ transplants, is consistent with OPTN final rule's goals, including that of an equitable national system for organ allocation.

Even if some OPTN policies pertaining to VCA transplantation do not become approved by the Secretary as enforceable, all institutions performing VCA transplantation would be required to comply with the provisions of the OPTN final rule (including the requirement that such institutions become members of the OPTN and data submission requirements). Further, such institutions could be subject to sanctions by the OPTN for failure to comply with allocation and other OPTN policies. For example, a member may be named a member not in good standing by the OPTN for failing to comply with such a policy.

This rule includes one technical change to the regulation text originally proposed in the NPRM. One of the proposed criteria for a category of body parts to meet the definition of VCA was that it must be ''susceptible to allograft rejection, requiring immunosuppression that may increase infectious disease risk to the recipient.'' Although this applies to all of the broad categories of these allografts (such as limb, face, abdominal wall, etc), there could be a rare situation in which the donor of a specific VCA allograft is either the identical twin of the recipient or shares such highly concordant histocompatibility matching markers in which case the recipient of the VCA allograft would not require any immunosuppression. In addition, there is potential for major advances in the field of immunologic tolerance such that clinical interventions might eliminate the susceptibility of allografts to rejection. Even though the recipient would not require immunosuppression in such situations, these categories of VCAs fall within the definition of VCAs in this notice. For this reason, the list of criteria specified for the definition of VCAs in the amended regulation (within 42 CFR 121.2) is modified to read as follows: ''(9) susceptible to allograft rejection, generally requiring immunosuppression that may increase infectious disease risk to the recipient.''

*Including VCAs Within the Definition of Human Organs Covered by Section 301 of NOTA*

The Secretary has decided to include VCA within the definition of human organs, as covered by section 301 of NOTA, which prohibits the purchase or sale of human organs for human transplantation. This criminal prohibition provides in part that ''[i]t shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce. The preceding sentence does not apply with respect to human organ paired donation.'' (42 U.S.C. 274e(a).) Section 301 of NOTA defines the term ''human organ'' to mean ''the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.'' (42 U.S.C. 274e(c)(1).)

As set forth by statute, the Secretary may add additional organs to the definition of human organ covered by section 301 through rulemaking to include the transplantation of additional human organs within section 301's prohibition. The Secretary has previously exercised this authority. Including VCAs within this definition of human organs may subject persons violating its terms with respect to VCAs to criminal penalties.

Through this rule, the Secretary adds VCAs to the list of human organs covered by section 301 of NOTA. The

Secretary modifies 42 CFR 121.13, which includes the definition of human organs covered by section 301 of NOTA, to include VCAs (as defined through this regulation in revised section 121.2 of the OPTN final rule). Subparts are being added to this definition to conform with Public Law 100–607, which added subparts of covered human organs to the statutory definition of human organs governed by section 301 of NOTA.

**III. Comments and Responses**

HHS received a total of 29 comments from the public, including transplant physicians and surgeons, health care professionals and other individuals, transplant centers, professional transplant organizations, and other non-profit organizations related to organ donation and transplantation. Of the comments received, 27 supported adding VCAs to the definition of organs covered by the OPTN final rule. The other two comments were neither favorable nor unfavorable, but did not oppose the proposal. Of the 27 supporting comments, 19 included various concerns and suggestions. All comments were considered in developing this rule. The following section presents a summary of all major issues raised in the comment letters, grouped by subject, as well as a response to such comments.

*1. Use of VCA Portions for Non-VCA Transplants in Same Recipient*

*Comment:* A commenter suggested that portions of a VCA not required for organ transplantation (i.e., left over bone or tendons from a limb allocated from VCA) should be permitted to be used to fully reconstruct any anatomic area in that particular recipient. The commenter requested that the statement ''such body parts cannot be used for transplantation into a different anatomical location in the recipient,'' included in the Preamble to the NPRM, be deleted from the proposed rule. The commenter compares the use of additional tendons, nerves, vessels, fat tissue, or spinal column to the current guidelines for use of blood vessels recovered from a donor for the express purpose of assisting in vascularization of an organ procured from the same donor and transplanted to the same recipient. The comment also envisioned that the use of donor bone marrow or fat tissue might reduce the amount of required immunosuppression and should be treated in the same manner as blood vessels for solid organ transplants.

*Response:* The Department does not agree with this recommended change. The Secretary appreciates the intent of the commenter to make use of available VCA portions for the benefit of patients. However, as described in the NPRM, the Department expects that portions of a VCA not used in connection with the same VCA transplant must not be used for other purposes, including transplantation in a different anatomical location in the recipient who received the VCA or in a different recipient. Disposition of VCA remnants will be subject to OPTN policies and state regulations. This provision is consistent with the current regulatory status of blood vessels recovered with organs for transplantation according to the OPTN final rule.

The term organ as defined by section 121.2 of the OPTN final rule provides that ''Blood vessels recovered from an organ donor during the recovery of such organ(s) are considered part of an organ with which they are procured for purposes of this part if the vessels are intended for use in organ transplantation and labeled 'For use in organ transplantation only.''' Because VCAs are being included in this definition of organs, blood vessels recovered in this way with VCAs would also be considered part of the VCA. The addition of VCAs to the OPTN final rule does not apply to the use of deceased donor bone marrow since bone marrow does not meet the criteria for VCA designation.

*2. Criteria for a VCA*

*Comment:* A commenter indicated that the proposed definition of organ is too broad and could cause confusion with HCT/Ps, especially whole joints and other osteoarticular allografts (OAs) that are currently regulated as HCT/Ps by FDA. The commenter indicated that only two of the nine proposed criteria do not apply to OAs: the first criterion, the requirement for blood flow by surgical revascularization with blood vessel connection, and the ninth criterion, susceptibility to allograft rejection requiring the use of immunosuppression. The commenter suggested that for clarity and to avoid confusion this rule specifically list OAs and those other HCT/Ps currently regulated by FDA and not included as VCA organs.

*Response:* The Department does not agree with this comment. As indicated in the NPRM: ''At the time of the RFI [2008], . . . HRSA sought feedback from stakeholders and the public as to how VCAs should be defined: . . . [either] (1) a broad regulatory definition describing the common features of VCAs without listing covered body parts; or (2) a definition listing body parts that would qualify as VCAs.'' And the comments to the RFI suggested that VCAs should be included within the definition of organs covered under the OPTN (10 out of 11 comments supportive). In the NPRM, the Secretary proposed nine specific characteristics to establish the criteria for a body part to meet the definition of organ covered by the OPTN final rule. This approach is intended to explain to the public which body parts would be presently covered, while allowing other body parts that are transplanted to be covered as the field advances. In addition, the Department received no negative feedback in response to its request for information on adopting this approach. Therefore, VCAs are defined in this rule amendment by all nine specified criteria, not just one or several. As indicated in the NPRM, for a body part to be defined as a VCA, it must have all the nine characteristics. The examples described by the commenter (whole joint and other OAs) do not meet at least two of these criteria, so these allografts would not meet the definition of an organ according to the OPTN final rule, as revised through this regulation.

*3. OPTN Policy Development*

*Comment:* Two comments included suggestions regarding OPTN policy development for VCAs. They noted that VCA transplantation remains an experimental field holding great promise and should be approached carefully and thoughtfully as standards are developed to define and measure success. According to the commenters, a nationwide VCA Committee should be formed in preparation for OPTN policy approval and to provide a national dialogue. The commenter suggested that this committee should include representatives of centers that have performed a clinical VCA transplantation in the United States in addition to the major transplant and procurement societies. In addition, the commenter suggested that the committee should work with the OPTN in developing a 5–10 year timeline to incorporate VCAs within the OPTN framework.

*Response:* The Department agrees with the commenters that VCA transplantation is in its early phases and that the process for developing OPTN policies for VCAs (including those that create standards to define and measures success) should be approached carefully and thoughtfully with input from a broad segment of the VCA transplant community of professionals, institutions, and organizations. The OPTN final rule (section 121.4) requires the OPTN to develop policies ''with the

advice and interest of the OPTN membership and other interested parties.'' Although the OPTN alone is responsible for establishing its policies, the development of VCA policies may include the input of other interested parties including transplantation surgeons, physicians, and other professionals, transplant centers, OPOs, and other institutions, transplant organizations, organ donor and transplant patient representation, and the public. Although there is no mechanism within the OPTN final rule to establish a formal committee outside the OPTN governance structure, the OPTN has the flexibility to gather additional information and input from experts in the field and the public through various *ad hoc* Requests for Information and scheduled open public forums. Incorporation of VCA policies within the OPTN will be included as part of the ongoing OPTN strategic planning process. Moreover, once this regulation goes into effect, all transplant hospitals performing VCA transplantation and participating in the Medicare or Medicaid programs will be required to be OPTN members and, as such, will be able to participate in the development of OPTN policies as members. 42 U.S.C. 1320b–8(a)(1)(B). The OPTN, in consultation with HRSA, will decide upon the specific process by which this input is obtained. As indicated in the VCA NPRM: ''The OPTN final rule does allow some flexibility specific to each organ. The OPTN sometimes fashions distinct organ-specific policies tailored to the circumstances of transplanting particular organs. For example, the training of professionals working for designated programs may vary by organ and OPTN policies with respect to disease transmission protocols and testing may diverge based on circumstances relating to particular organs. Likewise, the particular characteristics of and circumstances surrounding different types of organs lead to different OPTN allocation policies.'' 76 FR at 78219.

*Comment:* One commenter requested that the Secretary provide the OPTN guidance regarding flexibility for OPTN membership to programs and groups that have not historically been focused on the field of transplantation. The commenter strongly encourages the OPTN to accept applications for medical/scientific or individual members that encompass the viewpoint and expertise of the reconstructive surgeon and their team/program as well as that of the conventional solid organ transplant team.

*Response:* As indicated above, the Department agrees that the process for development of OPTN policies for VCAs must be approached carefully and thoughtfully with input from a broad segment of the VCA transplant community of professionals, institutions, and organizations. Because VCAs have not previously been included as organs under the OPTN final rule, professionals with VCA programs affiliated with the current OPTN members are not specifically identified by the OPTN as reconstructive or VCA transplant surgeons or physicians or team members within VCA programs. However, most current VCA transplant programs operate within transplant hospitals that include transplant programs for traditional organs (such as kidney, heart, liver, etc.), so the parent institutions of these VCA transplant programs are already members of the OPTN. The OPTN final rule (section 121.3 (b)(1)) requires that: ''The OPTN shall admit and retain as members the following: (i) All OPOs; (ii) Transplant hospitals participating in the Medicare or Medicaid programs and; (iii) Other organizations, institutions, and individuals that have an interest in the fields of organ donation or transplantation.'' Therefore, the OPTN final rule provides the flexibility requested by the commenter for OPTN membership to include appropriate VCA transplantation stakeholders.

*Comment:* One commenter expressed a preference that VCA allocation should continue at this time as a locally driven process, developing into a regional and national system as part of a long-term plan. The commenter is concerned about the effects adding VCAs will have on the current organ allocation system, such as technical issues and the multiple extensive programmatic elements that need to be developed to implement VCA allocation policies.

*Response:* The Department believes that development and implementation of allocation policies for VCAs by the OPTN can be complex and must be conducted in a thoughtful and deliberative manner that is widely inclusive of the broad community of VCA stakeholders and completely transparent to all. The OPTN final rule (section 121.8) emphasizes that OPTN organ allocation policies shall be based on sound medical judgment; shall seek to achieve the best use of organs; shall be specific for each organ type; shall be designed to avoid wasting organs, to avoid futile transplants, to promote patient access to transplantation, and to promote the efficient management of organ placement; and shall not be based on the candidate's place of residence or place of listing (except to the extent required by other regulatory requirements). As stated in the Preamble to the VCA NPRM: ''given the relatively small numbers of other VCAs transplanted at this time, the Secretary does not expect that the OPTN would develop allocation policies for all VCAs within a short time frame. . . .'' 76 FR at 78218. We explained the Department's expectation that the OPTN will initially create policies addressing hands and faces as these two VCAs have been the most frequently performed VCA transplant procedures in the U.S. and are the subject of extensive ongoing clinical research programs by the Departments of Defense and Veterans Affairs. The Department's position has not changed: we continue to expect that the OPTN will develop allocation policies initially for hands and faces and will wait to develop allocation policies for other organs until the field has more clinically evolved and the need arises. The OPTN utilizes organ-specific committees to discuss, draft, and propose organ-specific policies, including those related to allocation. The Department anticipates that the OPTN will establish similar committee(s) containing experts in VCA transplantation. Initially, these are likely to be committees or subcommittees for limb and/or face transplantation. The concerns and issues brought up by the commenters regarding allocation will be among the many issues discussed in detail by organ-specific VCA committee(s). Each VCA is associated with its own unique set of characteristics and clinical factors that the organ-specific committee(s) can take into consideration when developing allocation policies.

*4. Impact on First Person Donor Authorization in State Registries*

*Comment:* A commenter expressed concerns as to whether currently registered organ donors would be automatically ''opted in'' (selected) for donating VCAs (i.e., hand and/or face) or whether the organ donor authorization registry for each state would need to be changed. The commenter suggested drawing a distinction between ''life extending'' and ''not life extending'' VCAs and proposed that that each state should institute a deceased organ registry where donors could ''opt in'' (select specific organ designation) to elect to donate either ''life extending'' or ''not life extending'' organs (or both) while also providing donors with the option to specifically exclude the organs they do not wish to donate. Another commenter

recommended that a separate authorization be established for VCA donation (presumably by states under applicable state laws).

At a meeting (February 28, 2012) of the ACOT, a committee member commented that questions had been raised about whether consent to organ donation generally (e.g., signing an organ donor card or designation in a state registry) would suffice as consent to donate a VCA. The committee member explained that, as a matter of public trust, a general consent to organ donation should not be considered adequate to constitute consent to donate a VCA.

*Response:* In the NPRM, the Secretary specifically requested comments regarding the potential impact of including VCAs in the definition of organs on organ donation efforts to increase participation in deceased organ donor registries, signing organ donor cards, and the general willingness of individuals to agree to be deceased organ donors. Consent to donation is governed by state law. The Uniform Anatomical Gift Act (UAGA) is a model law that addresses issues including consent to donate organs from deceased donors. The National Conference of Commissioners on Uniform State Laws have promulgated three versions of the UAGA over time (1968, 1987, and 2006), each of which included a form of first person consent (authorization), i.e., legally honoring the decision to donate organs upon death by a person deemed competent to make such a decision. All states have enacted laws based on one of the versions of the UAGA. Most state laws on consent to organ and tissue donation are modeled on the language used in the 2006 UAGA that refers to consent to donate a ''part'' of the body (meaning an organ, eye, or tissue, but not the whole body). It is our understanding that most states have not clearly defined organs and have not clearly delineated which body parts qualify as organs as opposed to tissues for purposes of consent to donation. Illinois law defines ''organ'' to mean ''a human kidney, liver, heart, lung, pancreas, small bowel, or other transplantable vascular body part as determined by the Organ Procurement and Transplantation Network, as periodically selected by the U.S. Department of Health and Human Services'' (755 ILCS 50/1–10). We defer to state officials on their interpretation of state law. Putting aside Illinois law, it is our understanding that reclassifying VCAs as organs in this regulation should not affect their classification as organs, tissues, or other body parts under state laws with respect to organ and tissue donation.

The hand and face have likely been considered tissue by most (if not all) states since the first hand transplant was performed in the U.S. in 1999. VCA transplantation (whether as tissue or organ) raises the larger issue concerning the adequacy and clarity of information and education provided to prospective donors who have consented to organ and/or tissue donation or who have signed up on state donor registries. Given that VCA transplantation is an emerging field, members of the public may not understand the classification of such body parts under state law (i.e., as organs, tissues, or otherwise as body parts), if this matter has not yet been clarified by state law. Thus, we agree with the commenter that questions of public trust may arise if transparency is not kept in the forefront at every phase of the donation process. For this reason, the Secretary encourages explicit consent for VCAs from prospective donors (or next of kin) and that such consent be as clear and meaningful as possible, and congruent with actual donor intent, especially regarding whether the consent to donate extends to VCAs specifically, and whether certain body parts should be included or excluded. Because consent to donation is governed by state law, the federal government may not resolve all of the issues related to consent for VCA donation through federal regulation. The Department believes that individual states should consider how the inclusion of face, hand, and other VCAs as organs for transplantation might impact the way that state offers the options for organ and tissue donation for its donor authorization (''first person consent'') state registry. As noted above, states establish laws that regulate first person consent for organ and tissue donation registrations. Each state has the authority to enact laws regarding the definition of organs and tissues and develop policies about whether to provide its registrants the option to specifically include or exclude the gift of specific body parts (including VCAs). Thus, states retain the ability to designate VCAs as either organ, tissue, or some other type of body part. With this rule adding VCAs to organs covered under the OPTN final rule, some states might identify a need to amend or revise current laws, regulations, policies, and/or procedures that designate how VCAs are categorized (e.g, organ, tissue, or other) within its donor authorization state registry (''first person consent'') program. For this reason, among others, this rule will be effective at 365 days following publication in order to allow sufficient time for states to accomplish these actions.

It is our understanding that OPOs must ensure that each organ (including VCAs) is recovered in accordance with the consent requirements of applicable state law. Although not always required in cases where the donor has already provided first person consent on a state registry, in the interest of full disclosure, transparency, and the public trust, it is our understanding that OPOs obtain consent or concurrence by the next of kin before proceeding with VCA donation. Given the relatively new and transformative nature of VCA transplantation, the Secretary encourages states and stakeholders to consider best practices in informing the public about the opportunity for VCA donation and obtaining consent or authorization to donate organs and tissues generally and VCAs specifically based upon as full information as possible.

In response to the comment regarding the distinction between life saving and life enhancing organs, as indicated in the NPRM, ''The Secretary does not agree with a direct demarcation between life saving organ transplants and life enhancing organ transplants for the purposes of defining organs under the OPTN final rule.'' 76 FR at 78218. Until only recently, the kidney was considered life enhancing, not life saving. Nonetheless, the kidney was the first organ successfully transplanted and has always been included in the list of organs governed by NOTA and OPTN final rule. States have other mechanisms and approaches available for providing potential organ donors with first person designation options on their state registries for selecting or excluding specific body parts.

*5. Impact of VCAs on Cost to OPTN Operations and Operational Efficiency*

*Comment:* Six commenters expressed concerns regarding the cost of defining VCAs as organs. Five commenters stated that additional resources would be necessary for OPTN if oversight is expanded to include VCAs. Two of these commenters indicated that significant expenses would likely be incurred in the infancy of such an oversight program and that oversight of VCA transplantation could consume resources presently dedicated to the requirements of the OPTN's current mission to provide oversight programs for procurement, allocation, and transplantation of existing organs. Another commenter recommended that VCAs should be incorporated into the current OPTN fee structure with one fee

for all organ types. Two commenters recommended that the OPTN seek additional and/or alternative funding mechanisms for VCA-related expenditures and that it attempt to minimize the administrative burden of adding operations related to VCA transplants. Another commenter suggested that the Department of Health and Human Services work collaboratively with the Departments of Defense and Veterans Affairs to ensure adequate funding. One commenter expressed concern as to whether the OPTN contractor can efficiently handle the current waiting list along with new responsibilities that may result from adding VCA transplants. The commenter stated that having too many regulations may interfere with and slow down the process and affect administration of the transplant program.

*Response:* Appropriate funding for the effective operation of the OPTN is important for its national organ recipient matching, allocation, policymaking, and oversight responsibilities. The major costs to the OPTN to implement this rule and to incorporate VCAs within the current OPTN operations will be primarily associated with adding the relevant governance structures such as a VCA Committee. The Department does not anticipate that extensive modifications to the existing information technology infrastructure will be required. The OPTN is funded by yearly appropriations by Congress as well as a patient registration fee authorized under section 121.5(c) of the OPTN final rule (which is approved by the Secretary). The Department anticipates that its federal appropriated funds (not patient registration fees), will be used to pay for the costs to the OPTN associated with the initial implementation of VCA governance systems. The Department does not agree that this rule will result in adverse impact on OPTN operational efficiency. The small numbers of VCA transplants to date in the U.S. and the steady but slow growth in this field would suggest that the initial burden of VCAs, specifically face and limbs, is anticipated to be small and is not likely to affect the OPTN contractor's ability to handle the current waiting list along with new VCA responsibilities, nor interfere with the OPTN's ability to administer and regulate the organ transplant program.

*6. Research Status of VCA Transplantation*

*Comment:* Three comments emphasized the current and future research aspects of VCAs. One commenter suggested continuing research during the early phases of VCA transplantation with oversight by the OPTN. Another suggested that, as an experimental field and given the small number of VCA transplants at this time, VCA transplantation should be considered as clinical research under the auspices of the OPTN. According to commenters, the field should develop in a scholarly approach, not so much to promote an academic development of this field, but rather to insure the best and most sustainable outcomes for potential patients. A third stated that VCA transplantation is not a life saving procedure, yet does require immunosuppression and rehabilitation. This can lead to allosensitization that may negatively impact future (more traditional) life saving organ transplants. A comparison was made to kidneys: After years of weighing the potential benefit of kidney transplant compared with dialysis for patients with end stage renal disease, outcomes analyses led to the now well accepted understanding that kidney transplants are in fact life saving. The commenter expressed hope that OPTN oversight would allow the creation of data sets that will assist the community in deciding who would or would not benefit from VCA transplantation.

*Response:* NOTA authorizes the OPTN to ''carry out studies and demonstration projects for the purpose of improving procedures for organ donation procurement and allocation'' (section 274(b)(2)(N)) but makes no provision for clinical organ transplantation research by the OPTN. The OPTN has no authority to direct and fund clinical research but OPTN policies allow organs to be used for nonclinical research purposes when those organs are not transplanted into human recipients. Further, NOTA does not authorize the OPTN to designate any medical procedure as experimental or investigational. Nevertheless, the Secretary understands that further clinical research will be needed to advance the field of VCA transplantation. For example, the OPTN facilitated access to pancreatic islet cells from deceased pancreas donors under clinical research protocols supported by the National Institutes of Health (NIH). The OPTN and the Scientific Registry of Transplant Recipients (SRTR) will continue to cooperate with the transplant community and respond to requests from researchers for data needed for *bona fide* research purposes related to transplanted organs, including VCAs, in order to develop improved access and allocation for VCAs, to improve VCA candidate selection, and to identify best practices for optimal VCA transplant outcomes.

*7. Risks of VCA Transplantation to Recipients*

*Comment:* Two comments were related to the risks that VCA transplant recipients encounter and the potential risk/benefit decisions that they must make to opt for a VCA transplant. One comment stated that patients should have more time to consider the pros and cons of surgery for non-life extending VCA transplants. Given that such patients' lives are not on the line, this commenter felt that these patients are in a better situation to say ''no'' to surgeries they feel may be unsafe. Another commented that the short term benefits of upper limb transplantation could be observed, evaluated, and estimated in the first few years after transplantation. However, the risks of adverse events continue for the life of the patient and/or allograft. For this reason, and given the potential serious morbidity, the commenter expressed that the transplant community must continue to maximize benefit by careful patient selection and continuing strict indications for upper limb transplantation. The commenter suggested that this evaluation process be performed under research and could continue for an entire generation of upper limb transplant patients.

*Response:* The Department agrees that VCA transplantation poses unique organ-specific risks and that close oversight and follow up are needed for patient protections and to maximize the optimal benefit for VCA recipients. This process will require deliberate and thorough policymaking by the OPTN to develop appropriate policies for informed consent, candidate registration, recipient follow up, and VCA transplant program requirements for staffing, infrastructure, and program policies for candidate selection criteria, pre- and post-operative patient care, follow up, and quality improvement. As noted above, NOTA makes no provision for clinical organ transplantation research by the OPTN. This would also apply to VCA organs under this regulation. Nevertheless, the Secretary understands that further clinical research will be needed to advance the field of VCA transplantation. The OPTN and the SRTR will continue to cooperate with the transplant community and respond to requests from researchers for data needed for *bona fide* research purposes related to transplanted organs including VCAs.

*Comment:* A commenter indicated that due to the potential physical and

psychological impact caused by rejection of a hand or face transplant, the criteria for tissue typing compatibility based on antibody screening and cross matching must be more stringent for VCA transplants than in traditional solid organ transplants. The commenter suggested that it is necessary to obtain a history of allosensitization, including a history of number of pregnancies, number and type of transfusions, history of recent vaccinations and infections, and a history of previous organ and tissue allografts (including allogeneic heart valves and connective tissues). Additional comments include screening objectives, the frequency of screening, assignment of unacceptable antigens, sample storage, and post-transplant testing.

*Response:* The Department agrees that VCA transplantation presents unique aspects for the role of histocompatibility testing, tissue typing and matching, allosensitization identification and monitoring, and other potential factors that can affect the host immune response to the allograft and impact its success or failure. These issues, along with many others, will be considered as the OPTN develops policies for incorporating specific VCA organs within its operations for candidate registration requirements, organ allocation, recipient follow up, and data collection.

The OPTN Histocompatibility Committee, composed of experts in the field, considers issues relating to donor and recipient histocompatibility, organ allocation, histocompatibility testing, and histocompatibility laboratory and personnel qualifications. The goal of the Committee's work is to promote patient safety, good transplant outcomes, and best use of organs. It is the Histocompatibility Committee's responsibility to establish new and/or amend existing guidelines and policies in consideration of the unique aspects of VCA organ histocompatibility. In doing so, unique VCA histocompatibility concerns as raised by the commenter will be among the issues discussed.

*Comment:* A commenter expressed concern that as external (VCA) transplants become more common, there may be an increasing possibility of transplanting and transferring biometric identity data of the donor to the recipient.

*Response:* The Department believes that reclassifying VCAs as organs, rather than as HCT/Ps, does not affect the issues raised by the commenter. Whether the VCA is considered an organ (under regulatory oversight of HRSA and policy management by OPTN) or HCT/P (under regulatory oversight of FDA), transplantation of VCAs (hand and face) has been ongoing in the U.S. since 1999. These are the two most common VCAs transplanted so far and will likely remain so for the near future. A facial transplant results in a new face for the recipient as the donor's facial soft tissues are attached to the unique bone structure of the recipient. Therefore a recipient face scan is not likely to be similar to that of the donor. Upper limb transplantation does result in transferring the deceased donor's fingerprints and palm prints to the recipient. Limb transplantation has been occurring in small numbers in the U.S. since 1999. Issues related to biometric identity authentication (potential ''identity transfer'') are addressed by regulatory authorities and security and law enforcement agencies at all levels of government. These issues are also addressed by nongovernment entities responsible for their business practices and the integrity of their financial operations.

*8. Waiting List Criteria and Potential Live VCA Donors*

*Comment:* One commenter requested clarification as to whether veterans will be given preferred status for VCA transplantation and how this rule will affect funding or reimbursement from veteran benefits, Medicare/Medicaid, and private insurers.

*Response:* Wounded warriors returning from the conflicts in Iraq and Afghanistan are anticipated to constitute a significant proportion of potential candidates for limb and face transplants because of the number of limb and face injuries sustained in these battle environments. Nevertheless, organ allocation policies are not based on employment or military/veteran status, but must comply with the requirements of the OPTN final rule. The final rule does not determine benefits, coverage policies, or reimbursement amounts for organ transplantation from public or private insurers. The deceased donor (or authorized next-of-kin) has the option for directed donation to the extent permissible by applicable state and federal law.

*Comment:* One commenter questions how the VCA transplant waiting list will be categorized (i.e., by gender or race) and whether the OPTN will allow live donations or only recover a hand or face from someone who is about to die.

*Response:* VCAs meet the definition of organs based on this rule and are no different from any other organs previously listed under NOTA and the OPTN final rule. Each transplant center has its own selection criteria for accepting potential candidates for VCA transplant and placing them on the waiting list. The OPTN final rule provides specific allocation performance goals (42 CFR 121.8(b)), including: ''Standardizing the criteria for determining suitable transplant candidates through the use of minimum criteria (expressed, to the extent possible, through objective and measurable medical criteria) for adding individuals to, and removing candidates from, organ transplant waiting lists.'' The demographic categories mentioned by the commenter are not criteria utilized for placement on the organ wait list.

Live donor organs are addressed by OPTN policies. The most common are kidney and liver. Although a potential living donor may express a desire to donate a VCA, no transplant center currently provides this service. Organs are not procured in the U.S. from any person ''who is about to die,'' but in fact are obtained either willingly from a living donor or from a person who is already dead (deceased donor) with proper authorization.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety, distributive, and equity effects). In addition, under the Regulatory Flexibility Act (RFA), if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, costs, benefits, incentives, equity, and available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are significant because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that minimal resources are required to implement the requirements in this rule because organizations involved (*e.g.,* OPOs and transplant hospitals) already implement related requirements for other organs in the OPTN rule (42 CFR 121.2). Therefore, in accordance with the Regulatory Flexibility Act of 1980

(RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

The Secretary also has determined that this rule does not meet the criteria for an economically significant rule as defined by Executive Order 12866 and will have no major effect on the economy or federal expenditures. The Department has determined that this rule is not a major rule within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on state, local, and tribal governments or on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

The provisions of this rule will not affect the following elements of family well-being: family safety, family stability, marital commitment; parental rights in the education, nurture, and supervision of their children; family functioning, disposable income, or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

As stated above, this rule modifies the regulations governing the OPTN and section 301 of NOTA based on legal authority.

Impact of the New Rule

This rule has the effect of including VCAs within the ambit of the regulations governing the operation of the OPTN, and would include transplanted human VCAs within the prohibition set forth at section 301 of NOTA. This rule authorizes the Secretary to take enforcement actions against entities violating OPTN policies pertaining to the transplantation of VCAs once such policies are approved as enforceable by the Secretary. Even if the Secretary does not approve such policies as enforceable, OPTN members may be subject to enforcement actions by the OPTN for violations of OPTN policies extending to VCAs. OPTN members will be required to comply with requirements set forth in the OPTN final rule, including those pertaining to data submission, as applied to VCAs. Finally, individuals violating section 301 of NOTA with respect to VCA transplants may be subject to criminal penalties.

Paperwork Reduction Act of 1995

Prior to the amendments made through this regulation, the OPTN final rule authorized information collection activities with respect to ''organs'' as defined in 42 CFR 121.2. See generally 42 CFR 121.11. Because this regulation expands the definition of organs to encompass VCAs, the OPTN final rule's existing information collection authorities will now extend to information concerning VCAs. The current data collection requirements in the OPTN final rule approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned control numbers OMB No. 0915–0157 (for organ donors, candidates, and recipients) and OMB No. 0915–0184 (for OPTN membership application data) will be impacted by this rule because much of the information collected on these forms will now be collected with respect to VCA donors, candidates, and recipients, as well as VCA transplant programs. The new collections, reporting and disclosure activities (listed in the table below) will be submitted to OMB for approval in accordance with OMB requirements.

Membership in the OPTN is determined by submission of application materials to the OPTN demonstrating that the applicant meets all required criteria for membership and will agree to comply with all applicable provisions of NOTA. 42 U.S.C. 273 *et seq.* Section 1138(a)(1)(B) of the Social Security Act, as amended, 42 U.S.C. 1320b–8(a)(1)(B), requires that hospitals in which transplants are performed by members of, and abide by the rules and requirements (as approved by the Secretary of HHS) of the OPTN as a condition of participation in Medicare and Medicaid for the hospital. Section 1138 contains a similar provision for the OPOs and makes membership in the OPTN and compliance with its operating rules and requirements (as approved by the Secretary of HHS), including those relating to data collection, mandatory for all transplant programs and OPOs. The information is used predominantly to match donor organs with recipients, to monitor compliance of member organizations with OPTN policies and requirements to guide organ allocation policy development, and to report periodically on the clinical and scientific status of organ donation and transplantation in this country.

The currently-approved data collections include worksheets and reporting burden for organs and describe respondents as non-profit institutions and small organizations, which would be the same for this rule. The title, description, and respondent description of all information collections relating to VCAs are shown (see table below) with similar estimates of annual reporting and record keeping burden as with other organs previously approved in the OPTN final rule.

Currently there are approximately 12 hand, 4 face, and 1 abdominal wall transplant programs in the U.S., although only 9 have actually performed a clinical transplant operation to date. The current rate of VCA transplants is less than 10 a year for hands and less than one a year for faces and abdominal walls). For reporting calculations (below), we have projected a total of 10 VCA transplant programs, each registering 2 candidates a year to the waiting list and each program performing 1 transplant procedure a year. The data burden calculation (see table below) assumes that data associated with entering deceased donor information is already accounted in the current OMB approved data collection forms and does not represent additional data collection burden resulting from this final rule. Specifically, it is reasonable to assume that any donor that would be considered a VCA donor is also considered to be a donor for other organs already covered by this rule. The hourly rate used for calculation of total burden cost to respondents is the average hourly wage for a transplant data coordinator ($26.00). This rate reflects the median annual salary and benefits for a Data Control Clerk II (www.salary.com). The total annual respondent burden hours (42.5) represents 4.2 hours ($109.20) per respondent.

*Title:* Organ Procurement and Transplantation Network.

*Description:* Information will be collected from transplant hospitals, OPOs, and histocompatibility laboratories predominantly for the purpose of matching donor VCAs with potential recipients, monitoring compliance of member organizations with system rules, conducting statistical analyses, and developing policies relating to organ procurement and transplantation.

The practical utility of the data collection is further enhanced by requirements that the OPTN must report a variety of data to the Secretary, including data on performance by organ and status category, including program-specific data, OPO-specific data, data by program size, and data aggregated by organ procurement area, OPTN region, the nation as a whole, and other geographic areas (42 CFR 121.8(c)(3)). The OPTN must also transmit proposed allocation policies and performance indicators, which will be used to assess the likely effects of policy changes and

to ensure that the proposed policies are consistent with the OPTN final rule.

The OPTN and Scientific Registry must make available to the public timely and accurate information concerning the performance of transplant programs, and must respond to requests from the public for data needed for *bona fide* research or analysis purposes or to assess the performance of the OPTN or Scientific Registry, to assess individual transplant programs, or for other purposes (42 CFR 121.11(b)(1)(iv) and 42 CFR 121.11(b)(1)(v) and 42 CFR 121.11(b)(1)(vi)).

The OPTN must provide to each member OPO and transplant hospital the plans and procedures for reviewing applications and for monitoring compliance with these rules and OPTN policies. The OPTN must also report to the Secretary on OPOs and transplant hospitals that may not be in compliance with these rules or OPTN policies, and on their progress toward compliance.

The OPTN and Scientific Registry are required to maintain and manage the information on candidates, donors and recipients.

*Description of Respondents:* Non-profit institutions and small organizations.

The estimated annual reporting burden is as follows:

| Section | Form | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours (cost) |
|---|---|---|---|---|---|---|
| 121.5(b) | VCA Candidate Registration | 10 | 2 | 20 | 0.30 | 6 ($156) |
| 121.6(c) | Submitting criteria for VCA acceptance (reporting). | 10 | 1 | 10 | 0.5 | 5 ($130) |
| 121.6(c) | Sending criteria to OPOs (disclosure) | 10 | 1 | 10 | 0.5 | 5 ($130) |
| 121.7(b)(4) | Reasons for Refusal | 10 | 1 | 10 | 0.1 | 1 ($26) |
| 121.9(b) | Designated transplant program requirements. | 10 | 1 | 10 | 2 | 20 ($520) |
| 121.11(b)(2) | VCA Registration | 10 | 1 | 10 | 0.25 | 2.5 |
| 121.11(b)(2) | VCA Follow up | 10 | 1 | 10 | 0.20 | 2 ($52) |
| 121.11(b)(2) | Post-transplant malignancy | 10 | 1 | 10 | 0.08 | 1 ($26) |
| Total | | 139 | 9 | 90 | 14.6 | 42.5 ($1105) |

**List of Subjects in 42 CFR Part 121**

Health care, Hospitals, Organ transplantation, Reporting and record keeping requirements.

Dated: February 8, 2013.

**Mary Wakefield,**

*Administrator, Health Resources and Services Administration.*

Approved: February 14, 2013.

**Kathleen Sebelius,**

*Secretary.*

Accordingly, 42 CFR part 121 is amended as set forth below:

## PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** Sections 215, 371–376 of the Public Health Service Act (42 U.S.C. 216, 273–274d); sections 1102, 1106, 1138 and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b–8 and 1395hh); and section 301 of the National Organ Transplant Act, as amended (42 U.S.C. 274e).

■ 2. Amend § 121.2 by revising the definition for ''Organ'' and adding a definition for Vascularized composite allograft'' to read as follows:

### § 121.2 Definitions.

* * * * *

*Organ* means a human kidney, liver, heart, lung, pancreas, intestine (including the esophagus, stomach, small and/or large intestine, or any portion of the gastrointestinal tract) or vascularized composite allograft (defined in this section). Blood vessels recovered from an organ donor during the recovery of such organ(s) are considered part of an organ with which they are procured for purposes of this part if the vessels are intended for use in organ transplantation and labeled ''For use in organ transplantation only.''

* * * * *

*Vascularized composite allograft* means a body part:

(1) That is vascularized and requires blood flow by surgical connection of blood vessels to function after transplantation;

(2) Containing multiple tissue types;

(3) Recovered from a human donor as an anatomical/structural unit;

(4) Transplanted into a human recipient as an anatomical/structural unit;

(5) Minimally manipulated (i.e., processing that does not alter the original relevant characteristics of the organ relating to the organ's utility for reconstruction, repair, or replacement);

(6) For homologous use (the replacement or supplementation of a recipient's organ with an organ that performs the same basic function or functions in the recipient as in the donor);

(7) Not combined with another article such as a device;

(8) Susceptible to ischemia and, therefore, only stored temporarily and not cryopreserved; and

(9) Susceptible to allograft rejection, generally requiring immunosuppression that may increase infectious disease risk to the recipient.

* * * * *

■ 3. In § 121.4, add paragraph (e)(3) to read as follows:

### § 121.4 OPTN policies: Secretarial review and appeals.

* * * * *

(e) * * *

(3) Identify all covered body parts in any policies specific to vascularized composite allografts, defined in § 121.2.

■ 4. Revise § 121.13 to read as follows:

### § 121.13 Definition of Human Organ Under section 301 of the National Organ Transplant Act of 1984, as amended.

Human organ, as covered by section 301 of the National Organ Transplant Act of 1984, as amended, means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, skin, intestine (including the esophagus, stomach, small and/or large intestine, or any portion of the gastrointestinal tract) or any vascularized composite allograft defined in § 121.2. It also means any subpart thereof, including that derived from a fetus.

[FR Doc. 2013–15731 Filed 7–2–13; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 204, 209, 216, 225, 229, and 247

### Defense Federal Acquisition Regulation Supplement; Technical Amendments

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Manuel Quinones, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6088; facsimile 571–372–6094.

**SUPPLEMENTARY INFORMATION:** This final rule amends the DFARS as follows:

1. Corrects typographical error at section 225.7902–5(b)(1).

2. Replaces the word ''clause'' with ''provision'' when referring to FAR 52.204–7 at 204.1202; 209.104–70; 209.470–4; 216.203–4–70; 225.1101; 225.1103; 225.7605; 229.402–70; and 247.574.

### List of Subjects in 48 CFR Parts 201, 204, 215, 225, 227, 242, 245 and 252

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 204, 209, 216, 225, 229, and 247 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 209, 216, 225, 229, and 247 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## PART 204—ADMINISTRATIVE MATTERS

**204.1202 [Amended]**

■ 2. Amend section 204.1202(2) by removing ''the clause at 52.204–7'' and adding ''the provision at FAR 52.204–7'' in its place.

## PART 209—CONTRACTOR QUALIFICATIONS

**209.104–70 [Amended]**

■ 3. Amend paragraphs (a) and (b) of section 209.104–70 by removing ''the clause at FAR 52.204–7'' and adding ''the provision at FAR 52.204–7'' in its place.

**209.470–4 [Amended]**

■ 4. Amend paragraph (a) of section 209.470–4 by removing ''the clause at FAR 52.204–7'' and adding ''the provision at FAR 52.204–7'' in its place.

## PART 216—TYPES OF CONTRACTS

**216.203–4–70 [Amended]**

■ 5. Amend paragraph (c)(2) of section 216.203–4–70 by removing ''the clause at FAR 52.204–7'' and adding ''the provision at FAR 52.204–7'' in its place.

## PART 225—FOREIGN ACQUISITION

**225.1101 [Amended]**

■ 6. Amend section 225.1101, in paragraphs (1)(i), (5)(i), (7), and (10)(i), by removing ''the clause at FAR 52.204–7'' and adding ''the provision at FAR 52.204–7'' in its place.

**225.1103 [Amended]**

■ 7. Amend paragraph (3) of section 225.1103 by removing ''the clause at FAR 52.204–7'' and adding ''the provision at FAR 52.204–7'' in its place.

**225.7605 [Amended]**

■ 8. Amend section 225.7605 by removing ''the clause at FAR 52.204–7'' and adding ''the provision at FAR 52.204–7'' in its place.

**225.7902–5**

■ 9. Amend section 225.7902–5 by revising (b)(1)(i) to read as follows:

**225.7902–5 Solicitation provision and contract clause.**

* * * * *

(b)(1) * * *

(i) Export-controlled items are expected to be involved in the performance of the contract and the clause at 252.225–7048 is used; and

* * * * *

## PART 229—TAXES

**229.402–70 [Amended]**

■ 10. Amend section 229.402–70 by—

■ a. In paragraph (c)(2), removing ''the clause at FAR 52.204–7'' and adding ''the provision at FAR 52.204–7'' in its place; and

■ b. In paragraph (e)(1), removing ''the clause at FAR 52.204–7'' and adding ''the provision at FAR 52.204–7'' in its place.

## PART 247—TRANSPORTATION

**247.574 [Amended]**

■ 11. Amend paragraph (a)(2) of section 247.574 by removing ''the clause at FAR 52.204–7'' and adding ''the provision at FAR 52.204–7'' in its place.

[FR Doc. 2013–15966 Filed 7–2–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 121004518–3559–02]**

**RIN 0648–BC66**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 37; Correction

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

**ACTION:** Correcting amendment.

**SUMMARY:** This action corrects the final rule implementing Amendment 37 to the FMP for the Reef Fish Resources of the Gulf of Mexico (Gulf Reef Fish Amendment 37), which was published in the **Federal Register** on May 9, 2013. This correcting amendment revises an amendatory instruction that precluded incorporation of new regulatory language in the final rule implementing Gulf Reef Fish Amendment 37 into the Code of Federal Regulations. The intent of this correcting amendment is to correct the amendatory instruction and regulatory text to eliminate confusion among interested persons.

**DATES:** This correction is effective July 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Anne Marie Eich, 727–824–5305; email: *AnneMarie.Eich@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On May 9, 2013, NMFS published a final rule to implement Gulf Reef Fish Amendment 37 (78 FR 27084). That final rule, in part, revised the recreational annual catch limits (ACLs) and accountability measures (AMs) for gray triggerfish harvested in the Gulf. The management measures contained in the final rule to implement Gulf Reef Fish Amendment 37 revised temporary

measures originally implemented in a final temporary rule effective through November 10, 2012 (77 FR 28308, May 14, 2012), and extended through May 15, 2013 (77 FR 67303, November 9, 2012). The final rule implementing Gulf Reef Fish Amendment 37 contained the correct regulatory text but the instruction for amending paragraph (b) of § 622.41 failed to lift the suspension of that paragraph.

**Need for Correction**

After publication of the final rule for Gulf Reef Fish Amendment 37, NMFS determined that it contained an incorrect amendatory instruction. The amendatory instruction should have lifted the suspended regulatory text implemented through temporary measures that revised the recreational ACLs and AMs for gray triggerfish harvested in the Gulf, specified in paragraph (b) of § 622.41, as well as revised that paragraph. This correcting amendment is necessary to revise this amendatory instruction.

**Correction**

As published, the final rule implementing Gulf Reef Fish Amendment 37 contains an error in the amendatory instructions. In § 622.41, the suspension of paragraph (b) should be lifted and then paragraph (b) should be revised. All other information remains unchanged and will not be repeated in this correction.

**Classification**

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for this action because it would be unnecessary and contrary to the public interest. Providing prior notice and the opportunity for public comment is unnecessary because the public received notice and an opportunity to comment on the proposed rule for Gulf Reef Fish Amendment 37 (78 FR 10122, February 13, 2013). This correcting amendment simply revises an amendatory instruction that was incorrect in the final rule. Further, any delay caused by an additional public comment period might cause confusion because the incorrect ACL is currently in place and would therefore be contrary to the public interest.

For the same reasons, the Assistant Administrator also finds good cause, pursuant to 5 U.S.C. 553(d), to waive the 30-day delay in effective date for this correcting amendment.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

This rule has been determined to be not significant under Executive Order 12866.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Gulf of Mexico.

Dated: June 28, 2013.

**Alan D. Risenhoover,**

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

Accordingly, 50 CFR part 622 is corrected by making the following correcting amendments:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.41, the suspension of paragraph (b) is lifted and paragraph (b) is revised to read as follows:

### § 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(b) *Gray triggerfish*—(1) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACT (commercial quota) specified in § 622.39(a)(1)(vi), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the commercial ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACL and ACT (commercial quota) for that following year by the amount the prior-year ACL was exceeded. The commercial ACL is 64,100 lb (29,075 kg), round weight.

(2) *Recreational sector.* (i) Without regard to overfished status, if gray triggerfish recreational landings, as estimated by the SRD, reach or are projected to reach the applicable ACT specified in paragraph (b)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register, to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit of gray triggerfish in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) In addition to the measures specified in paragraphs (b)(2)(i) of this section, if gray triggerfish recreational landings, as estimated by the SRD, exceed the applicable ACL specified in paragraph (b)(2)(iii) of this section, and gray triggerfish are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL and the ACT for that following year by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

(iii) The recreational ACL for gray triggerfish is 241,200 lb (109,406 kg), round weight. The recreational ACT for gray triggerfish is 217,100 lb (98,475 kg), round weight. Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

* * * * *

[FR Doc. 2013–16018 Filed 7–2–13; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 78, No. 128
Wednesday, July 3, 2013

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2013–0354; Directorate Identifier 2011–SW–072–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Helicopters

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

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

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS350B, BA, B1, B2, B3, D, AS355E, F, F1, F2, and N helicopters. The existing AD requires inspecting to determine whether a cross-member is installed at station X 2165 and doublers at X 2325 and Y 269, and installing them if they are missing. Since we issued that AD, we discovered that the applicability of the AD should be limited to those helicopters with collective-to-yaw control coupling. We also sought to revise the inspection of the tail rotor control rigging to clarify the procedures. This proposed AD would retain the requirements in the existing AD with the mentioned clarifications but would supersede it to include only those helicopters with collective-to-yaw control coupling. The actions specified by this proposed AD are intended to prevent reduced yaw control and subsequent loss of helicopter control.

**DATES:** We must receive comments on this proposed AD by September 3, 2013.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, issued EASA Emergency AD No.: 2007–0139–E, dated May 15, 2007 (corrected May 23, 2007), to correct an unsafe condition for all Eurocopter Model AS350B, BA, BB, B1, B2, B3, D, AS355 E, F, F1, F2, and N helicopters delivered before January 1, 2007, and equipped with a collective-to-yaw control coupling. EASA advises of a report of a crack discovered in the area of the center cross-member at station X 2325, at the attachment point of the yaw channel ball-type control sheath stop, of a Model AS355N helicopter fitted with the collective-to-yaw control coupling. According to EASA, investigations revealed that the helicopter did not have the structural doublers, which are combined with the collective-to-yaw control coupling installation. EASA advises that repetitive loads on the non-modified cross member cause it to crack, which can ''reduce the yaw control travel, and thus diminish the pilot's ability to control yawing of the helicopter.''

On September 23, 2010, we issued AD No. 2010–21–01, Amendment 39–16461 (75 FR 63050, October 14, 2010) for Eurocopter Model AS350B, BA, B1, B2, B3, D, AS355E, F, F1, F2, and N helicopters. AD 2010–21–01 requires within 10 hours time-in-service (TIS) or 1 month, inspecting the helicopters to determine whether a cross-member is installed at station X 2165 and doublers at X 2325 and Y 269. If the cross-member and doublers are not installed, AD 2010–21–01 requires inspecting for a crack in the center cross-member, and replacing the center cross-member if there is a crack before further flight. If a crack does not exist, AD 2010–21–01

requires inspecting the tail rotor control rigging before further flight. Lastly, if needed, AD 2010–21–01 requires installing a cross-member and two doublers within 55 hours TIS. AD 2010–21–01 was prompted by a report of a crack discovered in the area of the center cross-member, as advised in the EASA AD. These actions are intended to prevent a crack in the center cross-member, which can result in reduced yaw control and subsequent loss of helicopter control.

**Actions Since Existing AD Was Issued**

Since we issued AD 2010–21–01 (75 FR 63050, October 14, 2010), we discovered that we included all helicopters in the existing AD applicability rather than limiting it to only those helicopters with collective-to-yaw control coupling. Therefore, this action would retain the requirements in AD 2010–21–01 with some revisions for the inspection of the tail rotor control rigging to clarify those procedures. This proposed AD would reduce the applicability to only those Model AS350 and AS355 helicopters with collective-to-yaw control coupling installed.

**FAA's Determination**

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, EASA has kept the FAA informed of the situation described above. The FAA has examined EASA's findings, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of these same type designs.

**Related Service Information**

We reviewed Eurocopter Emergency Alert Service Bulletin (EASB), Revision 0, dated April 11, 2007, that contains three different numbers (Nos. 53.00.37, 53.00.11, and 53.00.23) for Eurocopter Model 350, 355, 550, and 555 helicopters. EASB No. 53.00.37 relates to two Model 350 (350 BB and 350 L1) helicopters that are not type certificated in the United States. EASB No. 53.00.11 relates to four Model 550 and six Model 555 military helicopters that are not type-certificated in the United States. The EASB describes procedures for checking the conformity for the cross member at X 2325 under the cabin floor. The actions in the EASA AD are intended to correct the same unsafe condition as that identified in the service bulletin.

**Proposed AD Requirements**

This proposed AD would retain the requirements of AD No. 2010–21–01 (75 FR 63050, October 14, 2010) for inspecting applicable helicopters to determine if a cross-member and doublers are installed and if a crack exists in the center cross-member, replacing any unairworthy center cross-member with an airworthy center cross-member, inspecting the tail rotor control rigging, and installing a cross-member and two doublers if not installed. This proposed AD would reduce the applicability to only those Model AS350 and AS355 model helicopters with collective-to-yaw control coupling installed. With a reduction in applicability in this proposed AD, the cost of compliance would differ. This proposed AD also clarifies the appropriate corrective action resulting from the tail rotor control rigging inspection.

**Differences Between the Proposed AD and the EASA AD**

This proposed AD differs from the EASA AD as follows:

- We would require installation of the cross-member at station X 2165 and the two doublers at stations X 2325 and Y 269 within 55 hours time-in-service. The EASA AD requires that this action be accomplished within 12 months.
- We would not require repetitive inspections if no crack exists in the center cross-member, whereas the EASA AD does.
- We do not include military model helicopters in the applicability.

**Costs of Compliance**

We estimate that this proposed AD would affect 72 helicopters of U.S. Registry and that labor costs would average $85 a work-hour. It would take about one work-hour to perform the inspections, and if needed, to install the cross-member, two doublers and an airworthy center-cross member. Required parts would cost about $161 per helicopter. Based on these figures, we estimate the cost of the proposed AD to be $246 per helicopter and $17,712 for the fleet if all repairs are needed.

**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, I certify this proposed regulation:

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

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–21–01 (75 FR 63050, October 14, 2010), and adding the following new AD:

**Eurocopter France:** Docket No. FAA–2013–0354; Directorate Identifier 2011–SW–072–AD.

**(a) Applicability**

This AD applies to Eurocopter France Model AS350B, BA, B1, B2, B3, D, AS355E, F, F1, F2, and N helicopters with collective-to-yaw control coupling, part number 350A27–2178–04, 350A27–2178–06, or 350A27–2178–0601, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as reduced yaw control travel, which could result in loss of control of the helicopter.

**(c) Affected ADs**

This AD supersedes AD 2010–21–01, Amendment 39–16461 (75 FR 63050, October 14, 2010).

**(d) Comments Due Date**

We must receive comments by September 3, 2013.

**(e) Compliance**

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

**(f) Required Actions**

(1) Within 10 hours time-in-service (TIS) or within one month, whichever occurs first, determine whether the cross-member (numbered ''1'') at station X 2165 and the two doublers (numbered ''2'' and ''3'') at stations X 2325 and Y 269 are installed as shown in Figure 1 of Eurocopter Emergency Alert Service Bulletin (EASB) No. 53.00.37, Revision 0, dated April 11, 2007 (EASB 53.00.37), for Model AS350 helicopters and EASB No. 53.00.23, Revision 0, dated April 11, 2007 (EASB 53.00.23), for Model AS355 helicopters.

(2) If the cross-member (numbered ''1'') and doublers (numbered ''2'' and ''3'') are not installed, before further flight, inspect for a crack in the center cross-member (numbered ''4'') in the area around the attachment point of the tail rotor directional ball-type control as shown in Figure 1 of EASB 53.00.37 for Model AS350 helicopters or EASB 53.00.23 for Model AS355 helicopters.

(i) If a crack exists, before further flight, replace the unairworthy center cross-member (Numbered ''4'') with an airworthy center cross-member as described in paragraph (f)(3) of this AD.

(ii) If a crack does not exist, before further flight, inspect the tail rotor control rigging to determine whether it meets conformity limits.

(A) If all items of the tail rotor control rigging are found within conformity limits, install the cross-member and doublers as described in paragraph (f)(3) of this AD.

(B) For any items of the tail rotor control rigging found outside of conformity limits, perform appropriate corrective action in accordance with FAA-accepted procedures, and install the cross-member and doublers as described in paragraph (f)(3) of this AD.

(3) Within 55 hours TIS, if the cross member (Numbered ''1'') is not installed, install the cross-member at station X 2165 and the 2 doublers (Numbered ''2'' and ''3'') at stations X 2325 and Y 269 by following the Appendix, the referenced figures 2 and 3 of EASB 53.00.37 for Model AS350 helicopters or EASB 53.00.23 for Model AS355 helicopters.

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

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(h) Additional Information**

The subject of this AD is addressed in European Aviation Safety Agency (EASA) Emergency AD No. 2007–0139–E, dated May 15, 2007 (corrected May 23, 2007). You may view the EASA AD at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0354.

**(i) Subject**

Joint Aircraft Service Component (JASC) Code: 5320, Fuselage Miscellaneous Structure.

Issued in Fort Worth, Texas, on April 11, 2013.

**Lance T. Gant,**

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

[FR Doc. 2013–15961 Filed 7–2–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0555; Directorate Identifier 2010–SW–047–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Eurocopter Deutschland GmbH (ECD) Model EC135 and MBB–BK 117 C–2 helicopters. This proposed AD is prompted by the discovery during a routine inspection of loose flight control bearings because of incorrect installation. This proposed AD would require inspecting the flight-control bearings repetitively, replacing any loose bearing with an airworthy flight-control bearing, and installing bushings and washers. The proposed actions are intended to prevent the affected control lever from shifting, contacting the helicopter structure, and reducing control of the helicopter.

**DATES:** We must receive comments on this proposed AD by September 3, 2013.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**FOR FURTHER INFORMATION CONTACT:** Matt Fuller, Senior Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

## Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued AD No. 2010–0058, dated March 30, 2010, (AD 2010–0058), to correct an unsafe condition for the ECD Model MBB–BK 117 C–2, EC 135 and EC 635 helicopters. EASA advises that during an inspection of an MBB–BK 117 C–2, ''bearings were detected which had not been correctly fixed.'' As some bearings on the EC 135 and MBB–BK 117 C–2 type designs are installed with the same procedure, they are equally affected by the possibility of the unsafe condition. EASA states that this condition, if not corrected, could result in the affected control lever shifting in the axial direction, contacting the helicopter structure, and subsequently reducing control of the helicopter.

## FAA's Determination

These helicopters have been approved by the aviation authority of the Federal Republic of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

## Related Service Information

Eurocopter has issued Alert Service Bulletin (ASB) MBB BK117 C–2–67A–010, Revision 3, dated February 8, 2010, and ASB EC135–67A–019, Revision 3, dated December 16, 2009. These ASBs specify:

- Within the next 50 flight hours (FHs), inspecting the affected bearings and, if necessary, rebonding any affected bearings or replacing the lever assembly.
- Within 12 months, retrofitting bushings on the levers to prevent movement of the bearings.
- After the retrofit, repeating the inspection every 800 FHs or 36 months for the Model EC 135 helicopters, whichever comes first, and 600 FHs or 24 months, whichever comes first, for the Model MBB–BK 117 C–2 helicopters.

EASA classified these ASBs as mandatory and issued AD 2010–0058 to ensure the continued airworthiness of these helicopters.

## Proposed AD Requirements

For EC135 helicopters, this proposed AD would require, within 100 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, modifying the left-hand (LH) and right-hand (RH) guidance units and the cyclic shaft by installing bushings and washers to prevent shifting in the axial direction. This proposed AD would require at intervals not to exceed 800 hours TIS or 36 months, whichever occurs first, inspecting the bearings in the LH guidance unit, the RH guidance unit, cyclic control, upper guidance unit, and linear voltage differential transducer plate for play. If any bearing is loose, the proposed AD would require replacing the affected bearing with an airworthy bearing.

For MBB–BK 117 C–2 helicopters, this proposed AD would require, within 100 hours TIS or at the next annual inspection, whichever occurs first, modifying the LH and RH guidance units and the lateral control lever by installing bushings and washers to prevent shifting of the bearings in the axial direction. This proposed AD also would require at intervals not to exceed 600 hours TIS or 24 months, whichever occurs first, inspecting the bearings in the RH guidance unit, LH guidance unit, and lateral control guidance unit for play. If any bearing is loose, the proposed AD would require replacing the affected bearing with an airworthy bearing.

## Differences between this Proposed AD and the EASA AD

Differences between this proposed AD and the EASA AD are:

- The EASA AD is applicable to the EC 635 helicopter, whereas this proposed AD is not because the EC 635 helicopter is not type certificated in the U.S.
- The EASA AD requires an initial inspection within 50 flight hours or one month, whichever occurs first after May 31, 2008, and a modification within the next 12 months. This proposed AD would require the modification within 100 hours TIS or at the next annual inspection, whichever occurs first, and no inspection until after the modification has been accomplished.
- The EASA AD provides requirements for certain spare parts, whereas this proposed AD does not.

## Costs of Compliance

We estimate that this proposed AD would affect 175 Model EC135 and 112 Model MBB–BK 117 C–2 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we would expect the following costs:

- For EC135 helicopters, it would take about 32 work-hours to perform the modification. Parts would cost about $312. The total cost for the modification would be about $3,032 per helicopter and $530,600 for the U.S. operator fleet. The repetitive inspections would require 6.5 work-hours for a cost of about $553 per helicopter and about $96,775 for the fleet per inspection cycle.
- For MBB–BK 117 C–2 helicopters, it would take about 32 work-hours to perform the modification. Parts would cost about $396. The total cost for the modification would be $3,116 per helicopter and $348,992 for the U.S. operator fleet. The cost for the repetitive inspections thereafter would be about $85 per helicopter and $9,520 for the fleet per inspection cycle.

## 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, I certify this proposed regulation:

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

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

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

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

We prepared an economic 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 airworthiness directive (AD):

**Eurocopter Deutschland GmbH:** Docket No. FAA–2013–0555; Directorate Identifier 2010–SW–047–AD.

**(a) Applicability**

This AD applies to the following helicopters, certificated in any category:

(1) Eurocopter Deutschland GmbH (ECD) Model EC135 P1, P2, P2+, T1, T2, and T2+ helicopters, serial number (S/N) 0005 through 00829, with a tail rotor control lever, part number (P/N) L672M2802205 or L672M1012212; cyclic control lever, P/N L671M1005250; collective control lever assembly, P/N L671M2020108; or collective control plate, P/N L671M5040207; installed; and

(2) Model MBB–BK 117 C–2 helicopters, S/N 9004 through 9310, with a tail rotor control lever assembly, P/N B672M1007101 or B672M1807101; tail rotor control lever, P/N B672M1002202 or L672M2802205; or lateral control lever assembly, P/N B670M1008101, installed.

**(b) Unsafe Condition**

This AD defines the unsafe condition as incorrectly installed flight control bearings. This condition could cause the affected control lever to shift and contact the helicopter structure, resulting in reduced control of the helicopter.

**(c) Comments Due Date**

We must receive comments by September 3, 2013.

**(d) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time.

**(e) Required Actions**

(1) For Model EC135 P1, P2, P2+, T1, T2, and T2+ helicopters:

(i) Within the next 100 hours time-in-service (TIS) or at the next annual inspection, whichever occurs, modify the left-hand (LH) and right-hand (RH) guidance units and the cyclic shaft by installing bushings and washers to prevent shifting of the bearings in the axial direction as follows:

(A) Remove and disassemble the LH guidance unit and install a bushing, P/N L672M1012260, between the bearing block and the lever of the LH guidance unit as depicted in Detail A of Figure 5 of Eurocopter Alert Service Bulletin EC135–67A–019, Revision 3, dated December 16, 2009 (EC135 ASB).

(B) For helicopters without a yaw brake, remove and disassemble the RH guidance unit and install a bushing, P/N L672M1012260, between the bearing block and the lever as depicted in Detail B of Figure 5 of EC135 ASB.

(C) Remove and disassemble the cyclic shaft and install a washer, P/N L671M1005260, between the bearing block and the lever as depicted in Detail C of Figure 6 of EC135 ASB.

(D) Remove the collective control rod from the bellcrank and install a washer, P/N L221M1042208, on each side of the collective control rod and bellcrank as depicted in Detail D of Figure 6 of EC135 ASB.

(E) At intervals not to exceed 800 hours TIS or 36 months, whichever occurs first, inspect the bearings in the LH guidance unit, RH guidance unit, cyclic control, upper guidance unit, and linear voltage differential transducer plate for play. If any bearing is loose, replace the affected bearing with an airworthy bearing.

(2) For Model MBB–BK 117 C–2 helicopters:

(i) Within the next 100 hours TIS or at the next annual inspection, whichever occurs first, modify the LH and RH guidance units and the lateral control lever by installing bushings and washers to prevent shifting of the bearings in the axial direction as follows:

(A) Remove and disassemble the RH guidance unit and install a bushing, P/N L672M1012260, between the lever and the bracket as depicted in Detail B of Figure 4 of Eurocopter Alert Service Bulletin MBB BK117 C–2–67A–010, Revision 3, dated February 8, 2010 (BK117 ASB). Remove and disassemble the LH guidance unit and install a bushing, P/N L672M1012260, between the lever and the bracket as depicted in Detail C of Figure 4 of BK117 ASB.

(B) Remove the lateral control lever and install new bushings in accordance with the Accomplishment Instructions, paragraphs 3.C(9)(a) through 3.C(9)(g), of BK 117 ASB.

(C) Identify the modified lever assembly by writing ''MBB BK117 C–2–67A–010'' on the lever with permanent marking pen and protect with a single layer of lacquer (CM 421 or equivalent).

(D) Apply corrosion preventive paste (CM 518 or equivalent) on the shank of the screws and install airworthy parts as depicted in Figure 5 of BK117 ASB.

(E) At intervals not to exceed 600 hours TIS or 24 months, whichever occurs first, inspect the bearings in the RH guidance unit, LH guidance unit, and lateral control guidance unit for play. If any bearing is loose, replace the affected bearing with an airworthy bearing.

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

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *matthew.fuller@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(g) Additional Information**

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD

No. 2010–0058, dated March 30, 2010. You may view the EASA AD at *http://www.regulations.gov* in Docket No. FAA–2013–0555.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 6710, Main Rotor Control.

Issued in Fort Worth, Texas, on June 18, 2013.

**Kim Smith,**

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

[FR Doc. 2013–15956 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0540; Directorate Identifier 2012–NM–185–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 certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. The existing AD currently requires repetitive inspections for wear damage and cracks of the fuselage skin in the interface area of the vertical stabilizer seal and fuselage skin, a detailed inspection for wear damage and cracks of the surface of any skin repair doubler in the area, and corrective actions if necessary. For airplanes on which the fuselage skin has been blended to remove wear damage, the existing AD also requires repetitive external detailed inspections or high frequency eddy current inspections for cracks of the blended area of the fuselage skin, and corrective actions if necessary. Since we issued that AD, we have received a report of wear through the fuselage skin that occurred sooner than the repetitive inspection interval specified in the existing AD. This proposed AD would reduce the repetitive inspection interval and change certain corrective actions. We are proposing this AD to detect and correct wear damage and cracks of the fuselage skin in the interface area of the vertical stabilizer seal and fuselage skin in sections 46 and 48, which could cause in-flight depressurization of the airplane.

**DATES:** We must receive comments on this proposed AD by August 19, 2013.

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

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *Bill.Ashforth@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0540; Directorate Identifier 2012–NM–185–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 June 19, 2009, we issued AD 2009–14–02, Amendment 39–15951 (74 FR 30919, June 29, 2009), on the products listed above, which superseded AD 2002–26–15, Amendment 39–13003 (68 FR 476, January 6, 2003). AD 2009–14–02 requires repetitive inspections for wear damage and cracks of the fuselage skin in the interface area of the vertical stabilizer seal and fuselage skin, a detailed inspection for wear damage and cracks of the surface of any skin repair doubler in the area, and corrective actions if necessary. For airplanes on which the fuselage skin has been blended to remove wear damage, AD 2009–14–02 also requires repetitive external detailed inspections or high frequency eddy current inspections for cracks of the blended area of the fuselage skin, and corrective actions if necessary. AD 2009–14–02 resulted from reports of skin wear damage on airplanes with fewer than 8,000 total flight cycles. Additionally, there were three reports of skin wear damage on airplanes on which Boeing Material Specifications (BMS) 10–86 Teflon-filled coating was applied (terminating action per AD 2002–26–15). We issued AD 2009–14–02 to detect and correct wear damage and cracks of the fuselage skin in the interface area of the vertical stabilizer seal and fuselage skin in sections 46 and 48, which could cause in-flight depressurization of the airplane.

### Actions Since Existing AD 2009–14–02, Amendment 39–15951 (74 FR 30919, June 29, 2009) Was Issued

Since we issued AD 2009–14–02, Amendment 39–15951 (74 FR 30919, June 29, 2009), we have received a report of wear through the fuselage skin between body station (STA) 2598 and STA 2638, stringers S–2L to S–3L. The wear developed in less than 3,657 flight hours since the previous inspection, which was less than the repetitive

inspection interval specified in AD 2009–14–02. The wear occurred through both the Teflon filled coating and the full thickness of the 0.050-inch-thick skin to create a hole approximately 16 inches in length.

**Relevant Service Information**

We reviewed Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0540.

**FAA's Determination**

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

**Proposed AD Requirements**

Although this proposed AD does not explicitly restate the requirements of AD 2009–14–02, Amendment 39–15951 (74 FR 30919, June 29, 2009), this proposed AD would retain certain requirements of AD 2009–14–02. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraphs (g) and (h) of this proposed AD. This proposed AD would reduce the repetitive inspection interval and add rub strip installation for airplanes with wear or blend that exceeds structural repair manual limits. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

We have also clarified the applicability in paragraph (c) of AD 2009–14–02, Amendment 39–15951 (74 FR 30919, June 29, 2009), which specifies ''Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2478, Revision 1, dated March 27, 2008.'' The effectivity of that service information lists all Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. Therefore, the applicability of this proposed AD specifies ''all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.''

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

Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011, specifies certain optional economic-based actions. This proposed AD would not require those actions.

**Costs of Compliance**

We estimate that this proposed AD affects 917 airplanes of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection [retained actions from existing AD 2009–14–02, Amendment 39 15951 (74 FR 30919, June 29, 2009)]. | 12 work-hours × $85 per hour = $1,020 | $0 | $1,020 ..... | $935,340. |
| Inspection and application of BMS 10–86 Teflon-filled coating [retained actions from existing AD 2009–14–02, Amendment 39–15951 (74 FR 30919, June 29, 2009)]. | 8 work-hours × $85 per hour = $680 per inspection cycle. | $0 | $680 per inspection cycle. | $623,560 per inspection cycles. |

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

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

We 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) 2009–14–02, Amendment 39–15951 (74 FR 30919, June 29, 2009), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2013–0540; Directorate Identifier 2012–NM–185–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by August 19, 2013.

**(b) Affected ADs**

This AD supersedes AD 2009–14–02, Amendment 39–15951 (74 FR 30919, June 29, 2009).

**(c) Applicability**

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted a report of wear through the fuselage skin that occurred sooner than the previous repetitive inspection interval. We are issuing this AD to detect and correct wear damage and cracks of the fuselage skin in the interface area of the vertical stabilizer seal and fuselage skin in sections 46 and 48, which could cause in-flight depressurization of the airplane.

**(f) Compliance**

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

**(g) Repetitive Detailed Inspection**

At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011 (the effective date of AD 2009–14–02, Amendment 39–15951 (74 FR 30919, June 29, 2009) is August 3, 2009), except as specified in paragraph (j)(1) of this AD: Do a detailed inspection of the fuselage skin and any skin repair doubler surface for wear damage and cracking at the vertical stabilizer seal interface, apply Boeing Material Specifications (BMS) 10–86 Teflon-filled coating, and do all applicable corrective actions, except as specified in paragraph (j)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011. Do all applicable corrective actions at the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011. Repeat the detailed inspection thereafter at intervals not to exceed the applicable repetitive interval specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011, except as specified in paragraph (j)(2) of this AD. The effective date of AD 2009–14–02, Amendment 39–15951 (74 FR 30919, June 29, 2009) is August 3, 2009.

**(h) Repetitive High Frequency Eddy Current (HFEC) Inspections**

For airplanes on which the skin is blended forward of station 2360 without external reinforcement: At the applicable compliance time specified in Table 4 in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011, do an external surface HFEC inspection of the blended area of the fuselage skin and the surface of any repair doubler for cracks, apply BMS 10–86 Teflon-filled coating, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011. Do all applicable corrective actions at the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011. Repeat the HFEC inspection thereafter at intervals not to exceed the compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011. The effective date of AD 2009–14–02, Amendment 39–15951 (74 FR 30919, June 29, 2009) is August 3, 2009.

**(i) Optional Terminating Action**

Installation of CRES rub strips in accordance with Boeing Service Bulletin 747–53–2721, Revision 2, dated March 17, 2011, except as specified in paragraph (j)(3) of this AD, is terminating action for the inspections specified in paragraphs (g) and (h) of this AD at the locations of the CRES rub strip installations only.

**(j) Exceptions to Service Information**

(1) Where Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011, specifies a compliance time after the ''Revision 3 date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011, is not a requirement of this AD.

(3) Where Boeing Service Bulletin 747–53–2721, Revision 2, dated March 17, 2011, specifies to contact Boeing for a modification or for instructions: Before further flight, contact the FAA for instructions using a method approved in accordance with the procedures specified in paragraph (l) of this AD, and accomplish those instructions.

**(k) Credit for Previous Actions**

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if the corresponding actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–53A2478, Revision 1, dated March 27, 2008; or Boeing Service Bulletin 747–53A2478, Revision 2, dated July 15, 2010; which are not incorporated by reference in this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 747–53A2478, Revision 3, dated October 17, 2011, can be used.

(2) This paragraph provides credit for the actions specified in paragraph (i) of this AD, if the corresponding actions were performed before the effective date of this AD using Boeing Service Bulletin 747–53–2721, dated May 28, 2009; or Revision 1, dated June 24, 2010; which are not incorporated by reference in this AD.

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

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

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

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

(4) Installation of CRES rub strips approved as AMOCs for AD 2009–14–02, Amendment 39–15951 (74 FR 30919, June 29, 2009), are approved as AMOCs for this AD.

**(m) Related Information**

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *Bill.Ashforth@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65,

Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. 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. 2013–15948 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2013–0554; Directorate Identifier 2012–SW–009–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Eurocopter Deutschland GmbH (Eurocopter) Model EC135 P1, EC135 P2, EC135 P2+, EC135 T1, EC135 T2, and EC135 T2+ helicopters. This proposed AD would require analyzing the main gearbox (MGB) oil for indications of metal chips or pieces, reviewing the MGB log or equivalent record, and inspecting certain teeth in the MGB after two chip indications. This proposed AD is prompted by a partial tooth rupture found in an MGB that was returned to the manufacturer for repairs. The proposed actions are intended to detect wear in the MGB that could lead to a gear tooth rupture, failure of the MGB, loss of power to the main rotor, and subsequent loss of control of the helicopter.

**DATES:** We must receive comments on this proposed AD by September 3, 2013.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**FOR FURTHER INFORMATION CONTACT:** Chinh Vuong, Aerospace Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *Chinh.Vuong@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2009–0106R1, dated November 3, 2011, to correct an unsafe condition for the Eurocopter Model 635 military helicopter and Model EC135 P1, EC135 P2, EC135 P2+, EC135 T1, EC135 T2, and EC135 T2+ helicopters. EASA advises that an MGB was returned to the manufacturer for repair after ''several chip indications.'' According to EASA, a partial tooth rupture was detected after disassembly of the gearbox and removal of a drive pinion. EASA states the tooth rupture was determined to have been caused by wear.

EASA AD No. 2009–0106R1 revises EASA Emergency AD 2009–0106–E, dated April 30, 2009, which superseded Emergency AD 2008–0116–E dated June 17, 2008. The most recent EASA AD includes requirements and timetables for oil sampling and analysis; checking the gearbox log card for chip indications; and corrective measures for chip indications. It also states that a prescribed modification to the MGB would be terminating action for the AD.

### FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of these same type designs.

### Related Service Information

Eurocopter issued Alert Service Bulletin (ASB) EC135–63A–012 on August 8, 2007, which was followed by five revisions, the most recent of which was issued September 6, 2011. The ASBs prescribe procedures to monitor and detect wear in time to prevent MGB tooth ruptures in main transmissions for EC135 and EC635 model helicopters. Revision 5 of the ASB prescribes procedures for taking and analyzing scheduled oil samples, identifying and addressing chip indications, and inspecting certain teeth in gearboxes.

**Proposed AD Requirements**

Within 100 hours time-in-service (TIS), and thereafter at intervals not to exceed 100 hours or 12 months, whichever occurs first, this proposed AD would require taking an oil sample. The oil sample would need to be analyzed within 25 hours TIS.

If the analysis indicates Stage II as defined by the ASB, within 25 hours TIS, this proposed AD would require removing and inspecting the oil filter element for a chip. If the analysis indicates Stage III as defined by the ASB, this proposed AD would require removing and inspecting the oil filter element for a chip within 10 hours TIS.

If there are no chips, we propose cleaning the oil filter element and chip detector, inspecting the drive stage toothing, performing a ground run, and inspecting for leaking oil. If there is a chip, this proposed AD would require replacing the MGB with an airworthy MGB before further flight.

Before the MGB has accumulated 300 hours TIS, this proposed AD would require determining whether two or more chip indications have occurred. If two or more chip indications have occurred, this proposed AD would require inspecting the drive stage toothing, performing a ground run, and inspecting for leaking oil. At any time if there is a chip indication, we would require removing and inspecting the chip detector for deposits (fine particles or metallic fuzz) or a chip, and removing and inspecting the oil filter element for a chip.

If there are no chips and a minimal amount of particles or metallic fuzz, this proposed AD would require cleaning the chip detector and the oil filter element and entering the chip indication on the MGB log card before further flight. If there are no chips and some particles or metallic fuzz, this proposed AD would require cleaning the chip detector and the oil filter element and entering the chip indication on the MGB log card before further flight. The proposed AD also would require inspecting the drive stage toothing, performing a ground run, and within 10 hours TIS inspecting for leaking oil. The proposed AD would then require performing a ground run for 15 minutes at the flight-idle power setting, and then re-inspecting the chip detector for a chip, particles and metallic fuzz. If there is a chip, this proposed AD would require replacing the MGB with an airworthy MGB.

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

The EASA AD applies to military EC635 helicopters. This AD does not apply to EC635 helicopters because they are not type certificated in the United States.

**Costs of Compliance**

We estimate that this proposed AD would affect 242 helicopters of U.S. Registry and that labor costs would average $85 per work-hour. Based on these estimates, we expect the following the costs:

- Taking oil samples would take 1 work-hour. Assuming 2 samples per aircraft per year, we estimate a total cost of $170. No parts would be needed, so the total cost for the U.S. fleet would be $41,140.
- A laboratory analysis of 2 oil samples would cost $200 per helicopter for labor and equipment, for a total fleet cost of $48,400.
- Inspecting the oil filter element for a chip would require about a half-hour of labor for a cost per helicopter of about $43. No parts would be needed.
- Inspecting certain teeth in the gearbox, performing a ground run, and inspecting for leaking oil would take 8 work-hours for a labor cost of $680. Parts would cost $196, for a total cost per helicopter of $876.
- If the oil sample analysis indicates metal chips, recording the results on the aircraft log card would take a half-hour for a labor cost of about $43 per helicopter.
- Examining the log card for any previously recorded chip indications would be minimal.
- Inspecting the chip detector for deposits would require about 5 minutes of labor for a labor cost of about $7.
- Replacing the MGB with an airworthy MGB would require 8 work-hours for a labor cost of $680. Parts would cost $145,000 for total cost per helicopter of $145,680.

**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, I certify this proposed regulation:

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

We prepared an economic 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 airworthiness directive (AD):

**Eurocopter Deutschland GmbH (Eurocopter):** Docket No. FAA–2013–0554; Directorate Identifier 2012–SW–009–AD.

**(a) Applicability**

This AD applies to Model EC135 P1, EC135 P2, EC135 P2+, EC135 T1, EC135 T2, and EC135 T2+ helicopters with a main gearbox (MGB), part number (P/N) 4649 010 003, 4649 010 005, 4649 010 006, 4649 010 006X, 4649 010 008, 4649 010 008X, 4649 001 007, 4649 010 010, or 4649 010 013 installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a tooth rupture in the MGB. This condition could result in failure of the MGB, loss of power to the main rotor, and subsequent loss of control of the helicopter.

**(c) Comments Due Date**

We must receive comments by September 3, 2013.

**(d) Compliance**

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

**(e) Required Actions**

(1) Within 100 hours time-in-service (TIS), and thereafter at intervals not to exceed 100 hours or 12 months, whichever occurs first, take an oil sample in accordance with the Accomplishment Instructions, Part 1, of Eurocopter Alert Service Bulletin EC 135–63A–012, Revision 5, dated September 6, 2011 (ASB EC135–63A–012).

(2) Within 25 hours TIS after taking the oil sample in paragraph (e)(1), analyze the oil sample in accordance with the Accomplishment Instructions, Part 2.A. through Part 2.C. of ASB EC135–63A–012, except that you are not required to contact Eurocopter.

(i) If the analysis indicates Stage II as specified by the Accomplishment Instructions, Part 2.B., of ASB EC135–63A–012, within 25 hours TIS, remove and inspect the oil filter element for a chip, defined as any solid piece of metal but not metallic fuzz or fine particles.

(A) If there are no chips, clean the oil filter element and chip detector, inspect the drive stage toothing, perform a ground run, and inspect for leaking oil in accordance with the Accomplishment Instructions, Part 4.A through 4.G, of ASB EC135–63A–012. Change the oil.

(B) If there is a chip, replace the MGB with an airworthy MGB before further flight.

(ii) If the analysis indicates Stage III as specified by the Accomplishment Instructions, Part 2.B., of ASB EC135–63A–012 and if the water content is between 0.1 and 0.5 percent, within 10 hours TIS, remove and inspect the oil filter element for a chip.

(A) If there are no chips, clean the oil filer element and chip detector, inspect the drive stage toothing, perform a ground run, and inspect for leaking oil in accordance with the Accomplishment Instructions, Part 4.A through 4.G, of ASB EC135–65A–012. Change the oil.

(B) If there is a chip, replace the MGB with an airworthy MGB before further flight.

(3) Before the MGB has accumulated 300 hours TIS, determine whether two or more chip indications have occurred. If two or more chip indications have occurred, inspect the drive stage toothing, perform a ground run, and inspect for leaking oil in accordance with the Accomplishment Instructions, Part 4.A through 4.G, of ASB EC135–65A–012.

(4) Any time there is a chip indication, remove and inspect the chip detector for deposits (fine particles or metallic fuzz) or chips, and remove and inspect the oil filter element for a chip.

(i) If there are no chips and a minimal amount of particles or metallic fuzz, corresponding to Figure 5, Stage A of ASB EC135–65A–012, clean the chip detector and the oil filter element and enter the chip indication on the MGB log card before further flight.

(ii) If there are no chips and some particles or metallic fuzz, corresponding to Figure 5, Stage B of ASB EC135–65A–012, clean the chip detector and the oil filter element and enter the chip indication on the MGB log card before further flight, and within 10 hours TIS inspect the drive stage toothing, perform a ground run, and inspect for leaking oil in accordance with the Accomplishment Instructions, Part 4.A through 4.G, of ASB EC135–65A–012. Perform a ground run for 15 minutes at the flight-idle power setting, and then re-inspect the chip detector for a chip, particles, and metallic fuzz.

(iii) If there is a chip, replace the MGB with an airworthy MGB.

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

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Chinh Vuong, Aerospace Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *Chinh.Vuong@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(g) Additional Information**

The subject of this AD is addressed in the European Aviation Safety Agency (EASA) AD No. 2009–0106R1, dated November 3, 2011. You may view the EASA AD at *http://www.regulations.gov* in Docket No. FAA–2013–0554.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

Issued in Fort Worth, Texas, on June 18, 2013.

**Kim Smith,**

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

[FR Doc. 2013–15958 Filed 7–2–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0886; Directorate Identifier 2008–SW–067–AD]**

**RIN 2120–AA64**

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

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

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

**SUMMARY:** We are revising an earlier notice of proposed rulemaking (NPRM) that proposed to issue an airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model AB139 and AW139 helicopters with a certain wire strike protection system (WSPS) top cable cutter assembly installed. The existing NPRM proposes to require reworking or replacing the top cable cutter assembly to increase clearance between the WSPS and the main rotor (M/R) blades. The NPRM was prompted by a report of in-flight contact between the top cable-cutter assembly and two M/R blades. This action revises the proposals in the NPRM by requiring that the reworked or replaced part be marked with ''BT 139–126 Rev./'' or ''FAA'' at the end of the part number to reflect the field modification. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

**DATES:** We must receive comments on this SNPRM by September 3, 2013.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**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 economic 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 service information identified in this proposed AD, contact Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331–229111, fax 39 0331–229605/222595, or at *http://customersupport.agusta.com/technical_advice.php.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

## Discussion

On August 16, 2012, we issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to Agusta Model AB139 and AW139 helicopters with a certain WSPS top cable cutter assembly installed. The NPRM was published in the **Federal Register** on August 29, 2012 (77 FR 52270). The NPRM was prompted by a report of in-flight contact between the top cable-cutter assembly and two M/R blades. Based on this report, the European Aviation Safety Agency (EASA), which is the technical Agent for the member States of the European Union, issued EASA AD No. 2008–0148, dated August 5, 2008. The NPRM proposed to require reworking or replacing the top cable cutter assembly to increase clearance between the WSPS and the M/R blades, which is the same corrective action required by EASA AD No. 2008–0148.

## Actions Since Previous NPRM Was Issued

Since we issued the previous NPRM (77 FR 52270, August 29, 2012), we determined that the required actions should include re-identifying the reworked or replaced part by marking ''BT 139–126 Rev./'' or ''FAA'' at the end of the part number to reflect the field modification. Because this proposed change expands the scope of the NPRM, we are reopening the comment period to provide additional opportunity for public comment.

## Comments

We gave the public the opportunity to comment on the previous NPRM (77 FR 52270, August 29, 2012), but we did not receive any comments.

## FAA's Determination

We are proposing this SNPRM because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of these same type designs. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

## Related Service Information

We reviewed Agusta Bollettino Tecnico No. 139–126, dated June 20, 2008 (BT), which applies to Model AB139 and AW139 helicopters with certain serial-numbered WSPSs. The BT specifies, within 200 flight hours, reworking the top cable cutter assembly and marking it with ''BT 139–126 Rev./'' in a visible and permanent manner. EASA classified this BT as mandatory and issued AD No. 2008–0148 to ensure the continued airworthiness of these helicopters.

## Proposed Requirements of the SNPRM

This proposed SNPRM would require:

- Within 200 hours time-in-service, removing the WSPS upper installation,

P/N 4G9540A00111, including cutter assembly, P/N 423–83001–1.

- Before installing a WSPS upper installation, P/N 4G9540A00111, either reworking the top cable cutter assembly, P/N 423–83001–1, and re-identifying the part by adding ''BT 139–126 Rev./'' or ''FAA'' to the end of the part number, or replacing the top cable cutter assembly, P/N 423–83001–1, with an airworthy top cable cutter assembly that has been reworked and re-identified.

## Costs of Compliance

We estimate that this AD would affect about 39 helicopters of U.S. registry. We also estimate that it would take about 3 work-hours per helicopter to rework the top cable cutter assembly and to add ''BT 139–126 Rev./'' or ''FAA'' at the end of the part number, 1 work-hour to replace the top cable cutter assembly, and 1 work-hour to remove the WSPS upper installation. The average labor rate is $85 per work-hour. Required parts would cost about $9,000 per helicopter to replace the cutter. Based on these figures, we estimate the cost of this AD on U.S. operators would be $255 per helicopter to rework the top cable cutter assembly, $9,085 per helicopter to replace the top cable cutter assembly, and $85 per helicopter to remove the WSPS.

## 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, I certify this proposed regulation:

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

We prepared an economic 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 airworthiness directive (AD):

**Agusta S.p.A. Helicopters:** Docket No. FAA–2012–0886; Directorate Identifier 2008–SW–067–AD.

**(a) Applicability**

This AD applies to Agusta Model AB139 and AW139 helicopters, with a wire strike protection system (WSPS) top cable cutter assembly, part number (P/N) 423–83001–1, installed, which is part of the WSPS, P/N 4G9540F00211 or P/N 4G9540F00311, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as in-flight contact between the top cable cutter assembly and main rotor (M/R) blades. This condition could result in damage to the M/R blades and subsequent loss of helicopter control.

**(c) Comments Due Date**

We must receive comments by September 3, 2013.

**(d) Compliance**

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

**(e) Required Actions**

(1) Within 200 hours time-in-service, remove the WSPS upper installation, P/N 4G9540A00111, including top cable cutter assembly, P/N 423–83001–1.

(2) Before installing a WSPS upper installation, P/N 4G9540A00111, either:

(i) Rework the top cable cutter assembly, P/N 423–83001–1, in accordance with the Compliance Instructions, paragraph 3.1 through 3.5, and Figure 1 of Agusta Bolletino Technico No. 139–126, dated June 20, 2008. Re-identify the top cable cutter assembly in a visible and permanent way by adding ''BT 139–126 Rev./'' or ''FAA'' at the end of the part number; or

(ii) Replace the top cable cutter assembly, P/N 423–83001–1, with an airworthy top cable cutter assembly that has been reworked and re-identified in accordance with paragraph (e)(2)(i) of this AD.

(3) Do not install a top cable cutter assembly, P/N 423–83001–1, on any helicopter unless it has been reworked and re-identified in accordance with paragraph (e)(2)(i) of this AD.

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

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(g) Additional Information**

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2008–0148, dated August 5, 2008. You may view the EASA AD at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2012–0886.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 5320: Fuselage Miscellaneous Structure.

Issued in Fort Worth, Texas, on June 18, 2013.

**Kim Smith,**

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

[FR Doc. 2013–15951 Filed 7–2–13; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0467; Directorate Identifier 2013–NM–023–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 reports of certain sliding windows that were difficult to operate after landing. This proposed AD would require a detailed inspection to identify part numbers of sliding windows and sliding window seals, and modification if necessary. This proposed AD also includes an optional replacement. We are proposing this AD to detect and correct incorrect seals, which could lead to the functional loss of the sliding window as an exit, possibly preventing the flightcrew from safely evacuating the airplane during an emergency.

**DATES:** We must receive comments on this proposed AD by August 19, 2013.

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

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

For Airbus service information identified in this proposed AD, contact Airbus, 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;* Internet *http://www.airbus.com.* For PPG Aerospace service information identified in this proposed AD, contact PPG Aerospace, 12780 San Fernando Road, Sylmar, CA 91342; telephone 818–362–6711; fax 818–362–0603; Internet *http://corporateportal.ppg.com/na/aerospace.* 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, Washington 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–2013–0467; Directorate Identifier 2013–NM–023–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

## Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0011, dated January 15, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several occurrences have been reported on A320 family aeroplanes of PPG sliding windows that were difficult to operate after landing.
>
> The investigation results revealed that when a seal having Part Number (P/N) 22–17–7640–1 or P/N 22–17–7640–2 is installed on a sliding window, closure of the window can create a vacuum between the 2 tubes of the pressure seal, leading to the window remaining stuck to the frame on the fuselage side, due to suction effect.
>
> This condition, if not detected and corrected, could lead to the functional loss of the sliding window as an exit, possibly preventing the flight crew from safely evacuating the aeroplane during an emergency.
>
> For the reasons described above, this [EASA] AD requires a one-time detailed inspection (DI) of the sliding windows and its seal to identify the affected sliding window seals and, depending on findings, accomplishment of the applicable corrective actions [corrective action includes a modification or replacement].

The subject area on certain Airbus Model A318, A319, and A321 series airplanes is almost identical to that on the affected Model A320 series airplanes. Therefore, those Model A318, A319, and A321 series airplanes may be subject to the unsafe condition revealed on the Model A320 series airplanes. You may obtain further information by examining the MCAI in the AD docket.

## Relevant Service Information

Airbus has issued Service Bulletin A320–56–1015, dated September 14, 2012; and Service Bulletin A320–56–1016, including Appendices 01 and 02, dated September 14, 2012. PPG Aerospace has issued Service Bulletin 165312–56–001, dated February 29, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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

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

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

While paragraph (2) of EASA AD 2013–0011, dated January 15, 2013, requires modification of the sliding window seal before further flight, this AD requires modification of the sliding window seal within the compliance time specified in paragraph (g) of this AD. This difference has been coordinated with EASA.

## 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 1 work-hour and require parts costing $0, for a cost of $85 per product. We have no way of determining the number of products that may need these actions.

## Authority for This Rulemaking

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

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

## Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national

Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Airbus:** Docket No. FAA–2013–0467; Directorate Identifier 2013–NM–023–AD.

**(a) Comments Due Date**

We must receive comments by August 19, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 56, Windows.

**(e) Reason**

This AD was prompted by reports of certain sliding windows that were difficult to operate after landing. We are issuing this AD to detect and correct incorrect seals, which could lead to the functional loss of the sliding window as an exit, possibly preventing the flightcrew from safely evacuating the airplane during an emergency.

**(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) Inspection**

Within 750 flight cycles or 750 flight hours, or within 4 months, after the effective date of this AD, whichever occurs first: Do a detailed inspection to identify part numbers (P/Ns) of each window and seal of the left-hand (LH) and right-hand (RH) sliding windows and sliding window seals, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–56–1016, including Appendices 01 and 02, dated September 14, 2012. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the window and seal of the LH and RH sliding windows and sliding window seals can be conclusively determined from that review.

**(h) Modification**

If a sliding window part number identified in table 1 to paragraph (h) of this AD is found during the inspection required by paragraph (g) of this AD, and the part number does not have modification amendment M, and does have sliding window seals having P/N 22–17–7640–1 or P/N 22–17–7640–2 installed: Within the compliance time specified in paragraph (g) of this AD, modify the sliding window seal, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–56–1015, dated September 14, 2012.

TABLE 1 TO PARAGRAPH (h) OF THIS AD—AFFECTED PPG AEROSPACE SLIDING WINDOW PART NUMBERS

| Left-hand | Right-hand |
|---|---|
| NP165312–1 | NP165312–2 |
| NP165312–3 | NP165312–4 |
| NP165312–5 | NP165312–6 |
| NP165312–7 | NP165312–8 |
| NP165312–9 | NP165312–10 |
| NP165312–11 | NP165312–12 |

**(i) Optional Replacement**

For sliding windows identified as affected in paragraph (h) of this AD, replacement of a sliding window seal having P/N 22–17–7640–1 L/H or P/N 22–17–7640–2 R/H with a seal having P/N 22–17–7640–3 L/H or P/N 22–17–7640–4 R/H, respectively done, in accordance with 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), is an acceptable alternative method of compliance with the modification required by paragraph (h) of this AD.

**Note 1 to paragraph (i) of this AD:** Guidance for replacement of a sliding window seal can be found in Page Block 401 of Sub-section 56–12–11 of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual.

**(j) Exceptions to Requirements of Paragraphs (g) and (h) of this AD**

(1) Airplanes on which Airbus modification 153512 (installation of sliding window with P/N NP165312–13 and P/N NP165312–14 with improved seal) or modification 153534 (installation of sliding window with P/N NP165312–11 and P/N NP165312–12 with amendment M) has been embodied in production are not affected by the requirements of paragraphs (g) and (h) of this AD, provided that no sliding window or sliding window seal has been replaced since first flight.

(2) Airplanes on which Airbus modification 39587 (installation of affected seal on PPG Aerospace sliding windows) has not been embodied in production are not affected by the requirements of paragraphs (g) and (h) of this AD, provided that no sliding window or sliding window seal has been replaced since first flight.

*(k) Parts Installation Limitation*

As of the effective date of this AD, no person may install on any airplane any PPG Aerospace sliding window with a part number listed in table 1 to paragraph (h) of this AD with a seal having P/N 22–17–7640–1 or P/N 22–17–7640–2, unless the seal has been modified in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–56–1015, dated September 14, 2012; or PPG Aerospace Service Bulletin 165312–56–001, dated February 29, 2012.

**(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, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(m) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0011, dated January 15, 2013, for related information.

(2) For Airbus 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;* Internet *http://www.airbus.com.* For PPG Aerospace service information identified in this AD, contact PPG Aerospace, 12780 San Fernando Road, Sylmar, CA 91342; telephone 818 362 6711; fax 818 362 0603; Internet *http://corporateportal.ppg.com/na/aerospace.* 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 14, 2013.

**Jeffrey E. Duven,**

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

[FR Doc. 2013–15947 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0468; Directorate Identifier 2012–NM–147–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 certain The Boeing Company Model 777–200 and –300 series airplanes equipped with Rolls-Royce engines. The existing AD currently requires repetitive inspections to detect cracks of the outer V-blades of the thrust reverser, and corrective action if necessary. The existing AD also provides for optional terminating action for the repetitive inspections. Since we issued that AD, we have received reports of cracked outer V-blade fittings at the hinge beam end of Rolls-Royce engine thrust reversers, on airplanes on which the optional terminating action was done. This proposed AD would add, for airplanes on which the optional terminating action is done, repetitive inspections for cracking in the outer V-blade fittings of the hinge beam and latch beam ends of each thrust reverser half, and replacement of an affected thrust reverser half if necessary. This proposed AD would also add airplanes to the applicability. We are proposing this AD to prevent separation of a thrust reverser from the airplane during normal reverse thrust or during a refused takeoff, which could result in unexpected thrust asymmetry and a possible runway excursion.

**DATES:** We must receive comments on this proposed AD by August 19, 2013.

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

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Melanie Violette, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6422; fax: 425–917–6590; email: *melanie.violette@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–2013–0468; Directorate Identifier 2012–NM–147–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 December 14, 2006, we issued AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006), for certain The Boeing Company Model 777–200 and –300 series airplanes, equipped with Rolls-Royce engines, as identified in Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006. That AD requires repetitive inspections to detect cracks of the outer V-blades of the thrust reverser, and corrective action if necessary. The existing AD also provides for optional terminating action for the repetitive inspections. That AD resulted from reports of cracked outer V-blades in the thrust reversers. We issued that AD to prevent separation of a thrust reverser from the airplane during normal reverse thrust or during a refused takeoff, which could result in impact damage to other airplane areas. If a thrust reverser separates from the airplane during a refused takeoff, the engine could produce forward thrust, resulting in unexpected thrust asymmetry and a possible runway excursion.

### Actions Since Existing AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006) Was Issued

Since we issued AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006), we have received reports of cracked outer V-blade fittings at the hinge beam end of the thrust

reverser due to relative movement between the engine and the thrust reverser during flight operation, on airplanes on which the optional terminating action (Boeing Special Attention Service Bulletin 777–78–0061, dated July 6, 2006) specified in AD 2006–26–06 had been done.

**Relevant Service Information**

We reviewed Boeing Special Attention Service Bulletins 777–78–0061, Revision 1, dated August 28, 2007, and 777–78–0064, Revision 2, dated June 14, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0468.

**FAA's Determination**

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

**Proposed AD Requirements**

This proposed AD would retain certain requirements of AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006). This proposed AD would add new airplanes to the applicability. This proposed AD would also require, for airplanes on which the optional terminating action is done, repetitive inspections for cracking in the outer V-blade fittings of the hinge beam and latch beam ends of each thrust reverser half, and replacement of an affected thrust reverser half if necessary.

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

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

**Change to Existing AD**

This proposed AD would retain certain requirements of AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006). Since AD 2006–26–06 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 2006–26–06, amendment 39–14864 (71 FR 77586, December 27, 2006) | Corresponding requirement in this proposed AD |
|---|---|
| paragraph (f) | paragraph (g) |
| paragraph (g) | paragraph (h) |

We have removed the reference to paragraph (h) of AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006) from paragraph (f) of AD 2006–26–06 (paragraph (g) of this proposed AD). Paragraph (h) of AD 2006–26–06 requires reporting and is not a method of compliance for doing applicable corrective actions as specified in paragraph (f) of AD 2006–26–06. We have added a reference to paragraph (m) of this AD.

**Interim Action**

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

**Costs of Compliance**

We estimate that this proposed AD affects 55 airplanes of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| Inspections [retained actions from existing AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006)]. | 16 work-hours × $85 per hour = $1,360 per inspection cycle. | $1,360 per inspection cycle. | $74,800 per inspection cycle. |
| Repetitive inspections outer V-blade [new proposed action]. | 82 work-hours × $85 per hour = $6,970 per inspection cycle. | $6,970 per inspection cycle. | $383,350 per inspection cycle. |

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

**Authority for this Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2013–0468; Directorate Identifier 2012–NM–147–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by August 19, 2013.

**(b) Affected ADs**

This AD supersedes AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006).

**(c) Applicability**

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, equipped with Rolls-Royce engines, as identified in Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 78, Engine exhaust.

**(e) Unsafe Condition**

This AD was prompted by reports of cracked outer V-blade fittings at the hinge beam end of Rolls-Royce engine thrust reversers. We are issuing this AD to prevent separation of a thrust reverser from the airplane during normal reverse thrust or during a refused takeoff, which could result in unexpected thrust asymmetry and a possible runway excursion.

**(f) Compliance**

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

**(g) Retained Repetitive Inspections**

This paragraph restates the requirements of paragraph (f) of AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006), with new service information. For Group 1, Configuration 1, airplanes as identified in Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012: Do the detailed inspections to detect cracks in the outer V-blade of the thrust reversers. Do the inspections in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006; or Revision 2, dated June 14, 2012. Do the inspections at the applicable times specified in paragraph 1.E., ''Compliance'' of Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006; except where Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006, specifies an initial compliance time after the date on the service bulletin, this AD requires compliance within the specified time after January 11, 2007 (the effective date of AD 2006–26–06). Do applicable corrective actions before further flight, in accordance with Boeing Special Attention Service Bulletin 777–78–0064, Revision 1, dated November 30, 2006; or Revision 2, dated June 14, 2012; or paragraph (m) of this AD. As of the effective date of this AD, use only Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012, to accomplish the actions required by this paragraph.

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

This paragraph restates the credit for previous actions specified in paragraph (g) of AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006). For Group 1, Configuration 1, airplanes as identified in Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012: Actions done before January 11, 2007 (the effective date of AD 2006–26–06), in accordance with Boeing Special Attention Service Bulletin 777–78–0064, dated August 7, 2006, are acceptable for compliance with the requirements of paragraph (g) of this AD.

**(i) Retained Optional Terminating Action for Paragraph (g) of this AD with New Requirements**

This paragraph restates the optional terminating action specified in paragraph (i) of AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006), with new service information. Accomplishment of the actions specified in paragraph (i)(1) or (i)(2) of this AD terminates the requirements of paragraph (g) of this AD. For airplanes on which this terminating action has been accomplished, operators must do the inspection required by paragraph (j) of this AD.

(1) Accomplishment of the applicable inspections and related investigative/corrective actions before the effective date of this AD, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0061, dated July 6, 2006; except, where Boeing Special Attention Service Bulletin 777–78–0061, dated July 6, 2006, specifies to contact the manufacturer for appropriate action, repair before further flight using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(2) Accomplishment of the applicable modification, inspections, and related investigative/corrective actions, in accordance with Boeing Special Attention Service Bulletin 777–78–0061, Revision 1, dated August 28, 2007; except, where Boeing Special Attention Service Bulletin 777–78–0061, Revision 1, dated August 28, 2007, specifies to contact the manufacturer for appropriate action, repair before further flight using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

**(j) New Repetitive Inspections**

For Group 1, Configuration 2, airplanes, and Groups 2 and 3 airplanes, as identified in Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012: At the applicable times specified in paragraph 1.E., ''Compliance'' of Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012, except as provided by paragraph (k) of this AD, do a detailed inspection for cracking of the outer V-blade fittings at the latch beam end and hinge beam end of each thrust reverser half, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012.

(1) If no cracking is found, repeat the inspections thereafter at the times specified in paragraph 1.E., ''Compliance'' of Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012.

(2) If any cracking is found, before further flight, replace the affected thrust reverser half with a serviceable thrust reverser half, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012. Repeat the inspections thereafter at the times specified in paragraph 1.E., ''Compliance'' of Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012.

**(k) Service Information Exception**

Where Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012, specifies an initial compliance time ''after the date of Revision 2 of this service bulletin,'' this AD requires compliance within the specified time after the effective date of this AD.

**(l) Reporting**

Although Boeing Special Attention Service Bulletin 777–78–0064, Revision 2, dated June 14, 2012, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

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

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

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

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

(4) AMOCs approved previously in accordance with AD 2006–26–06, Amendment 39–14864 (71 FR 77586, December 27, 2006), are not approved as AMOCs for this AD.

**(n) Related Information**

(1) For more information about this AD, contact Melanie Violette, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6422; fax: 425–917–6590; email: *melanie.violette@faa.gov.*

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

Issued in Renton, Washington, on June 14, 2013.

**Jeffrey E. Duven,**

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

[FR Doc. 2013–15955 Filed 7–2–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0556; Directorate Identifier 2007–SW–30–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Erickson Air-Crane Incorporated Helicopters (Type Certificate previously Held by Sikorsky Aircraft Corporation)

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

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

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–64E helicopters. The existing AD requires checks of the main rotor blades for a crack. This proposed AD would retain the actions of the existing AD, would reflect that the type certificate (TC) for this model helicopter has been transferred to Erickson Air-Crane Incorporated (Erickson), and expand the applicability to include the similar Erickson Model S–64F helicopters. This proposed AD is prompted by a need to expand the applicability to include Model S–64F helicopters and clarify the applicable main rotor blades by part number. The proposed actions are intended to detect a crack in the main rotor blade and prevent blade separation and subsequent loss of control of the helicopter.

**DATES:** We must receive comments on this proposed AD by September 3, 2013.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### 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 economic 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 service information identified in this proposed AD, contact Erickson Air-Crane Incorporated, ATTN: Chris Erickson/Compliance Officer, 3100 Willow Springs Rd., PO Box 3247, Central Point, OR 97502; telephone (541) 664–5544; fax (541) 664–2312; email *cerickson@ericksonaircrane.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** JC Lin, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5170; email *7-AVS-ASW-170@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

### Discussion

On December 6, 1990, we issued AD 90–26–12, Amendment 39–6841 (55 FR 51406, December 14, 1990) for Sikorsky Model S–64E helicopters. The AD requires repetitive checks of the Blade Inspection Method (BIM) indicator of each main rotor blade to determine whether the blade pressure has been compromised by a blade crack. These checks, which may be performed by the pilot, must be accomplished and recorded before the first flight of each day and thereafter at intervals not to exceed three hours time-in-service (TIS) for helicopters engaged in seven or more external lifts per hour or five hours TIS for operations with less than seven external lifts per hour or operations without an external load, with each check-interval measured from the last check. Those actions are intended to detect fatigue cracks in the blade, which could result in separation of the blade and loss of control of the helicopter.

**Actions Since Existing AD Was Issued**

Since we issued AD 90–26–12 (55 FR 51406, December 14, 1990) for Model S–64E helicopters, cracks have been discovered on the main rotor blades of Model S–64F helicopters. The main rotor blades used on the Model S–64F helicopter are similar to the main rotor blades used on the Model S–64E helicopter; however, Model S–64F was not included in AD 90–26–12. Also, on February 13, 1992, Sikorsky transferred TC H6EA for Model S–64E and S–64F helicopters to Erickson. Erickson later issued Service Bulletin (SB) No. 64F15–2, Revision A, dated July 14, 1999, for the Model S–64F and SB No. 64B15–4D, Revision D, dated January 26, 2001, for the Model S–64E. Erickson released SB No. 64F15–2 to provide the operation and check procedures for BIM blades installed on the Model S–64F helicopters. Several blade spars with a crack emanating from corrosion pits and other damage have been found because of BIM pressure indications, similar to the Model S–64E helicopters. The checks in SB No. 64F15–2 for the Model S–64F are the same as those required by AD 90–26–12 for the Model S–64E helicopters. We also determined that the primary temperatures listed in the Required Actions section of this AD should be converted from degrees Celsius to degrees Fahrenheit and part numbers for the applicable main rotor blades should be specified for increased clarity.

**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 supersede AD 90–26–12 (55 FR 51406, December 14, 1990), to retain the same checks and procedures, but in a revised format to meet current publication requirements and to expand the applicability to include both the Erickson S–64E and S–64F helicopters. This proposed AD would require recurring checks of the BIM indicator on each blade to determine whether the BIM indicator is displaying a black or red color, which is an indication that the blade pressure may have been compromised by a blade crack. If there is a black or red color BIM indication, the proposed AD would require checking the BIM indicator to determine whether it is functioning properly. If the BIM indicator is malfunctioning, correcting it before further flight would be required. If the BIM indicator is functioning properly, and the blade BIM indication remains red or black, replacing the blade before further flight would be required. The proposed AD would require that the checks be accomplished and recorded before the first flight of each day and thereafter at intervals not to exceed three hours TIS for helicopters engaged in seven or more external lifts per hour or five hours TIS for operations with less than seven external lifts per hour or operations without an external load, with each check-interval measured from the last check. These checks may be performed by an owner/operator (pilot) and must be entered into the helicopter maintenance records in accordance with 14 CFR 43.9(a)(1)–(4) and 91.417(a)(2)(v). A pilot may perform these checks because they involve only a check of the BIM pressure indicators and can be performed equally well by a pilot or a mechanic. This authorization is an exception to our standard maintenance regulations.

**Costs of Compliance**

We estimate that this proposed AD would affect 27 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Each visual BIM pressure indicator color check would take about 0.1 work-hour at an average labor rate of $85 per work-hour. Based on these figures, each visual BIM pressure indicator color check would cost about $9 per helicopter or $230 for the fleet. Each BIM pressure indicator function check would take about 0.25 work-hour, and would cost about $21, or $574 for the fleet.

If a main rotor blade must be replaced, it would take about 2 work-hours and required parts would cost about $125,000. Based on these figures, it would cost about $125,170 per helicopter to replace a main rotor blade.

**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, I certify this proposed regulation:

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

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 90–26–12 (55 FR 51406, December 14, 1990), and adding the following new AD:

**Erickson Air-Crane Incorporated (Type Certificate Previously Held By Sikorsky Aircraft Corporation):** Docket No. FAA–2013–0556; Directorate Identifier 2007–SW–30–AD.

**(a) Applicability**

This AD applies to Erickson Air-Crane Incorporated (Erickson) Model S–64E and S–64F helicopters, with rotary wing blade assembly (main rotor blade), part number (P/N) 6415–20201–043, –045, –047, –048, –049, –050, or –051; or 6415–20601–041, –042, –043, –044, –045, –046, –047, –048, –049, –050, –051, or –052, installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a crack in the main rotor blade (blade), which could result in blade separation and subsequent loss of control of the helicopter.

**(c) Affected ADs**

This AD supersedes AD 90–26–12, Docket No. 90–ASW–27, Amendment 39–6841 (55 FR 51406, December 14, 1990).

**(d) Comments Due Date**

We must receive comments by September 3, 2013.

**(e) Compliance**

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

**(f) Required Actions**

(1) Before further flight, visually check the Blade Inspection Method (BIM) pressure indicators of the main rotor blades for a black or red color indication.

(2) Before further flight, replace any blade with a black or red color indication in a BIM pressure indicator with an airworthy part of the same part number unless the black or red color indication is determined to be the result of BIM system malfunction.

*Note 1 to paragraph (f)(2) of this AD:* Paragraphs (f)(4)(i–iv) of this AD specify how to determine if a BIM system is functioning correctly.

(3) Repeat the visual BIM pressure indicator check required by paragraph (f)(1) of this AD prior to the first flight of each day and thereafter at intervals not to exceed:

(i) Three hours time-in-service (TIS) from the last check for helicopters engaged in seven or more external lifts per hour; or

(ii) Five hours TIS from the last check for helicopters engaged in either less than seven external lifts per hour or operation without external cargo.

(4) Prior to the first flight of each day, check the BIM pressure indicator for proper function as follows:

(i) Press in and hold the manual test lever (grenade-type handle) on the raised area of the handle over the pin-type actuation plunger. Do not handle the indicator glass bulb since the heat of the hand may change the internal reference pressure and result in an erroneous indicator reading.

(ii) Depress the actuation plunger fully to shut off the pressure completely from the blade into the indicator. If necessary, press with the thumbs of both hands to overcome the plunger spring force.

*Note 2 to paragraph (f)(4)(ii) of this AD:* If pressure is applied to the end of the lever on the flat area, the actuation plunger will not fully depress.

(iii) Verify proper operation of the indicator by observing that a full-black or full-red (unsafe) indication appears in not less than 10 or more than 30 seconds after depressing the plunger for a temperature of 20 degrees F (−6.7 degrees C) or above. At lower temperatures, extend the upper limit to the corresponding time as follows:

(A) 19 to 0 degrees F (−7.2 to −17.8 degrees C); upper limit of 35 seconds.

(B) −1 to −20 degrees F (−18.3 to −28.9 degrees C); upper limit of 40 seconds.

(C) −21 to −40 degrees F (−29.4 to −40.0 degrees C); upper limit of 50 seconds.

(D) −41 to −60 degrees F (−40.5 to −51.1 degrees C); upper limit of 60 seconds.

(iv) Release the lever and observe that the black or red indication snaps back immediately, leaving an all-white or all-yellow (safe) indication.

(v) If the indicator does not meet the specified requirements, then either identify and correct the BIM indicator malfunction or replace the suspect main rotor blade with an airworthy blade of the same part number prior to further flight.

(5) The checks required by paragraphs (f)(1) and (f)(4)(i–iv) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1)–(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

**(g) Special Flight Permit**

Special flight permits will not be issued.

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

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: JC Lin, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5170; email *7-AVS-ASW-170@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(i) Additional Information**

Erickson Air-Crane Incorporated Service Bulletins No. 64B15–4D, Revision D, dated January 26, 2001 for the Model S–64E and No. 64F15–2, Revision A, dated July 14, 1999 for the Model S–64F, which are not incorporated by reference, contain additional information about the subject of this AD. For service information, contact Erickson Air-Crane Incorporated, ATTN: Chris Erickson/Compliance Officer, 3100 Willow Springs Rd, PO Box 3247, Central Point, OR 97502; telephone (541) 664–5544; fax (541) 664–2312; email *cerickson@ericksonaircrane.com*. You may review a copy of this information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**(j) Subject**

Joint Aircraft Service Component (JASC) Code: 6210, Main Rotor Blades.

Issued in Fort Worth, Texas, on June 18, 2013.

**Kim Smith,**

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

[FR Doc. 2013–15954 Filed 7–2–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0464; Directorate Identifier 2012–NM–010–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Aviation 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 Dassault Aviation Model FALCON 7X airplanes. The existing AD currently requires adding an automatic reversion logic and a means for the pilot to override pitch trim control normal modes, and installing placards in the cockpit; replacing the frame of the emergency switch box; replacing certain horizontal stabilizer electronic control units (HSECU); operating the airplane according to the limitations and procedures in the airplane flight manual (AFM); revising the Limitations section of the AFM; and revising the maintenance program to incorporate a certain maintenance planning document (MPD) task. Since we issued that AD, Dassault Aviation has developed a modification of the fly-by-wire (FBW) standard; changed the AFM to incorporate changes resulting from the FBW modification; and revised the airplane maintenance manual (AMM) to incorporate repetitive operational tests of the electric motors reversion relays and trim emergency command of the horizontal stabilizer trim system (HSTS). Once incorporated, these actions allow restoration of the originally certified minimum equipment list items. This proposed AD would retain certain requirements of the previous AD; would require modifying the FBW standard; operating the

airplane according to the limitations and procedures in an approved AFM; and operational testing of the electric motors reversion relays and trim emergency command of the HSTS, and repairs if necessary. We are proposing this AD to prevent an uncontrolled pitch trim runaway, which could result in loss of control of the airplane.

**DATES:** We must receive comments on this proposed AD by August 19, 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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.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:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1137; 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–2013–0464; Directorate Identifier 2012–NM–010–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

## Discussion

On July 15, 2011, we issued AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011). That AD requires actions intended to address an unsafe condition on all Dassault Aviation Model FALCON 7X airplanes.

Since we issued AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011), the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0241, dated December 19, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> In May 2011, a Dassault Aviation Falcon 7X aeroplane experienced an uncontrolled pitch trim runaway during descent. The crew succeeded in recovering a stable situation and performed an uneventful landing.
>
> The results of the investigations showed that there was a production defect in the Horizontal Stabilizer Electronic Control Unit (HSECU) which could have contributed to the cause of the event.
>
> This condition, if not corrected, could lead to a loss of control of the aeroplane.
>
> To address this unsafe condition, EASA issued emergency AD 2011–0102–E which prohibited further flights. Following further technical investigations accomplished by Dassault Aviation, EASA issued AD 2011–0114, currently at revision 2, which superseded EASA AD 2011–0102–E. Following accomplishment of all the actions as required by EASA AD 2011–0114R2, all aeroplanes could resume flying with operational limitations.
>
> Since EASA AD 2011–0114R2 was issued, Dassault Aviation have developed a modification (M1245 to be embodied through accomplishment of Dassault Aviation Service Bulletin F7X–214) of the Fly-By-Wire (FBW) current standard which improves the monitoring and reversion logic of the Horizontal Stabilizer Trim System (HSTS). This modification results in earlier failure detection and quicker reversion.
>
> Dassault Aviation have issued as well Revision 13 of the Aircraft Flight Manual (AFM) which incorporates the changes introduced in EASA AD 2011–0114R2 (CP55 and 56) as well as the new changes resulting from Dassault Aviation M1245 (CP58).
>
> Dassault Aviation have introduced as well operational tests of the HSTS electric motors reversion relays and of the HSTS trim emergency command into the Chapter 5.40 of F7X Aircraft Maintenance Manual (CP010).
>
> For the reasons described above, EASA issued AD 2011–0169 to require:
>
> 1. accomplishing Dassault Aviation modification M1245,
> 2. amending the AFM, and
> 3. implementing the operational tests of the HSTS electric motors reversion relays and of the HSTS trim emergency command.
>
> Accomplishment of all the above actions restored the full original certified flight envelope of the aeroplane.
>
> Since EASA AD 2011–0169 was issued, further analyses have demonstrated that, once Dassault Aviation modification M1245 is embodied, it is allowed to restore the originally certified Minimum Equipment List (MEL) items which were removed in accordance with the requirement of paragraph (4) of EASA AD 2011–0114R2.
>
> For the reasons described above, this [EASA] AD, which supersedes EASA AD 2011–0169, retaining its requirements, in addition, extends the applicability of the AD to all S/Ns and, for aeroplanes fitted with FBW standard 2.1.7.3, allows the MEL limitations imposed by EASA AD 2011–0114R2 to be removed.

You may obtain further information by examining the MCAI in the AD docket.

## Relevant Service Information

Dassault has issued the following service information.

- Dassault Mandatory Service Bulletin 7X–214, including New Standard Installation Checklist, dated August 30, 2011.
- Dassault Mandatory Service Bulletin 7X–214, Revision Erratum, dated January 26, 2012.
- Dassault Falcon 7X AFM, Revision 13, dated August 29, 2011.
- FCS Data Loading Procedure, Reference DT EQUIP 43913, Issue D, dated May 28, 2010.
- Chapter 5–40–00, Airworthiness Limitations, of the Falcon 7X Maintenance Manual DGT 107838, Revision 2, dated August 25, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

## Explanation of Changes Made to This NPRM

We have revised the heading and wording for paragraph (h) of this

proposed AD; this change does not affect the intent of that paragraph.

We have deleted note 2 to paragraph (l) of AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011). Instead, we have included that information in paragraph (l)(2) of this proposed AD.

We have deleted note 3 of AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011). Instead, we have included that information in paragraph (n) of this proposed AD.

## 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.

This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to the procedures specified in paragraph (s) of this proposed AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

## Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 30 products of U.S. registry.

The actions that are required by AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011), and retained in this proposed AD take about 340 work-hours per product, at an average labor rate of $85 per work hour. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, the estimated cost of the currently required actions is $28,900 product.

We estimate that it would take about 11 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $28,050, or $935 per product.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011), and adding the following new AD:

**Dassault Aviation:** Docket No. FAA–2013–0464; Directorate Identifier 2012–NM–010–AD.

**(a) Comments Due Date**

We must receive comments by August 19, 2013.

**(b) Affected ADs**

This AD supersedes AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011).

**(c) Applicability**

This AD applies to all Dassault Aviation Model FALCON 7X airplanes, certificated in any category, all serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 27, Flight controls.

**(e) Reason**

This AD was prompted by an uncontrolled pitch trim runaway during descent. We are issuing this AD to prevent an uncontrolled pitch trim runaway, which could result in loss of control of the airplane.

**(f) Compliance**

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

**(g) Retained Modification**

This paragraph restates the requirements of paragraph (g) of AD 2011–16–01, Amendment 39–16759 (76 FR47424, August 5, 2011). Before further flight, do the applicable actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) For airplanes on which Dassault Mandatory Service Bulletin 7X–211, Revision 1, dated June 14, 2011, has not been done as

of August 22, 2011 (the effective date of AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011)): Modify the airplane by adding an automatic reversion logic and a means for the pilot to override pitch trim control normal modes, and install placards in the cockpit in full view of the pilots, in accordance with paragraph 2., ''Accomplishment Instructions for Aircraft which have not Already Implemented the Revision 1 of the Service Bulletin,'' of Dassault Mandatory Service Bulletin 7X–211, Revision 2, including New Standard Installation Checklist and Appendix A, dated June 22, 2011, including FCS Data Loading Procedure, Issue D, dated May 28, 2010.

(2) For airplanes on which Dassault Mandatory Service Bulletin 7X–211, Revision 1, dated June 14, 2011, has been done as of August 22, 2011 (the effective date of AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011)): Replace the frame of the emergency switch box, in accordance with paragraph 3., ''Accomplishment Instructions for Aircraft which have Already Implemented Revision 1 of this Service Bulletin,'' of Dassault Mandatory Service Bulletin 7X–211, Revision 2, including New Standard Installation Checklist and Appendix A, dated June 22, 2011, including FCS Data Loading Procedure, Issue D, dated May 28, 2010.

(3) For airplanes equipped with any horizontal stabilizer electronic control unit (HSECU) P/N 051244–04, replace the HSECU with any HSECU identified in paragraph (g)(3)(i), (g)(3)(ii), or (g)(3)(iii) of this AD, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–212, Revision 2, dated July 7, 2011.

(i) HSECU P/N 051244–02.

(ii) Verified HSECU P/N 051244–04 having a stamped ''V.''

(iii) HSECU P/N 051244–05.

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

This paragraph restates the provisions specified in paragraph (h) of AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011). This paragraph provides credit for the HSECU replacement required by paragraph (g)(3)(i) or (g)(3)(ii) of this AD, if those replacements were performed before August 22, 2011 (the effective date of AD 2011–16–01), using Dassault Mandatory Service Bulletin 7X–212, Revision 1, dated June 23, 2011, which is not incorporated by reference in this AD.

**(i) Retained Revision of Airplane Flight Manual (AFM)**

This paragraph restates the requirements of paragraph (i) of AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011). As of August 22, 2011 (the effective date AD 2011–16–01), operate the airplane according to the limitations and procedures in the Dassault Falcon 7X AFM, Revision 12, dated June 16, 2011, until the actions required by paragraph (p) of this AD are accomplished. Revision 12 introduces revised operational speed limitations and revised procedures accounting for the new TRIM EMERG button.

**(j) Retained Electronic Checklist Database Installation**

This paragraph restates the requirements of paragraph (j) of AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011). Before further flight, install the electronic checklist V0007 database, in accordance with the Accomplishment Instructions of Dassault Service Bulletin 7X–213, dated June 22, 2011. Accomplishment of the actions required in paragraph (o) of this AD terminates the actions required by paragraph (j) of this AD.

**(k) Retained Operating Restrictions**

This paragraph restates the requirements of paragraph (k) of AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011). Before further flight, revise the Limitations section of the Dassault Falcon 7X AFM to include the information provided in Figure 1 to paragraph (k) of this AD. This may be accomplished by inserting a copy of Figure 1 to paragraph (k) of this AD into the AFM. Accomplishment of the actions required in paragraph (p) of this AD terminates the actions required by paragraph (k) of this AD.

Figure 1 to Paragraph (k) of This AD

Dispatch with any inoperative equipment identified below is prohibited. This prohibition takes precedence over the FAA master minimum equipment list (MMEL) or any operator's MEL.

Air data systems (identified as MEL item 34–9)

Multi functional probe (MFP) heating system (identified as MMEL item 30–1)

ACMU3 and ACMU4 (identified as MMEL item 27–3)

LH REAR POWER #3 (identified as MMEL item 27–5–(–6)

Back-up mode (identified as MMEL item 27–8)

**(l) Retained Maintenance Program Revision**

This paragraph restates the requirements of paragraph (l) of AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011).

(1) Within 30 days after August 22, 2011 (the effective date of AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011)), revise the maintenance program to incorporate Maintenance Planning Document (MPD) Task 27–40–00–710–801, as specified in Dassault Aviation, Falcon 7X Maintenance Manual (MM), Falcon 7X—Chapter 5–40–00 after Rev 01, dated June 10, 2011 (commonly referred to as Dassault Change Proposal (CP) CP009 to Chapter 5–40–00 of Dassault Falcon 7X MM). The initial compliance time for doing the operational test of the HSTS electric motors reversion relays is 1,850 flight hours after accomplishment of the applicable actions required by paragraph (g) of this AD. Accomplishment of the actions required in paragraph (q) of this AD terminates the actions required by paragraph (l) of this AD.

(2) The MM revision required by paragraph (l) of this AD may be done by inserting a copy of Dassault CP CP009, dated June 10, 2011, to Chapter 5–40–00 of Dassault Falcon 7X MM into the MM. When Dassault CP CP009 has been included in general revisions of the MM, the general revisions may be inserted into the MM, provided the relevant information in the general revision is identical to that in Dassault CP CP009, and Dassault CP CP009 may be removed.

**(m) Retained Limitations for Alternative Procedures or Intervals**

This paragraph restates the requirements of paragraph (m) of AD 2011–16–01, Amendment 39–16759 (76 FR47424, August 5, 2011). After the maintenance program has been revised as required by paragraph (l) of this AD, no alternative procedure or interval for the operational test may be used unless the procedure and/or interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (s) of this AD.

**(n) Retained FAA AD Differences**

This paragraph restates the AD differences identified by Note 3 of AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011). This AD differs from the mandatory continuing airworthiness information (MCAI) and/or service information as follows:

(1) European Aviation Safety Agency (EASA) AD 2011–0114R2 requires repetitive operational tests of the HSTS electric motors reversion relays, and specifies that the aircraft maintenance program may be revised in lieu of those repetitive tests. This FAA AD mandates revising the maintenance program.

(2) EASA AD 2011–0114R2 does not include any requirement to revise the electronic checklist. Paragraph (j) of this FAA AD requires this action.

(3) EASA AD 2011–0114R2 mandates amending the minimum equipment list (MEL) by removing certain items. This FAA AD instead requires revising the AFM to prohibit dispatch with those items inoperative. The operational effect, however, is the same.

**(o) New Fly-By-Wire System Modification**

Within 12 months after accomplishing the actions required by paragraph (g) of this AD or within 9 months after the effective date of this AD, whichever is later: Modify the fly-by-wire system installed in the airplane to the 2.1.7.3 standard, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–214, dated August 30, 2011, as revised by Dassault Mandatory Service Bulletin 7X–214, Revision Erratum, dated January 26, 2012. Accomplishment of the actions required in paragraph (o) of this AD terminates the actions required by paragraph (j) of this AD.

**(p) New AFM Revision**

After accomplishing the actions required by paragraph (o) of this AD: Operate the airplane thereafter according to the limitations and procedures specified in Dassault Falcon 7X AFM, Revision 13, dated August 29, 2011. Accomplishment of the actions required by this paragraph terminates the requirements of paragraphs (i) and (k) of this AD; thereafter, the AFM limitation required by paragraph (k) of this AD may be removed from the AFM.

**(q) New Maintenance Program Revision**

Within 30 days after the effective date of this AD: Revise the maintenance program to

incorporate Chapter 5–40–00, Airworthiness Limitations, of the Dassault Falcon 7X MM DGT 107838, Revision 2, dated August 25, 2011, into the MM.

(1) The initial compliance time for the operational test of the HSTS trim emergency command is within 650 flight hours after the modification required by paragraph (o) of this AD.

(2) The initial compliance time for the operational test of the HSTS electric motors reversion relays is within 5,050 flight hours after the modification required by paragraph (o) of this AD.

(3) Accomplishment of the actions required in paragraph (q) of this AD terminates the actions required by paragraph (l) of this AD.

**(r) New Limitations for Alternative Actions or Intervals**

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

**(s) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, Transport Airplane Directorate, ANM–116, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2011–16–01, Amendment 39–16759 (76 FR 47424, August 5, 2011), are approved as AMOCs for the corresponding provisions of this AD.

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

**(t) Related Information**

(1) Refer to MCAI EASA Airworthiness Directive 2011–0241, dated December 19, 2011, and the service information specified in paragraphs (t)(1)(i) though (t)(1)(ix) of this AD.

(i) Chapter 5–40–00, Airworthiness Limitations, of the Dassault Falcon 7X MM DGT 107838, Revision 2, dated August 25, 2011.

(ii) Dassault Change Proposal CP009 to Chapter 5–40- 00 of Dassault Falcon 7X Maintenance Manual), dated June 10, 2011.

(iii) Dassault Falcon 7X Airplane Flight Manual, Revision 12, dated June 16, 2011.

(iv) Dassault Falcon 7X Airplane Flight Manual, Revision 13, dated August 29, 2011.

(v) Dassault Mandatory Service Bulletin 7X–211, Revision 2, including New Standard Installation Checklist and Appendix A, dated June 22, 2011, including FCS Data Loading Procedure, Issue D, dated May 28, 2010.

(vi) Dassault Mandatory Service Bulletin 7X–212, Revision 2, dated July 7, 2011.

(vii) Dassault Mandatory Service Bulletin 7X–214, dated August 30, 2011.

(viii) Dassault Mandatory Service Bulletin 7X–214, Revision Erratum, dated January 26, 2012.

(ix) Dassault Service Bulletin 7X–213, dated June 22, 2011.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 14, 2013.

**Ali Bahrami,**

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

[FR Doc. 2013–15949 Filed 7–2–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2013–0539; Directorate Identifier 2012–NM–145–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** We propose to supersede airworthiness directive (AD) 2000–12–11, that applies to certain Model A300 B4–600 and Model A300 B4–600R series airplanes. That AD currently requires repetitive inspections to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair if necessary. Since we issued that AD, we have determined through a fleet survey and an updated fatigue and damage tolerance analysis that the risk for fatigue cracking on the front and rear spar bottom booms is higher than was initially determined. This proposed AD would reduce the initial inspection compliance time and repetitive inspection interval. We are proposing this AD to detect and correct fatigue cracks in the bolt holes of the wing spars, which could result in reduced structural integrity of a wing spar.

**DATES:** We must receive comments on this proposed AD by August 19, 2013.

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

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

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

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 227–2125; fax: (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0539; Directorate Identifier 2012–NM–145–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

## Discussion

On June 9, 2000, we issued AD 2000–12–11, Amendment 39–11789 (65 FR 37853, June 19, 2000). That AD requires actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2000–12–11, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0138, dated July 26, 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:

> Full fatigue tests carried out by the manufacturer revealed crack initiation from the bolts holes at inboard and outboard of rib 9, on the front and rear spar bottom booms. Similar cracks at the same area were reported by A300–600 aeroplane operators.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> To address this unsafe condition, [Direction Générale de l'Aviation Civile] DGAC France issued AD 94–208–169(B)R2 [which corresponds to FAA AD 95–07–05 Amendment 39–9187 (60 FR 17990, April 10, 1995)] to require an ultrasonic inspection of holes inboard and outboard of rib 9 on the front and rear spar bottom booms on Left Hand and Right Hand wings.
>
> Since that [DGAC] AD was issued, a fleet survey and updated Fatigue and Damage Tolerance analysis have been performed in order to substantiate the second A300–600 Extended Service Goal (ESG2) exercise. The results of these analyses have shown that the risk for these aeroplanes is higher than initially determined and that, consequently, the inspection threshold and interval must be reduced to allow timely detection of cracks and the accomplishment of an applicable corrective action [and related investigative action].
>
> For the reasons explained above, this new [EASA] AD retains the requirements of DGAC France AD 94–208–169(B)R2, which is superseded, and requires the accomplishment instructions within the new thresholds and intervals specified in Revision 04 of Airbus Mandatory Service Bulletin (SB) A300–57–6037 [dated February 24, 2011].

The related investigative action includes doing inspections for cracking. The corrective actions include oversizing holes and installing new fasteners, and for certain conditions, contacting the FAA or EASA (or its delegated agent) for instructions. You may obtain further information by examining the MCAI in the AD docket.

## Relevant Service Information

Airbus has issued Mandatory Service Bulletin A300–57–6037, Revision 04, dated February 24, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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

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

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

Airbus Mandatory Service Bulletin A300–57–6037, Revision 04, dated February 24, 2011, 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 the FAA or the EASA (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by the FAA or the EASA (or its delegated agent) would be acceptable for compliance with this proposed AD.

## Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 29 products of U.S. registry.

We estimate that it would take about 18 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $2,874 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $127,716, or $4,404 per product.

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

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2000–12–11, Amendment 39–11789 (65 FR 37853, June 19, 2000), and adding the following new AD:

**Airbus:** Docket No. FAA–2013–0539; Directorate Identifier 2012–NM–145–AD.

**(a) Comments Due Date**

We must receive comments by August 19, 2013.

**(b) Affected ADs**

This AD supersedes AD 2000–12–11, Amendment 39–11789 (65 FR 37853, June 19, 2000).

**(c) Applicability**

This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R and B4–622R airplanes; certificated in any category; all manufacturer serial numbers, except airplanes on which Airbus Modification 10161 has been incorporated in production.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by a fleet survey and an updated fatigue and damage tolerance analysis indicating a high risk for fatigue cracking on the front and rear spar bottom booms. We are issuing this AD to detect and correct fatigue cracks in the bolt holes of the wing spars, which could result in reduced structural integrity of a wing spar.

**(f) Compliance**

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

**(g) Repetitive Inspections**

At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Perform an ultrasonic inspection to detect fatigue cracking of the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, in accordance with the Accomplishment Instruction of Airbus Mandatory Service Bulletin A300–57–6037, Revision 04, dated February 24, 2011, except as specified in paragraph (k) of this AD. Repeat the inspection thereafter at intervals not to exceed the applicable time specified in paragraph (h) of this AD.

(1) For normal range airplanes, at the later of the times in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Within 14,100 flight cycles or 30,400 flight hours since airplane first flight or within 14,100 flight cycles or 30,400 flight hours since airplane modification done as specified in the Accomplishment Instructions of Airbus Service Bulletin A300–57–6039, whichever occurs first.

(ii) Within 1,600 flight cycles or 3,400 flight hours, whichever occurs first after the effective date of this AD.

(2) For short range airplanes, at the later of the times in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Within 15,200 flight cycles or 22,800 flight hours since airplane first flight, or since airplane modification done as specified in the Accomplishment Instructions of Airbus Service Bulletin A300–57–6039, whichever occurs first.

(ii) Within 1,700 flight cycles or 2,500 flight hours, whichever occurs first after the effective date of this AD.

**(h) Repetitive Inspection Compliance Times**

At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, repeat the inspection required by paragraph (g) of this AD.

(1) For normal range airplanes: Repeat the inspection thereafter at intervals not to exceed 3,900 flight cycles or 8,400 flight hours, whichever occurs first.

(2) For short range airplanes: Repeat the inspection thereafter at intervals not to exceed 4,200 flight cycles or 6,300 flight hours, whichever occurs first.

**(i) Corrective Action for Cracking**

If any crack is found during any inspection required by paragraph (g) of this AD: Before further flight, repair the cracking including applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–6037, Revision 04, dated February 24, 2011, except as specified in paragraph (k) of this AD. Do related investigative and corrective actions before further flight. Thereafter, repeat the inspection required by paragraph (g) of this AD at intervals not to exceed the applicable time specified in paragraph (h) of this AD. Corrective actions required by this paragraph do not constitute terminating action for the repetitive inspections required by paragraph (h) of this AD.

**(j) Definition of Short Range and Long Range Airplanes**

For purposes of this AD, short range airplanes are those with an average flight time lower than 1.5 flight hours, and normal range airplanes are those with an average flight time equal to or higher than 1.5 flight hours.

**(k) Exception to Service Information**

Where the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–6037, Revision 04, dated February 24, 2011, specify contacting Airbus for an approved repair: Before further flight, contact either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent), for instructions and do those instructions.

**(l) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using any of the service bulletins specified in paragraphs (l)(1) through (l)(4) of this AD.

(1) Airbus Mandatory Service Bulletin A300–57–6037, dated August 1, 1994.

(2) Airbus Mandatory Service Bulletin A300–57–6037, Revision 01, dated August 31, 1995.

(3) Airbus Mandatory Service Bulletin A300–57–6037, Revision 02, dated January 9, 2001.

(4) Airbus Mandatory Service Bulletin A300–57–6037, Revision 03, dated January 11, 2002.

**(m) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

(3) AMOCs Approved Previously: AMOCs approved previously in accordance with AD 2000–12–11, Amendment 39–11789 (65 FR 37853, June 19, 2000), are approved as AMOCs for the corresponding provisions of this AD.

**(n) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency Airworthiness Directive 2012–0138, dated July 26, 2012, and the service information specified in paragraphs (m)(1)(i) through (m)(1)(iii) of this AD; for related information.

(i) Airbus Mandatory Service Bulletin A300–57–6037, Revision 04, dated February 24, 2011.

(ii) Airbus Service Bulletin A300–57–6037, dated August 1, 1994.

(iii) Airbus Service Bulletin A300–57–6037, Revision 01, dated August 31, 1995.

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

Issued in Renton, Washington, on June 18, 2013.

**John Piccola,**

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

[FR Doc. 2013–15959 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2013–0573; Directorate Identifier 2012–SW–042–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Helicopters

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain serial-numbered Eurocopter France (Eurocopter) Model AS332C1 and AS332L1 helicopters. This proposed AD would require replacing the rivets on the left-hand (LH) and right-hand (RH) Y350 longitudinal beams (longitudinal beams Y350). This proposed AD is prompted by a report that non-conforming rivets had been installed on an AS332 helicopter during a production modification. The proposed actions are intended to prevent failure of the longitudinal beams Y350 and subsequent loss of control of the helicopter.

**DATES:** We must receive comments on this proposed AD by September 3, 2013.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD No.: 2012–0046–E, dated March 21, 2012 (EAD 2012–0046–E), to correct an unsafe condition for Eurocopter Model AS332 C1 and AS332 L1 helicopters. EASA advises that an AS332 helicopter was found on the production line with non-conforming rivets installed on the RH and LH longitudinal beams Y350 of the bottom structure of the fuselage, between sections X4780 and X5295. According to EASA, the investigation revealed that a limited number of helicopters were documented as receiving a production modification requiring the replacement of certain 3.2 mm rivets with 4.8 mm rivets, but the actual replacement of the rivets had not been performed. EASA states that this condition leads to significant reduction in the safety margins during sling operations and may cause failure of the web/flange assembly connections of the longitudinal beams Y350, possibly resulting in loss of control of the helicopter. For these reasons, EASA issued EAD 2012–0046–E, which, pending inspection of the helicopter beams Y350 and replacement of the affected rivets, prohibits sling operations or limits the 3-ton sling to external loads of 2.28 tons or less.

### FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral

agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

**Related Service Information**

We reviewed Eurocopter Emergency Alert Service Bulletin No. 01.00.81 Revision 0, dated March 19, 2012 (EASB 01.00.81) for Model AS332 helicopters. The EASB describes procedures for temporarily prohibiting sling operations or limiting the use of the 3-ton sling to 2.28 tons until the 3.2 mm diameter rivets are replaced with 4.8 mm diameter rivets.

**Proposed AD Requirements**

This proposed AD would require, within 10 hours time in service (TIS), replacing the non-conforming 3.2 mm rivets, part-number (P/N) 212 15DC 3200J, on the longitudinal beams Y350 with airworthy 4.8 mm rivets, P/N 212 15DC 4800J.

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

The EASA AD requires limiting the use of the 3-ton sling, inspecting the longitudinal beams Y350 for loose or missing rivets, black marks around the rivets, and cracks, and, depending on the accumulated sling operation cycles, replacing the rivets within a period of up to 24 months. This proposed AD does not require the inspections as it would require replacing the rivets within 10 hours TIS, regardless of accumulated sling operation cycles.

**Costs of Compliance**

We estimate that this proposed AD would affect 1 helicopter of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Modifying the longitudinal beams Y350 with 4.8 mm rivets would require about 24 work-hours at an average labor rate of $85 per hour and required parts would cost about $110, for a total cost per helicopter of $2,150. Thus, the total cost to U.S. operators to comply with the proposed AD would be about $2,150.

**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, I certify this proposed regulation:

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

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

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

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

We prepared an economic 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 airworthiness directive (AD):

**Eurocopter France:** Docket No. FAA–2013–0573; Directorate Identifier 2012–SW–042–AD.

**(a) Applicability**

This AD applies to Eurocopter France Model AS332C1 and AS332L1 helicopters with the following serial numbers, certificated in any category: 2494, 2497, 2499, 2501, 2507, 2510, 2513, 2517, 2523, 2524, 2526, 2528, 2531, 2533, 2538, 2544, 2546, 2548, 2550, 2553, 2556, 2558, 2561, 2563, 2566, 2568, 2569, 2571, 2635, 2641, 2644, 2649, 2652, 2657, 2665, 2667, 2669, 2671, 2682, 2683, 2686, 2689, 2694, 2696, 2700, 2704, 2705, 2706, 2710, 2713, 2717, 2720, 2726, 2733, 2737, 2738, 2748, 2751, 2754, 2757, 2758, 2761, 2763, 2765, 2774, 2780, 2787, 2800, 2807, 2816, 2820, 2833, 9007, 9008, 9009 and 9010.

**(b) Unsafe Condition**

This AD defines the unsafe condition as non-conforming rivets installed on the left-hand (LH) and right-hand (RH) Y350 longitudinal beams (longitudinal beams Y350) of the bottom structure. This condition could result in failure of the web/flange assembly connections of the longitudinal beams Y350 and subsequent loss of control of the helicopter.

**(c) Comments Due Date**

We must receive comments by September 3, 2013.

**(d) Compliance**

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

**(e) Required Actions**

Within 10 hours time-in-service, replace the 3.2 mm rivets, part-number (P/N) 21215DC3200J, of the RH and LH longitudinal beams Y350 of the bottom structure with 4.8 mm rivets, P/N 21215DC4800J, as shown in Figures 2 and 3 of Eurocopter Emergency Alert Service Bulletin No. 01.00.81, Revision 0, dated March 19, 2012.

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

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(g) Additional Information**

The subject of this AD is addressed in European Aviation Safety Agency (EASA) Emergency AD No.: 2012–0046–E, dated March 21, 2012. You may view the EASA AD at *www.regulations.gov* in Docket No. FAA–2013–0573.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 5314: Fuselage Main, Keel.

Issued in Fort Worth, Texas, on June 21, 2013.

**Kim Smith,**

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

[FR Doc. 2013–15964 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0465; Directorate Identifier 2012–NM–085–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 Model A318, A319, A320, and A321 series airplanes. This proposed AD was prompted by a determination that oxygen generators installed on a certain batch of passenger emergency oxygen container assemblies might become detached by extreme pulling of the mask tube at the end of oxygen supply causing a high temperature oxygen generator and mask to fall down. This proposed AD would require modifying the passenger emergency oxygen container assembly. We are proposing this AD to prevent a high temperature oxygen generator and mask from falling down and possibly resulting in an ignition source in the passenger compartment, injury to passengers, and reduced availability of supplemental oxygen.

**DATES:** We must receive comments on this proposed AD by August 19, 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;* 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–2013–0465; Directorate Identifier 2012–NM–085–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 2012–0055, dated April 3, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It has been determined that oxygen generators, installed on a specific batch of Type 1 (22 minute) passenger emergency oxygen container assemblies, may become detached by extreme pulling of the mask tube at the end of oxygen supply. Investigations revealed that such detachment can be caused by the increase in temperature towards the end of the generator operation, which may weaken the plastic housing in the attachment area of the bracket.
>
> This condition, if not corrected, could make the rivets slip through the plastic housing, causing a 'hot' oxygen generator and mask to fall down, possibly resulting in injury to passengers.
>
> For the reasons described above, this [EASA] AD requires modification of the affected oxygen container assemblies. This [EASA] AD also prohibits the installation of the affected (unmodified) containers on any aeroplane as replacement parts.

The modification consists of adding a reinforcement plate at the rear outside of the container and adding two washers to the rivets at the inside of the container to prevent the generator from detaching. You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Airbus has issued the following service bulletins.

- Service Bulletin A320–35–1049, dated June 15, 2011.
- Service Bulletin A320–35–1053, dated June 15, 2011.
- Service Bulletin A320–35–1054, dated June 15, 2011.
- Service Bulletin A320–35–1055, dated June 15, 2011.
- Service Bulletin A320–35–1056, dated June 15, 2011.
- Service Bulletin A320–35–1057, dated June 15, 2011.
- Service Bulletin A320–35–1058, dated June 15, 2011.

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

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

This product has been approved by the aviation authority of another

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 4 products of U.S. registry. We also estimate that it would take about 2 work-hours per oxygen container assembly to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $680 per oxygen container assembly.

**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–2013–0465; Directorate Identifier 2012–NM–085–AD.

**(a) Comments Due Date**

We must receive comments by August 19, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 35, Oxygen.

**(e) Reason**

This AD was prompted by a determination that oxygen generators, installed on a certain batch of passenger emergency oxygen container assemblies, might become detached by extreme pulling of the mask tube at the end of oxygen supply causing a high temperature oxygen generator and mask to fall down. We are issuing this AD to prevent a high temperature oxygen generator and mask from falling down and possibly resulting in an ignition source in the passenger compartment, injury to passengers, and reduced availability of supplemental oxygen.

**(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) Oxygen Container Assembly Modification**

Except as specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, within 5,000 flight cycles, or 7,500 flight hours, or 24 months, whichever occurs first after the effective date of this AD: Modify each type 1 (22 minute) passenger emergency oxygen container assembly installed on an airplane, having a part number (P/N) listed in paragraph (g)(1)(i) of this AD and a serial number (S/N) listed in paragraph (g)(1)(ii) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–35–1049, dated June 15, 2011; Airbus Service Bulletin A320–35–1053, dated June 15, 2011; Airbus Service Bulletin A320–35–1054, dated June 15, 2011; Airbus Service Bulletin A320–35–1055, dated June 15, 2011; Airbus Service Bulletin A320–35–1056, dated June 15, 2011; Airbus Service Bulletin A320–35–1057, dated June 15, 2011; or Airbus Service Bulletin A320–35–1058, dated June 15, 2011; as applicable.

(1) An oxygen container that has a part number listed in paragraph (g)(1)(i) of this AD and a serial number as listed in paragraph (g)(1)(ii) of this AD, and that has been modified in accordance with the instructions of B/E Aerospace Service Bulletin 1XC22–0100–35–006, is compliant with the modification requirement of paragraph (g) of this AD.

(i) Oxygen container part numbers listed in paragraphs (g)(1)(i)(A) through (g)(1)(i)(D) of this AD, where xxxx stands for and alphanumerical value.

(A) 13C22Lxxxxx0100.
(B) 13C22Rxxxxx0100.
(C) 14C22Lxxxxx0100.
(D) 14C22Rxxxxx0100

(ii) Oxygen container serial numbers listed in paragraphs (g)(1)(ii)(A) through (g)(1)(i)(H) of this AD.

(A) ARBC–0182 to ARBC–9999, inclusive.
(B) ARBD–0000 to ARBD–9999, inclusive.
(C) ARBE–0000 to ARBE–9999, inclusive.
(D) BEBF–0000 to BEBF–9999, inclusive.
(E) BEBH–0000 to BEBH–9999, inclusive.
(F) BEBK–0000 to BEBK–9999, inclusive.
(G) BEBL–0000 to BEBL–9999, inclusive.
(H) BEBM–0000 to BEBM–0454, inclusive.

(2) Airplanes on which Airbus modification 150704 has not been embodied in production are excluded from the requirements of paragraph (g) of this AD, unless an oxygen container with a part number listed in paragraph (g)(1)(i) of this AD and a serial number listed in paragraph (g)(1)(ii) of this AD is installed.

(3) Airplanes on which Airbus modification 150704 has been embodied in production and that are not listed by model and manufacturer serial number in Airbus Service Bulletin A320–35–1049, dated June 15, 2011; Airbus Service Bulletin A320–35–1053, dated June 15, 2011; Airbus Service Bulletin A320–35–1054, dated June 15, 2011; Airbus Service Bulletin A320–35–1055, dated June 15, 2011; Airbus Service Bulletin A320–35–1056, dated June 15, 2011; Airbus Service Bulletin A320–35–1057, dated June 15, 2011; or Airbus Service Bulletin A320–35–1058, dated June 15, 2011; as applicable, are excluded from the requirements of paragraph (g) of this AD, unless an oxygen container with a part number listed in paragraph (g)(1)(i) of this AD and a serial number listed in paragraph (g)(1)(ii) of this AD is installed.

**Note 1 to paragraph (g) of this AD:** The oxygen container assemblies listed in paragraph (g)(1)(i) of this AD and paragraph (g)(1)(ii) of this AD are B/E Aerospace products with the mark ''B/E AEROSPACE'' on the identification plate.

**(h) Parts Installation Limitation**

As of the effective date of this AD, no person may install, on any airplane, an oxygen container with a part number listed in paragraph (g)(1)(i) of this AD, and serial number listed in paragraph (g)(1)(ii) of this AD, unless the oxygen container has been modified according to Airbus Service Bulletin A320–35–1049, dated June 15, 2011; Airbus Service Bulletin A320–35–1053, dated June 15, 2011; Airbus Service Bulletin A320–35–1054, dated June 15, 2011; Airbus Service Bulletin A320–35–1055, dated June 15, 2011; Airbus Service Bulletin A320–35–1056, dated June 15, 2011; Airbus Service Bulletin A320–35–1057, dated June 15, 2011; or Airbus Service Bulletin A320–35–1058, dated June 15, 2011; as applicable.

**(i) 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.* 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.

**(j) Related Information**

(1) Refer to MCAI EASA Airworthiness Directive 2012–0055, dated April 3, 2012; and the following service bulletins; for related information.

(i) Airbus Service Bulletin A320–35–1049, dated June 15, 2011.

(ii) Airbus Service Bulletin A320–35–1053, dated June 15, 2011.

(iii) Airbus Service Bulletin A320–35–1054, dated June 15, 2011.

(iv) Airbus Service Bulletin A320–35–1055, dated June 15, 2011.

(v) Airbus Service Bulletin A320–35–1056, dated June 15, 2011.

(vi) Airbus Service Bulletin A320–35–1057, dated June 15, 2011.

(vii) Airbus Service Bulletin A320–35–1058, dated June 15, 2011.

(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;* 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.

Issued in Renton, Washington, on June 14, 2013.

**Ali Bahrami,**

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

[FR Doc. 2013–15950 Filed 7–2–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0457; Airspace Docket No. 13–AWP–5]**

## Proposed Establishment and Modification of Class E Airspace; Oakland, CA

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

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

**SUMMARY:** This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Metropolitan Oakland International Airport, Oakland, CA. Controlled airspace is necessary to accommodate aircraft using the Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport. This action would also modify Class E surface airspace designated as an extension to Class C airspace by removing the navigation aids from the airspace designation. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

**DATES:** Comments must be received on or before August 19, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0457; Airspace Docket No. 13–AWP–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0457 and Airspace Docket No. 13–AWP–5) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0457 and Airspace Docket No. 13–AWP–5''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for

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

**Availability of NPRMs**

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

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

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

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Metropolitan Oakland International Airport, Oakland, CA, to accommodate aircraft using the RNAV (GPS) standard instrument approach procedures at the airport. This action would enhance the safety and management of aircraft operations at the airport. Also, for clarity for the Class E airspace designated as an extension to a Class C airspace area, the navigation aids would be removed from the regulatory text and replaced with airport reference points.

Class E airspace designations are published in paragraphs 6003 and 6005, respectively, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

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

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

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

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

*Paragraph 6003 Class E airspace designated as an extension to Class C surface areas.*

* * * * *

**AWP CA E3 Oakland, CA [Modified]**

Metropolitan Oakland International Airport, CA
(Lat. 37°43′17″ N., long. 122°13′15″ W.)

That airspace extending upward from the surface within 2.7 miles each side of the Metropolitan Oakland International Airport 110° bearing extending from the 5-mile radius of the airport to 9 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

**AWP CA E5 Oakland, CA [New]**

Metropolitan Oakland International Airport, CA
(Lat. 37°43′17″ N., long. 122°13′15″ W.)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Metropolitan Oakland International Airport and within 4 miles each side of the airport 305° bearing extending from the 9-mile radius of the airport to 26 miles northwest of the airport.

Issued in Seattle, Washington, on June 24, 2013.

**Clark Desing,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–16037 Filed 7–2–13; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2013–0517; Airspace Docket No. 13–ANM–15]**

## Proposed Establishment of Class E Airspace; Cody, WY

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

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

**SUMMARY:** This action proposes to establish Class E airspace at the Cody VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME) navigation aid, Cody, WY, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Salt Lake City Air Route Traffic Control Center (ARTCC). The FAA is proposing this action to enhance the safety and management of aircraft operations within the National Airspace System.

**DATES:** Comments must be received on or before August 19, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0517; Airspace Docket No. 13–ANM–15, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2013–0517 and Airspace Docket No. 13–ANM–15) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0517 and Airspace Docket No. 13–ANM–15''. The postcard will be date/time stamped and returned to the commenter.

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

### Availability of NPRM's

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

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

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

### The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface at the Cody VOR/DME navigation aid, Cody, WY. This action would contain aircraft while in IFR conditions under control of Salt Lake City ARTCC by vectoring aircraft from en route airspace to terminal areas.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

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

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

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

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

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

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

### § 71.1 [Amended]

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

*Paragraph 6006 En Route Domestic Airspace Areas.*

* * * * *

**ANM WY E6 Cody, WY [New]**

Cody VOR/DME, WY

(Lat. 44°37′14″ N., long. 108°57′54″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 44°09′15″ N., long. 110°08′46″ W.; to lat. 44°19′00″ N., long. 112°04′36″ W.; to lat. 44°39′25″ N., long. 111°52′32″ W.; to lat. 45°32′41″ N., long. 111°17′39″ W.; to lat. 45°34′50″ N., long. 109°56′10″ W.; to lat. 45°03′06″ N., long. 109°22′15″ W.; to lat. 44°43′20″ N., long. 108°52′32″ W.; to lat. 45°08′46″ N., long. 107°33′33″ W.; to lat. 46°00′00″ N., long. 106°58′05″ W.; to lat. 45°48′16″ N., long. 106°34′25″ W.; to lat. 44°38′58″ N., long. 106°53′16″ W.; to lat. 44°09′12″ N., long. 108°02′32″ W.; to lat. 42°52′37″ N., long. 107°47′58″ W.; to lat. 42°15′53″ N., long. 108°06′44″ W.; to lat. 41°26′15″ N., long. 109°19′46″ W.; to lat. 41°41′49″ N., long. 109°29′35″ W.; to lat. 43°09′38″ N., long. 110°26′52″ W., thence to the point of beginning.

Issued in Seattle, Washington, on June 24, 2013.

**Clark Desing,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–16033 Filed 7–2–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2013–0180]**

**RIN 1625–AA08**

## Special Local Regulations; Red Bull Flugtag Miami, Biscayne Bay; Miami, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a special local regulation on the waters of Biscayne Bay, east of Bayfront Park, in Miami, Florida, during the Red Bull Flugtag event. The Red Bull Flugtag is scheduled to take place on Saturday, September 21, 2013. The event consists of 30 participants launching self-propelled flying objects from a 30 foot ramp to the water below. The special local regulation is necessary to provide for the safety of the participants, spectators, and general public on the navigable waters of the United States during the event. The special local regulation will establish an event area, where non-participant vessels are prohibited from entering, transiting, anchoring, or remaining.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 19, 2013. Requests for public meetings must be received by the Coast Guard on or before August 2, 2013.

**ADDRESSES:** You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

(4) See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–7576, email *Mike.H.Wu@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

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

### A. Public Participation and Request for Comments

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

*1. Submitting Comments*

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

To submit your comment online, go to *http://www.regulations.gov*, type the docket number USCG–2013–0180 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

change the rule based on your comments.

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number USCG–2013–0180 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*3. Privacy Act*

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

*4. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**B. Basis and Purpose**

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to provide for the safety of life on navigable waters of the United States during the Red Bull Flugtag.

**C. Discussion of Proposed Rule**

On September 21, 2013, Red Bull North America is sponsoring the Red Bull Flugtag. The event will be held on the waters of Biscayne Bay, Miami, Florida. The event consists of 30 participants launching self-propelled flying objects from a 30ft ramp to the water below. Approximately 150 spectator vessels are expected to attend the event.

The proposed rule will establish a special local regulation that will encompass certain waters of Biscayne Bay, Miami, Florida. The special local regulation will be enforced from 10:00 a.m. until 6:00 p.m. on September 21, 2013. The special local regulation establishes the following event area, where non-participant vessels are prohibited from entering, transiting, anchoring, or remaining within.

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

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this proposed rule is not significant for the following reasons: (1) The special local regulation will be enforced for only eight hours; (2) although non-participant persons and vessels will not be able to enter, transit through, anchor in, or remain within the event area without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period; (3) non-participant persons and vessels may still enter, transit through, anchor in, or remain within the event area during the enforcement period if authorized by the Captain of the Port Miami or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Biscayne Bay encompassed within the special local regulation from 10:00 a.m. until 6:00 p.m. on September 21, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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

*3. Assistance for Small Entities*

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

*4. Collection of Information*

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

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have

analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children From Environmental Health Risks*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the creation of a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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

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

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

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add a § 100.35T07–0180 to read as follows:

**§ 100.35T07–0180 Special Local Regulation; Red Bull Flugtag, Biscayne Bay; Miami, FL.**

(a) *Regulated Area.* The following regulated area is established. All coordinates are North American Datum 1983.

(1) Event Area. All waters of Biscayne Bay, Miami, FL, between Bayfront Park and the Intercontinental-Miami Hotel encompassed within the following points: Starting at point 1 in position 25°46′32″ N, 80°11′06″ W; thence southeast to point 2 in position 25°46′30″ N, 80°11′04″ W; thence south to point 3 in position 25°46′26″ N, 80°11′04″ W; thence southwest to point 4 in position 25°46′25″ N, 80°11′06″ W; thence north back to origin.

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

(c) *Regulations.*

(1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the event area without authorization from the Captain of the Port Miami or a designated representative.

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

(d) *Effective/Enforcement Date.* This rule is effective and enforced from 10 a.m. until 6 p.m. on September 21, 2013.

Dated: June 5, 2013.

**C.P. Scraba,**

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

[FR Doc. 2013–16059 Filed 7–2–13; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2013–0418]**

**RIN 1625–AA00**

## Safety Zone; Antique Boat Show, Niagara River, Grand Island, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on Niagara River, Grand Island, NY. This proposed rule is intended to restrict vessels from a portion of the Niagara River during the Antique Boat Show powerboat races. The safety zone established by this proposed rule is necessary to protect spectators, participants, and vessels from the hazards associated with powerboat races.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 2, 2013.

**ADDRESSES:** You may submit comments identified by docket number USCG–2013–0418 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Delivery:* at the same as mail address above, deliveries are accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these three methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

## Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

## A. Public Participation and Request for Comments

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

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2013–0418), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when the comment is successfully transmitted. If you fax, hand deliver, or mail your comment, it will be considered received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2013–0418] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0418) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*3. Privacy Act*

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

*4. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

## B. Basis and Purpose

The Antique Boat Show is an annual event involving hydroplane and power boat races that has taken place over the last 36 years. The Antique Boat Show takes place on the Niagara River within a 2.5 mile course located near the Buffalo Launch Club in Grand Island, NY. Typically, the event takes place on the first or second Saturday of September. The Captain of the Port Buffalo has determined that hydroplane racing presents significant hazards to public spectators and participants.

## C. Discussion of the Proposed Rule

This proposed temporary safety zone is necessary to guard against the hazards mentioned in the preceding paragraph. The proposed safety zone will be effective and enforced from 9:30 a.m. until 4:30 p.m. on September 7, 2013. The proposed safety zone will encompass all waters of Niagara River, Grand Island, NY starting at position 42°59′59″ N, 078°56′22″ W, East to 49°59′54″ N, 078°56′14″ W, South to 42°57′54″ N, 078°56′04″ W, West to 42°057′48″ N, 078°56′22″ W. (NAD 83)

Entry into, transiting, or anchoring within the proposed safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

## D. Regulatory Analyses

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

*1. Regulatory Planning and Review*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this proposed rule will be relatively small and enforced for relatively short time. Also, the proposed safety zone is designed to minimize its impact on navigable waters. Furthermore, the proposed safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the proposed safety zone when permitted by the Captain of the Port.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed temporary final rule may affect the following entities, some of which might be small entities: the owners of operators of vessels intending to transit or anchor in a portion of the Niagara River near Grand Island, NY between 9:30 a.m. to 4:30 p.m. on September 7, 2013.

This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this proposed rule will be in effect for only a few hours and the proposed safety zone will allow vessels to move freely around the proposed safety zone on the Niagara River. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

*3. Assistance for Small Entities*

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Unfunded Mandates Reform Act*

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

*7. Taking of Private Property*

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

*8. Civil Justice Reform*

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

*9. Protection of Children From Environmental Health Risks*

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

*10. Indian Tribal Governments*

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

*11. Energy Effects*

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

*12. Technical Standards*

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

*13. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on

the human environment. This proposed rule is categorically excluded, under figure 2–1, paragraph (34) (g), of the Commandant Instruction because it involves the establishment of a safety zone.

A preliminary environmental analysis checklist and a preliminary categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0418 to read as follows:

### § 165.T09–0418 Safety Zone; Antique Boat Festival, Niagara River, Grand Island, NY

*(a) Location.* The safety zone will encompass all waters of the Niagara River, Grand Island, NY starting at position 42°59′59″ N, 078°56′22″ W, East to 42°59′54″ N, 078°56′14″ W, South to 42°57′54″ N, 078°56′04″ W, West to 42°057′48″ N, 078°56′22″ W. (NAD 83).

*(b) Effective and Enforcement Period.* This regulation is effective and will be enforced on September 7, 2013, from 9:30 a.m. until 4:30 p.m.

*(c) Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 14, 2013.

**S.M. Wischmann,**

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

[FR Doc. 2013–16053 Filed 7–2–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF EDUCATION

## 34 CFR Chapter II

## Proposed Requirement—Migrant Education Program Consortium Incentive Grant Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Proposed requirement.

[CFDA Number 84.144F]

**SUMMARY:** The Assistant Secretary for Elementary and Secondary Education proposes to change the maximum duration of grants awarded to State educational agencies (SEAs) under the Migrant Education Program (MEP) Consortium Incentive Grant (CIG) Program from two years to three years. We take this action to allow participating SEAs to have an additional year to conduct needed activities, evaluate their projects, and provide a final report addressing their success in completing project activities and achieving the objectives and outcomes that were established in their approved CIG program application.

**DATES:** We must receive your comments on or before August 2, 2013.

**ADDRESSES:** Address all comments concerning this notice to: Lisa Gillette, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E313, Washington, DC 20202–6135.

If you prefer to send your comments by email, use the following address: *lisa.gillette@ed.gov*. You must include the term ''CIG-Duration'' in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Lisa Gillette. Telephone: (202) 260–1426, or by email: *lisa.gillette@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** *Invitation to Comment:* We invite you to submit comments regarding this notice.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed requirement. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 3E313, 400 Maryland Avenue, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Purpose of Program:* The MEP, authorized in title I, part C, section 1301 *et seq.* of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6391 *et seq.*), is a State-operated and State-administered formula grant program. The MEP helps SEAs support high-quality and comprehensive educational programs that do two things: provide migratory children with appropriate educational and supportive services that address their special needs in a coordinated and efficient manner, and give migratory children the opportunity to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet.

One component of the MEP is the CIG program, authorized in section 1308(d) of the ESEA (20 U.S.C. 6398(d)). Through the MEP CIG program, the Department provides financial incentives to SEAs to participate in

high-quality consortia that improve the interstate or intrastate coordination of migrant education programs by addressing key needs of migratory children who have their education interrupted.

**Program Authority:** 20 U.S.C. 6398.

*Applicable Program Regulations:* 34 CFR part 200, subpart C.

**Proposed Requirement**

This notice contains one proposed requirement.

*Duration of Consortium Incentive Grants*

*Background:* The Department published a notice of final requirements for the MEP CIG Program in the **Federal Register** on March 3, 2004 (69 FR 10110) (2004 Notice), and we have used these final requirements for CIG competitions since fiscal year (FY) 2004. The 2004 Notice contained basic requirements that govern CIG applications, established seven priorities that applicants must address, established a two-tiered funding formula (based on the size of the SEA's MEP formula grant) to determine the amount of the award the Department will make to SEAs that belong to consortia selected for an award, and authorized participating SEAs to use these funds to augment their MEP formula grant award. We subsequently published a notice of final priority for the MEP CIG program in the **Federal Register** on March 12, 2008 (73 FR 13217), in which we added an eighth priority.

The 2004 Notice also established a project period of up to two years for grants awarded under the MEP CIG program. Grantees are required under the 2004 Notice and 34 CFR 75.118 and 75.590 of the Education Department General Administrative Regulations (EDGAR) to submit a performance report (through the consortium's lead State) toward the end of the first project year and a final summary evaluation report at the end of the second project year. These reports must address the participating SEAs' completion of activities and attainment of objectives of the approved consortium. We explained in the 2004 Notice that we would not conduct a new incentive grant competition in FY 2005 but would make second-year continuation funding contingent on the SEAs' substantial completion of first-year consortium activities and attainment of the outcomes identified in the approved consortium application; the amount of second-year continuation funding was to be based on the same two-tiered formula described in the 2004 Notice. We have followed this process for the funding of second-year continuation awards since 2004.

The Department last awarded CIGs in FY 2012. Currently, 37 SEAs (out of a total of 47 SEAs that receive MEP formula grant program funds) participate in CIG program-funded consortia.

We are proposing to change the project period for several reasons. The 2004 Notice limited the MEP CIG awards to two years because they were intended to fund innovative pilot activities that grantees would put in place during the grant period, and then would continue with basic MEP formula grant funding provided under Title I, part C of the ESEA if the activities proved useful. However, based on our knowledge of the progress SEAs generally make on consortium projects, we believe that current grantees would benefit from a third year in which to work on and implement their CIG projects. In addition, although the two-year project period may sometimes be sufficient, it unnecessarily inhibits the Secretary's ability to establish a three-year project period for the CIG program where it is appropriate to do so. Increasing the project period that the Secretary may establish for the CIG program by one year will permit the Secretary to exercise judgment about what period would best permit grantees to achieve results and obtain better data to conduct the needed evaluations of their projects.

*Proposed Requirement—Duration of Incentive Grants:*

The Secretary may provide a maximum project period of three years for grants awarded under the MEP CIG program. The Secretary may extend the current two-year project period of the FY 2012 grantees to three years as well as determine a project period for future competitions of up to three years.

For grants with a three-year project period, grantees must submit a performance report at the end of each project year and are eligible for a continuation award at the end of the first and second project years based on the two-tiered funding formula in the 2004 Notice. The second and third year's continuation funding is contingent on the grantee making substantial progress in performing the previous year's consortium activities and in attaining the outcomes identified in the approved consortium application. Grantees must submit their final summary evaluation report at the end of the third project year.

*Final Requirement:*

We will announce the final requirement in a notice in the **Federal Register**. We will determine the final requirement after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. We invite applications through a notice in the **Federal Register**.

**Executive Orders 12866 and 13563**

*Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things

and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this proposed requirement only on a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible formal (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 28, 2013.

**Deborah S. Delisle,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2013–16021 Filed 7–2–13; 8:45 am]

**BILLING CODE 4000–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R05–OAR–2013–0343; FRL–9824–8]**

## Approval and Promulgation of Air Quality Implementation Plans; Illinois

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Illinois state implementation plan (SIP) submitted by the Illinois Environmental Protection Agency on April 11, 2013. The submission revises Title 35 of the Illinois Administrative Code Part 254, Annual Emissions Report. The revision provides clarification regarding greenhouse gases as it relates to the annual emissions report.

**DATES:** Comments must be received on or before August 2, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0946, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: June 6, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2013–15610 Filed 7–2–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2013–0376; FRL–9828–1]**

## Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of Consumer and Commercial Products Rules

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia for the purpose of removing four articles located in chapter 9VAC5–40 (Existing Stationary Sources) from the Virginia SIP. These articles are being removed because they were repealed in their entirety and replaced by articles in chapter 9VAC5–45 (Consumer and Commercial Products). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by August 2, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0376 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0376, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2013–0376. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: June 7, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2013–15727 Filed 7–2–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 62

**[EPA–R03–OAR–2013–0434; FRL–9829–7]**

## Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; District of Columbia; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator Units

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the Clean Air Act (CAA) section 111(d)/129 negative declaration for the District of Columbia for hospital/medical/infectious waste incinerator (HMIWI) units. This negative declaration certifies that HMIWI units subject to the requirements of sections 111(d) and 129 of the CAA do not exist within the jurisdictional boundaries of the District Department of the Environment (DDOE). In the Final Rules section of this **Federal Register**, EPA is approving the negative declaration as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by August 2, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0434 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: cox.kathleen@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0434, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2013–0434. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 51 N Street NE., Fifth Floor, Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Mike Gordon, (215) 814–2039, or by email at *gordon.mike@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information regarding DDOE's negative declaration for HMIWI units, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: June 13, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2013–15877 Filed 7–2–13; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register

Vol. 78, No. 128

Wednesday, July 3, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

June 28, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by August 2, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC, 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Forest Service**

*Title:* Annual Wildfire Summary Report.

*OMB Control Number:* 0596–0025.

*Summary of Collection:* The Cooperative Forestry Assistance Act of 1978 (U.S.C. 2101) requires the Forest Service (FS) to collect information about wildfire suppression efforts by State and local fire fighting agencies in order to support specific congressional funding requests for the Forest Service State and Private Forestry Cooperative Fire Program. The program provides supplemental funding for State and local fire fighting agencies. The FS works cooperatively with State and local fire fighting agencies to support their fire suppression efforts. FS will collect information using form FS 3100–8, Annual Wildfire Summary Report.

*Need and Use of the Information:* FS will collect information to determine if the Cooperative Fire Program funds, provided to the State and local fire fighting agencies have been used by State and local agencies to improve their fire suppression capabilities. The information collected includes the numbers of fires and acres burned on State and private land by cause, such as lightning, campfires, smoking, debris burning, arson, equipment, railroads, children and miscellaneous activities. Information will be shared with the pubic about the importance of the State and Private Cooperative Fire Program. FS would be unable to assess the effectiveness of the State and Private Forestry Cooperative Fire Program if the information provided on FS–3100–8, were not collected.

*Description of Respondents:* State, Local or Tribal Government.

*Number of Respondents:* 56.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 28.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2013–15988 Filed 7–2–13; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

June 28, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Rural Utilities Service**

*Title:* Preloan Procedures and Requirements for Telecommunications Program.

*OMB Control Number:* 0572–0079.

*Summary Of Collection:* The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance telecommunications, electric, and water and waste facilities in rural areas with a loan portfolio that totals nearly $42 billion. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* as amended, (RE Act). Section 201 of the RE Act authorizes the Administrator to make loans to qualified telephone companies for the purpose of providing telephone service to the widest practicable number of rural subscribers.

*Need and Use of the Information:* RUS will collect information using several forms to determine an applicant's eligibility to borrow from RUS under the terms of the RE Act. The information is also used to determine that the Government's security for loans made by RUS are reasonably adequate and that the loans will be repaid within the time agreed. Without the information, RUS could not effectively monitor each borrower's compliance with the loan terms and conditions to properly ensure continued loan security.

*Description of Respondents:* Business or other for-profit; Not-for-profit institutions.

*Number of Respondents:* 40.

*Frequency Of Responses:* Reporting: On occasion.

*Total Burden Hours:* 3,204.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2013–16006 Filed 7–2–13; 8:45 am]

**BILLING CODE 3410–15–P**

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2013–0021]**

### Notice of Request for Revision of a Currently Approved Information Collection (Interstate Shipment of Meat and Poultry Products)

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request revision of an information collection for the voluntary cooperative interstate shipment program because the Agency has more recent data concerning the program, and the information collection approval is scheduled to expire on August 31, 2013. FSIS is estimating fewer burden hours for this information collection than are currently approved because fewer States and State establishments are participating in the cooperative interstate shipment program than the Agency had originally estimated three years ago.

**DATES:** Comments on this notice must be received on or before September 3, 2013.

**ADDRESSES:** FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163B, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163B, Washington, DC 20250–3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2013–0021. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

*Docket:* For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street, Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065, South Building, Washington, DC 20250; Telephone (202) 720–0345.

**SUPPLEMENTARY INFORMATION:**

*Title:* Cooperative Inspection Programs: Interstate Shipment of Meat and Poultry Products.

*Type of Request:* Revision of an approved information collection.

*OMB Control Number:* 0583–0143.

*Expiration Date:* 8/31/2013.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary of Agriculture (7 CFR 2.18, 2.55) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). FSIS protects the public by verifying that meat and poultry products are wholesome, not adulterated, and properly marked, labeled, and packaged.

FSIS is planning to request a revision of an approved information collection addressing paperwork requirements for the voluntary cooperative interstate shipment program of meat and poultry products because the Agency has more recent data about the program, and the OMB approval of the information collection will expire on August 31, 2013. FSIS is estimating fewer burden hours for this information collection than are currently approved because fewer States and State establishments are participating in the cooperative interstate shipment program than the Agency had originally estimated three years ago.

FSIS administers a voluntary cooperative inspection program under which State-inspected establishments with 25 or fewer employees are eligible to ship meat and poultry products in interstate commerce (21 U.S.C. 683 and U.S.C. 472) (9 CFR 321.3, Part 332, 381.187, and Part 381 Subpart Z). In participating States, State-inspected establishments selected to take part in this program are required to comply with all Federal standards under the FMIA and the PPIA, as well as with all State standards. These establishments receive inspection services from State inspection personnel that have been trained in the enforcement of the FMIA and PPIA. Meat and poultry products produced under the program that have been inspected and passed by designated State personnel bear an official Federal mark of inspection and are permitted to be distributed in interstate commerce. FSIS provides oversight and enforcement of the program.

States that are interested in participating in the cooperative interstate shipment program need to submit a request for an agreement to establish such a program through the appropriate FSIS District Office (9 CFR 332.4 and 381.514). In its request, a State must agree to comply with certain

conditions in order to qualify for the interstate shipment program. The State must also: (1) identify establishments in the State that the State recommends for initial selection into the program, if any, and (2) include documentation to demonstrate that the State is able to provide necessary inspection services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program.

If a State determines that an establishment qualifies to participate in the cooperative interstate shipment program, and the State is able, and willing, to provide the necessary inspection services at the establishment, the State is to submit its evaluation of the establishment to the FSIS District Office that covers the State (74 FR 24729). FSIS, in coordination with the State, will then decide whether to select the establishments for the program.

Establishments that qualify for this program have to meet all requirements under the FMIA or PPIA, and implementing regulations, including FSIS requirements for recordkeeping (9 CFR 332.5 and 381.515). Most State-inspected establishments will already have met these recordkeeping requirements, but some establishments will need to make minor adjustments to their recordkeeping in order to meet FSIS requirements.

The FSIS selected establishment coordinator (SEC) is responsible for overseeing a State's cooperative inspection program. The SEC will visit each selected establishment in the State on a regular basis to verify that the establishment is operating in a manner that is consistent with the FMIA or PPIA and the implementing regulations (9 CFR 332.7 and 381.517).

FSIS has made the following estimates on the basis of an information collection assessment:

*Estimate of Burden:* FSIS estimates that it will take each new State an average of 40 hours for to prepare and submit a request to establish a cooperative interstate shipment program. It will take each State 24 hours to prepare and submit an evaluation for each new establishment entering the program. States will submit approximately 3 evaluations per year.

FSIS estimates that 15 establishments per year will spend 16 hours to modify their recordkeeping procedures to comply with Federal standards and 5 minutes per establishment to file these records.

FSIS estimates that it will take each new establishment 15 minutes to assist the SEC to locate the necessary records for review on the initial visit. Every selected establishment will spend 10 minutes assisting the SEC review its records approximately once a month.

*Respondents:* States and establishments.

*Estimated No. of Respondents:* 20 states and 60 establishments.

*Estimated No. of Annual Responses per Respondent:* One request per each new State to establish a cooperative interstate shipment program and approximately 3 evaluations of State-inspected establishments per State.

A one-time modification of records for each newly selected establishment whose recordkeeping does not comply with all Federal standards. One initial SEC visit in which each newly selected establishment will need to provide the SEC with access to all required records. Each establishment selected for the program will need to provide the FSIS access to its records on an ongoing basis. Total number of estimated annual responses is 830.

*Estimated Total Annual Burden on Respondents:* 2,005 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence SW., Room 6065, South Building, Washington, DC 20250; Telephone: (202) 720–0345.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent both to FSIS, at the addresses provided above, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

## USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

## Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service*.

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on: June 27, 2013.

**Alfred V. Almanza,**

*Administrator.*

[FR Doc. 2013–15980 Filed 6–28–13; 4:15 pm]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Inviting Rural Business Enterprise Grant Program Applications for Grants To Provide Technical Assistance for Rural Transportation Systems

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Business-Cooperative Service (RBS), an Agency within the U.S. Department of Agriculture (USDA) Rural Development mission area, announces the availability of three individual grants: two single grants not to exceed $929,111 together from the rural transportation funds appropriated for the Rural Business Enterprise Grant (RBEG) program and another single $232,278 grant for Federally Recognized Native American Tribes' (FRNATs) (collectively ''Programs'') from funds appropriated for the RBEG program. RBS will administer these awards under the RBEG program and 7 U.S.C. 1932(c)(2) for fiscal year (FY) 2013. Each grant is to be competitively awarded to an eligible applicant which is a qualified national non-profit organization. Two grants are for the provision of technical assistance to rural transportation (RT) projects and the other grant will be for the provision of technical assistance to RT projects operated by FRNAT's only.

All applicants are responsible for any expenses incurred in developing their applications.

**DATES:** The deadline for receipt of applications in the USDA Rural Development State Office is no later than 4:30 p.m. (local time) on September 3, 2013. Applications received at a USDA Rural Development State Office after that date will not be considered for FY 2013 funding.

**ADDRESSES:** Entities wishing to apply for assistance should contact the appropriate USDA Rural Development State Office to receive copies of the application package. A list of the USDA Rural Development State Offices addresses and telephone numbers are as follows:

**Alabama**

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495.

**Alaska**

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905.

**Arizona**

USDA Rural Development State Office, 230 N 1st Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8701/TDD (602) 280–8705.

**Arkansas**

USDA Rural Development State Office, Federal Building, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279.

**California**

USDA Rural Development State Office, 430 G Street, Agency #4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848.

**Colorado**

USDA Rural Development State Office, Denver Federal Center, Building 56, Room 2300, P.O. Box 25426, Denver, CO 80225–0426, (720) 544–2903/TDD (800) 659–3656.

**Delaware-Maryland**

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585.

**Florida/Virgin Islands**

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3402/TDD (352) 338–3499.

**Georgia**

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Stop 300, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

**Hawaii/Guam/American Samoa/**

Commonwealth of the Northern Mariana Islands/, Republic of Palau/Federated States of Micronesia/, Republic of the Marshall Islands, USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321.

**Idaho**

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644.

**Illinois**

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240.

**Indiana**

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 ext. 4/TDD (317) 290–3343.

**Iowa**

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858.

**Kansas**

USDA Rural Development State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767.

**Kentucky**

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422.

**Louisiana**

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655.

**Maine**

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331.

**Massachusetts/Rhode Island/Connecticut**

USDA Rural Development State Office, 451 West Street, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590.

**Michigan**

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169.

**Minnesota**

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

**Mississippi**

USDA Rural Development State Office, Federal Building, Ste 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850.

**Missouri**

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Ctr., Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480.

**Montana**

USDA Rural Development State Office, 2229 Boot Hill Court, P.O. Box 850,

Bozeman, MT 59715, (406) 585–2530/TDD (406) 585–2562.

**Nebraska**

USDA Rural Development State Office, Federal Building, Rom 152, 100 Centennial Mall N., Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093.

**Nevada**

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222/TDD (775) 885–0633.

**New Jersey**

USDA Rural Development State Office, 5th floor North, Ste 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784.

**New Mexico**

USDA Rural Development State Office, 6200 Jefferson Street NE., Room 255, Albuquerque, NM 87109, (505) 761–4953/TDD (505) 761–4938.

**New York**

USDA Rural Development State Office, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447.

**North Carolina**

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003.

**North Dakota**

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

**Ohio**

USDA Rural Development State Office, Federal Building, Room 507, 200 N. High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554.

**Oklahoma**

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

**Oregon**

USDA Rural Development State Office, 1201 NE Lloyd Boulevard, Suite 801, Portland, OR 97232, (503) 414–3366/TDD (503) 414–3387.

**Pennsylvania**

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261.

**Puerto Rico**

USDA Rural Development State Office, IBM Building, Ste 601, 654 Munoz Rivera Avenue, San Juan, PR 00936–6106, (787) 766–5095/TDD (787) 766–5332.

**South Carolina**

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

**South Dakota**

USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW, Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

**Tennessee**

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1071, (615) 783–1300.

**Texas**

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

**Utah**

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4324/TDD (801) 524–3309.

**Vermont/New Hampshire**

USDA Rural Development State Office, City Center, 3rd Floor, 87 Main Street, Suite 324, P.O. Box 249, Montpelier, VT 05601, (802) 828–6031/TDD (802) 223–6365.

**Virginia**

USDA Rural Development State Office, Culpeper Building, Ste 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1551/TDD (804) 287–1753.

**Washington**

USDA Rural Development State Office, 1835 Blacklake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760.

**West Virginia**

USDA Rural Development State Office, 1550 Earl Core Road, Suite 101, Morgantown, WV 26505, (304) 284–4860/TDD (304) 284–4836.

**Wisconsin**

USDA Rural Development State Office, 5417 Clem's Way, Stevens Point, WI 54482, (715) 345–7671/TDD (715) 345–7614.

**Wyoming**

USDA Rural Development State Office, 100 East B Street, Room 1005, P.O. Box 11005, Casper, WY 82601, (307) 233–6700/TDD (307) 233–6733.

**FOR FURTHER INFORMATION CONTACT:** Please contact the USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice.

**SUPPLEMENTARY INFORMATION:**

**Overview**

*Federal Agency:* Rural Business-Cooperative Service.

*Solicitation Opportunity Title:* Rural Business Enterprise Grants.

*Announcement Type:* Initial Solicitation Announcement.

*Catalog of Federal Domestic Assistance Number:* 10.769.

*Dates:* Application Deadline: Completed applications must be received in the USDA Rural Development State Office no later than 4:30 p.m. (local time) on September 3, 2013, to be eligible for FY 2013 grant funding. Applications received after this date will not be eligible for FY 2013 grant funding.

**I. Funding Opportunity Description**

A. *Purpose of the Program.* The purpose of this program is to improve the economic conditions of rural areas.

B. *Statutory Authority.* This programs is authorized under section 310B(c) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(c)). Regulations are contained in 7 CFR part 1942, subpart G. The program is administered on behalf of RBS at the State level by the USDA Rural Development State Offices. Assistance provided to rural areas under the Programs may include the provision of on-site technical assistance to local and regional governments, public transit agencies, and related non-profit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program will be made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. Information required to be in the application package includes Forms SF 424, ''Application for Federal

Assistance;'' Form RD 1940–20, ''Request for Environmental Information;'' Scope of Work Narrative; Income Statement; Balance Sheet or Audit for previous 3 years; AD–1047, ''Debarment/Suspension Certification;'' AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion;'' AD–1049, ''Certification Regarding Drug-Free Workplace Requirements;'' SF LLL, ''Disclosure of Lobbying Activities;'' RD 400–1, ''Equal Opportunity Agreement;'' RD 400–4, ''Assurance Agreement;'' a letter stating Board authorization to obtain assistance; and a letter certifying citizenship, as referenced in 7 CFR 1942.307(b). For the FRNAT grant, which must benefit FRNATs, at least 75 percent of the benefits of the project must be received by members of FRNATs. The project that scores the greatest number of points based on the RBEG selection criteria and the discretionary points will be selected for each grant.

Applicants must be qualified national non-profit organizations with experience in providing technical assistance and training to rural communities Nation-wide for the purpose of improving passenger transportation service or facilities. To be considered ''national,'' RBS requires a qualified organization to provide evidence that it operates RT assistance programming Nation-wide. There is not a requirement to use the grant funds in a multi-State area. Grants will be made to qualified national non-profit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities.

*Definitions*

C. *Definition of Terms.* The definitions applicable to this Notice are published at 7 CFR 1942.304.

D. *Application awards.* The Agency will review, evaluate, and score applications received in response to this Notice based on the provisions in 7 CFR part 1942, subpart G and as indicated in this Notice. However, the Agency advises all interested parties that the applicant bears the burden in preparing and submitting an application in response to this Notice whether or not funding is appropriated for these programs in FY 2013.

## II. Award Information

*Type of Award:* Grant.

*Fiscal Year Funds:* FY 2013.

*Total Funding:* $1,161,389.

*Approximate Number of Awards:* Three.

*Average Award:* Two single grants not to exceed $929,111 together and another single $232,278 grant for FRNAT's.

*Anticipated Award Date:* October 16, 2013, subject to the availability of funding.

## III. Eligibility Information

*A. Eligible Applicants*

To be considered eligible, an entity must be a qualified national non-profit organization serving rural areas as evidenced in its organizational documents and demonstrated experience. Grants will be competitively awarded to qualified national non-profit organizations. As mentioned later in this Notice, regarding corporate felony convictions and corporate Federal tax delinquencies, applicants that are not delinquent on any Federal debt or otherwise disqualified from participation in this program are eligible to apply. All other restrictions in this Notice will apply.

*B. Cost Sharing or Matching*

Matching funds are not required.

*C. Other Eligibility Requirements*

Applications will only be accepted from qualified national non-profit organizations to provide technical assistance for rural transportation.

*D. Completeness Eligibility*

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements. If due to a change made in the appropriations act for FY 2013, additional information is needed, then applicants that submitted complete applications prior to the application deadline will be provided additional time in which to provide that information.

## IV. Fiscal Year 2013 Application and Submission Information:

*A. Address to Request Application Package*

For further information, entities wishing to apply for assistance should contact the USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice to obtain copies of the application package.

Applicants are encouraged to submit applications through the Grants.gov Web site at: *http://www.grants.gov*. Applications may be submitted in either electronic or paper format. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov Web site. Applications may not be submitted by electronic mail.

- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that you begin the application process through Grants.gov in sufficient time to complete the application before the deadline date.
- You may submit all documents electronically through the Web site, including all information typically included on the application and all necessary assurances and certifications.
- After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- USDA Rural Development may request that the applicant provide original signatures on forms at a later date.
- If applicants experience technical difficulties on the closing date and are unable to meet the deadline, you may submit a paper copy of your application to your respective Rural Development State Office. Paper applications submitted to a Rural Development State Office must meet the closing date and local time deadline.
- Please note that applicants can locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number or FedGrants Funding Opportunity Number, which can be found at *http://www.Grants.gov.*

All applicants, whether filing applications through *www.Grants.gov* or by paper, must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or at *http://www.dnb.com*.

*B. Content and Form of Submission*

An application must contain all of the required elements. Each application received in a USDA Rural Development State Office will be reviewed to determine if it is consistent with the eligible purposes contained in section 310B(c)(2) of the CONACT. Each selection priority criterion outlined in 7 CFR 1942.305(b)(3), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 1942, subpart G, will be provided by any interested applicant making a request to a USDA Rural Development State Office

provided in the **ADDRESSES** section of this Notice.

All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the applications are submitted to the USDA Rural Development State Office. Multiple project applications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project.

For multiple-project applications, the average of the individual project scores will be the score for that application.

*C. Submission Dates and Times*

*Application Deadline Date:* No later than 4:30 p.m. (local time) September 3, 2013.

*Explanation of Deadlines:* Applications must be in the USDA Rural Development State Office by the deadline date.

**V. Application Review Information**

RBS will score applications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G and will select grantees subject to the grantees satisfactory submission of the additional items required by 7 CFR part 1942, subpart G and the USDA Rural Development Letter of Conditions. The amount of an RT grant may be adjusted, in the RBS's discretion,to enable RBS to award RT grants to the two applications with the highest priority scores. Applicants selected for award who have their grant request adjusted, will have the opportunity to either rescind their request or modify their proposal to reflect the adjusted award. RBS must approve the modified proposal. RBS will select the next highest ranking application(s) for award when any initially selected application is rescinded or when RBS and the initially selected applicant cannot reach an agreement on a modified proposal.

**VI. Award Administration Information**

*A. Award Notices*

Successful applicants will receive notification for funding from the USDA Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applications will receive notification by mail.

*B. Administrative and National Policy Requirements*

Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 1942, subpart G. Grantees must further comply with applicable provisions of 7 CFR parts 3015, 3016, 3019, and 3052.

**VII. Agency Contacts**

For general questions about this announcement, please contact your USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice.

**VIII. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act, the paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0570–0022.

*Federal Funding Accountability and Transparency Act*

All applicants, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.* Similarly, all applicants must be registered in the System for Award Management (SAM) prior to submitting an application. Applicants may register for the SAM at *http://www.sam.gov.* All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

*Corporate Felony Convictions and Corporate Felony Tax Delinquencies*

Applications from corporate applicants submitted under this Notice must include Form AD 3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants.'' Corporate applicants who receive an award under this Notice will be required to sign Form AD 3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.''

*Nondiscrimination Statement:* The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the *USDA Program Discrimination Complaint Form* (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov.*

Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: June 25, 2013.

**Lillian E. Salerno,**

*Acting Administrator, Rural Business-Cooperative Service.*

[FR Doc. 2013–16079 Filed 7–2–13; 8:45 am]

BILLING CODE 3410–XY–P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

**DATES:** Comments on this notice must be received by September 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5162-South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078, FAX: (202)

720–8435 or email: *michele.brooks@wdc.usda.gov*.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Stop 1522, Room 5162-South Building, Washington, DC 20250–1522, FAX: (202) 720–8435 or email: *michele.brooks@wdc.usda.gov*.

*Title:* Broadband Initiatives Program—Rural Libraries, Technical Assistance, and Satellite Grants.

*OMB Control Number:* 0572–0145.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act) the Rural Utilities Service's Broadband Initiatives Program (BIP) announced funding for specific grants for Satellite, Rural Library Broadband and Technical Assistance. Grant awardees under the program are required to comply with OMB reporting requirements implementing the Recovery Act.[1] RUS is no longer awarding Recovery Act funds under this program, however this Information Collection remains active because awardees are required to comply with Recovery Act recordkeeping and reporting requirements under this collection and may be submitting reports.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 22 hours per response.

*Respondents:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 134.

*Estimated Number of Responses per Respondent:* 2.8.

*Estimated Total Annual Burden on Respondents:* 8,427.

Copies of this information collection can be obtained from Rebecca Hunt, Program Development and Regulatory Analysis, at (202) 205–3660, FAX: (202) 720–8435 or email: *rebecca.hunt@wdc.usda.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 27, 2013.

**John Charles Padalino,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2013–15987 Filed 7–2–13; 8:45 am]

**BILLING CODE P**

[1] *See, e.g.,* 2 CFR pt. 176, Interim Final Guidance for Federal Financial Assistance, 74 FR 18449 (Apr. 23, 2009); Implementing Guidance for Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (OMB M–09–21 June 22, 2009); and updated Guidance on the American Recovery and Reinvestment Act of 2009 (OMB M–10–08 Dec. 18, 2009).

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

**DATES:** Comments on this notice must be received by September 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1522, Room 5162-South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202)720–8435. Email: *michele.brooks@wdc.usda.gov*.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that will be submitted to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., STOP 1522, Room 5162-South Building, Washington, DC 20250–1522, FAX: (202)720–8435 or email: *michele.brooks@wdc.usda.gov*.

*Title:* Servicing of Water Programs Loans and Grants.

*OMB Control Number:* 0572–0137.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The Rural Utilities Service (RUS) Water and Environmental Programs (WEP) provide financing and technical assistance for development and operation of safe and affordable water supply systems and sewage and other waste disposal facilities. WEP provides loans, guaranteed loans and grants for water, sewer, storm water, and solid waste disposal facilities in rural areas and towns of up to 10,000 people. The recipients of the assistance covered by 7 CFR part 1782 must be public entities. These public entities can include municipalities, counties, special purpose districts, federally designated Indian tribes, and corporations not operated for profit, including cooperatives. The information, for the most part financial in nature, is needed by the Agency to determine if borrowers, based on their individual

situations, qualify for the various servicing options.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 1.22 hours per response.

*Respondents:* Business or other for profit and non-profit institutions, and state and local governments.

*Estimated Number of Respondents:* 493.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 641 hours.

Copies of this information collection can be obtained from Rebecca Hunt, Program Development and Regulatory Analysis, at (202) 205–3660. FAX: (202)720–8435. Email: *rebecca.hunt@wdc.usda.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 27, 2013.

**John Charles Padalino,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2013–15985 Filed 7–2–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Pilot Project Assessing Economic Benefits of Marine Debris Removal.

*OMB Control Number:* None.

*Form Number(s):* NA.

*Type of Request:* Regular submission (request for a new information collection).

*Number of Respondents:* 1,320.

*Average Hours Per Response:* Primary survey, 20 minutes; non-response survey, 5 minutes.

*Burden Hours:* 410.

*Needs and Uses:* This request is for a new information collection.

Under the authority of the Marine Debris Research, Prevention, and Reduction Act (Marine Debris Act of 2012, 33 U.S.C. 1951 et seq., as amended by Title VI of Pub. L. 112–213), NOAA's Marine Debris Division (MDD) is conducting a pilot project designed to assess the economic benefits to beach visitors of marine debris removal. The project will use a revealed preference valuation approach (a random utility travel cost model) to assess benefits associated with marine debris removal at selected beaches in Southern California. The MDD intends to conduct a mail survey of Orange County, California households in order to gather beach trip data required to estimate the model. The pilot project will provide information for use in assessing and prioritizing future efforts to reduce or remove marine debris. The project will also lay the groundwork for additional research related to economic benefits, providing information about the types of marine debris that beach visitors are concerned about and about potential economic modeling challenges.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: June 27, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–15939 Filed 7–2–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Quarterly Summary of State and Local Government Tax Revenue.

*OMB Control Number:* 0607–0112.

*Form Number(s):* F–71, F–72, F–73.

*Type of Request:* Revision of a currently approved collection.

*Burden Hours:* 8,011.

*Number of Respondents:* 7,384.

*Average Hours per Response:* 16 and a half minutes.

*Needs and Uses:* The U.S. Census Bureau requests a revision to the Quarterly Summary of State and Local Government Tax Revenues to ensure accurate collection of information about state and local government tax collections. The revision consists of a new survey universe and modifications to the collection instrument for the F–73 portion of the program. Previously, the F–73 Form collected information on 11 types of tax revenues. That number is being reduced to three (general sales, personal income, and corporate income). The universe for the F–73 Form will also be reduced. With the change in the survey universe and collection instrument, the F–73 component is being renamed to the Quarterly Survey of Selected Non-Property Taxes from the current Quarterly Survey of Non-Property Taxes.

State and local government tax collections, amounting to nearly $1.4 trillion annually, constitute approximately 43 percent of all governmental revenues. Quarterly measurement of, and reporting on, these fund flows provides valuable insight into trends in the national economy and that of individual states. Information collected on the type and quantity of taxes collected gives comparative data on how the various levels of government fund their public sector obligations.

The Census Bureau uses the three forms covered by this statement to collect state and local government tax data for this data series established in 1962. Tax collection data are used to measure economic activity for the Nation as a whole, as well as for comparison among the states. These data are also used in comparing the mix of taxes employed by individual states and in determining the revenue raising capacity of different types of taxes in different state-areas.

Key users of these data include the Bureau of Economic Analysis, the Federal Reserve Board, and the Department of Housing and Urban Development who rely on these data to provide the most current information on the financial status of state and local governments. These data are included in the quarterly estimates of the National Income and Product Accounts developed by the Bureau of Economic Analysis and the Department of Housing and Urban Development has used the property tax data as one of nine cost

indicators for developing Section 8 rent adjustments. Legislators, policy makers, administrators, analysts, economists, and researchers use these data to monitor trends in public sector revenues. Journalists, teachers, and students use these data as well.

*Affected Public:* State, local or Tribal governments.

*Frequency:* Quarterly.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., Section 182.

*OMB Desk Officer:* Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: June 28, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–15990 Filed 7–2–13; 8:45 am]

**BILLING CODE 3510–07–P**

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Emerging Technology and Research Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on July 18 and 19, 2013, 8:30 a.m., Room 3884, at the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

**Agenda**

*Thursday, July 18*

Open Session: 8:30 a.m.–4:30 p.m.

1. Opening Remarks.
2. Recent Activities to the Scientific Community.
3. Emerging Technologies and Export Control: The Boeing Experience.
4. Question and Comments from the Public.
5. New Technologies—Foreign Patent Process.
6. Review of technologies submitted for consideration by ETRAC members.
7. Presentation to BIS officials on technologies submitted by ETRAC members.

*Friday, July 19*

Closed Session

Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and l0(a)(3).

The open sessions will be accessible via teleconference to 40 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than, July 11, 2013.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 4, 2012, pursuant to Section l0(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9) (B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a) (3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: June 25, 2013.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2013–16047 Filed 7–2–13; 8:45 am]

**BILLING CODE 3510–JT–P**

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Sensors And Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on July 30, 2013, 9:30 a.m., in the Herbert C. Hoover Building, Room 6087B, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

**Agenda**

*Public Session*

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

*Closed Session*

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than July 23, 2013.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 11, 2012 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining

portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: June 26, 2013.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2013–16044 Filed 7–2–13; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–847]**

### 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From India: Final Results of Antidumping Duty Administrative Review and Revocation of Order (in Part); 2011–2012

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On May 2, 2013, the Department of Commerce (the Department) published the preliminary results of the third administrative review of the antidumping duty order on 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP) from India.[1] The review covers one manufacturer and exporter of the subject merchandise to the United States: Aquapharm Chemicals Pvt., Ltd. (Aquapharm). The period of review (POR) is April 1, 2011, through March 31, 2012. We did not receive comments from any interested parties. Therefore, the final results do not differ from the preliminary results. We continue to find that sales of subject merchandise have not been made at prices below normal value (NV) by Aquapharm. Accordingly, we have determined to revoke the antidumping duty order, in part, with respect to HEDP produced and exported by Aquapharm.

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

**FOR FURTHER INFORMATION CONTACT:** Brandon Custard or David Goldberger, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–1823 or (202) 482–4136, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 2, 2013, the Department published in the **Federal Register** the *Preliminary Results,* in which we preliminarily determined that it was appropriate to revoke the order with respect to Aquapharm because it had satisfied all of the procedural and substantive requirements for revocation.[2]

We invited parties to comment on the *Preliminary Results.*[3] No comments were submitted.

**Scope of the Order**

The merchandise covered by the order includes all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid.[4] The product is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at item numbers 2931.90.9043 and 2811.19.6090.[5] Although the HTSUS numbers are provided for convenience and customs purposes, the full written scope description, as published in the antidumping order[6] and described in the Preliminary Decision Memorandum, remains dispositive.

**Determination To Revoke Order, In Part**

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Tariff Act of 1930, as amended (the Act). While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. For a more detailed written description of the requirements for revoking an antidumping duty order in whole or in part, *see* Preliminary Decision Memorandum.

We have determined that the request from Aquapharm meets all of the criteria for revocation under 19 CFR 351.222.[7] In the *Preliminary Results,* we determined that Aquapharm satisfied the procedural and substantive requirements for revocation.[8] As no parties have taken issue with the *Preliminary Results,* we continue to find that Aquapharm's request satisfies the requirements for revocation.

**Effective Date of Revocation**

This revocation applies to all entries of subject merchandise that are produced and exported by Aquapharm, and are entered, or withdrawn from warehouse, for consumption on or after April 1, 2012. The Department will order the suspension of liquidation lifted for all such entries and will instruct CBP to release any cash deposits or bonds. The Department will further instruct CBP to refund with interest any cash deposits on entries made on or after April 1, 2012.

**Final Results of the Review**

As a result of our review, we determined that the following weighted-average margin percentage applies for the period April 1, 2011, through March 31, 2012:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Aquapharm Chemicals Pvt., Ltd | 0.00 |

**Assessment Rates**

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review pursuant to 19 CFR 351.212.[9] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review. Because we have calculated a zero margin for Aquapharm in the final results of this review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings:*

[1] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012; Intent to Revoke Order (in Part),* 78 FR 25699 (May 2, 2012) (*Preliminary Results*).

[2] *See* ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from India,'' dated April 25, 2013 (Preliminary Decision Memorandum), at 2–3.

[3] *See Preliminary Results,* 78 FR at 25700.

[4] $C_2H_8O_7P_2$ or $C(CH_3)(OH)(PO_3H_2)_2$.

[5] We have revised the HTSUS item numbers for the merchandise subject to this order to reflect the current HTSUS schedule available on the International Trade Commission's Web site at *http://www.usitc.gov/tata/hts/bychapter/index.htm.*

[6] *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India and the People's Republic of China: Antidumping Duty Orders,* 74 FR 19197 (April 28, 2009).

[7] The Department recently modified the section of its regulations concerning the revocation of antidumping and countervailing duty orders in whole or in part, but that modification does not apply to this administrative review. *See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders,* 77 FR 29875 (May 21, 2012). Reference to 19 CFR 351.222(b) refers to the Department's regulations prior to the modification.

[8] Preliminary Decision Memorandum at 2–3.

[9] In these final results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

*Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification applies to entries of subject merchandise during the POR produced by Aquapharm for which it did not know that the merchandise it sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR if there is no rate for the intermediary involved in the transaction.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) No cash deposit will apply to Aquapharm, consistent with our revocation of the order with respect to Aquapharm, effective April 1, 2012, as discussed above; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.10 percent, the all-others rate established in the LTFV investigation. *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Notice of Final Determination of Sales at Less Than Fair Value,* 74 FR 10543, 10544 (March 11, 2009). These requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 24, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2013–15892 Filed 7–2–13; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–801]**

### Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rescission of Antidumping Duty New Shipper Review; 2012–2013

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from Ngoc Ha Co. Ltd. Food Processing and Trading (''Ngoc Ha''), the Department of Commerce (''the Department'') initiated a new shipper review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam'') covering the period August 1, 2012, through January 31, 2013.[1] On May 23, 2013, Ngoc Ha withdrew its request for a new shipper review. Accordingly, the Department is rescinding the new shipper review with respect to Ngoc Ha.

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

**FOR FURTHER INFORMATION CONTACT:** Alexander Montoro, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0238.

**Rescission of New Shipper Review**

On May 23, 2013, Ngoc Ha withdrew its new shipper review request.[2] 19 CFR 351.214(f)(1) provides that, the Department may rescind a new shipper review, if the party that requested the review withdraws its request for review within 60 days of the date of publication of the notice of initiation of the requested review. Given that Ngoc Ha withdrew its request for a new shipper review 55 days after the date of publication of the notice of initiation of the requested review, the Department is rescinding the new shipper review of the antidumping duty order on certain frozen fish fillets from Vietnam with respect to Ngoc Ha. Consequently, Ngoc Ha will remain part of the Vietnam-wide entity.

**Assessment**

Because Ngoc Ha remains part of the Vietnam-wide entity, its entries may become subject to review if interested parties request an administrative review of the antidumping duty order of certain frozen fish fillets from Vietnam covering the period August 1, 2012, to July 31, 2013. The opportunity to request an administrative review of entries of subject merchandise entered during that period has not yet expired. Therefore, the Department will not order liquidation of entries for Ngoc Ha. The Department intends to issue liquidation instructions for the Vietnam-wide entity, which will cover any entries by Ngoc Ha, 15 days after publication of the final results of the administrative review covering the period August 1, 2012, to July 31, 2013, if such a review is requested. If no such review is requested, the Department will issue liquidation instructions for the Vietnam-wide entity at the appropriate time.

**Cash Deposit**

The Department will notify U.S. Customs and Border Protection (''CBP'') that bonding is no longer permitted to fulfill security requirements for subject merchandise produced and exported by Ngoc Ha that is entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**. The Department will notify CBP that a cash deposit of 2.11 U.S. dollars per kilogram should be collected for all shipments of subject merchandise by Ngoc Ha entered, or withdrawn from

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[1] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review; 2012–2013,* 78 FR 18957 (March 28, 2013) (''*Initiation Notice*'').

[2] *See* letter from Ngoc Ha entitled ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Withdrawal of Request for a New Shipper Review,'' dated May 23, 2013.

warehouse, for consumption in the United States on or after the publication of this rescission notice.

**Notifications to Interested Parties**

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this rescission and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: June 26, 2013.

**Gary Taverman,**

*Senior Advisor for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2013–16020 Filed 7–2–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–894]**

### Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On March 6, 2013, the Department of Commerce (the Department) published the affirmative preliminary determination of circumvention of the antidumping duty (AD) order on certain tissue paper products (tissue paper) from the People's Republic of China (PRC).[1] We gave interested parties an opportunity to comment on the *Preliminary Determination.* Based on our analysis of these comments and the facts of record, as verified, our final determination remains unchanged from the *Preliminary Determination.*

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

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–3773, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 6, 2013, the Department published the *Preliminary Determination* finding that imports of tissue paper processed by A.R. Printing and Packaging India Pvt. Ltd. (ARPP) in India, and exported to the United States, are circumventing the AD order on tissue paper from the PRC,[2] as provided in section 781(b) of the Tariff Act of 1930, as amended (the Act). We invited interested parties to comment on the *Preliminary Determination.* On April 19 and 24, 2013, ARPP and the petitioner[3] submitted case and rebuttal briefs, respectively. The Department has conducted this anti-circumvention inquiry in accordance with section 781(b) of the Act and 19 CFR 351.225.

**Scope of the Antidumping Duty Order**

The tissue paper products subject to the order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter.[4] The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States. Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4804.39; 4805.91.1090; 4805.91.5000; 4805.91.7000; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.[5]

**Scope of the Anti-circumvention Inquiry**

The products covered by this inquiry are tissue paper products, as described above in the ''Scope of the Antidumping Duty Order'' section, which are produced in India from PRC-origin jumbo rolls and/or cut sheets of tissue paper, and exported from India to the United States. This inquiry only covers such PRC-origin products that are processed in India by ARPP and exported to the United States.

**Analysis of Comments Received**

All issues raised in the case briefs by parties in this circumvention inquiry are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. The Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/* and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, Room 7046 of the main Department of Commerce building. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

**Final Determination**

In the *Preliminary Determination,* the Department found that imports of tissue paper processed by ARPP in India, and exported to the United States, are circumventing the *PRC Tissue Paper Order* pursuant to section 781(b) of the Act. Our final determination remains unchanged from our *Preliminary Determination.* As detailed in the Issues and Decision Memorandum, we determine that tissue paper processed by ARPP in India from PRC-origin jumbo rolls and/or cut sheets of tissue paper and exported to the United States circumvented the *PRC Tissue Paper*

[1] *See Certain Tissue Paper Products From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 78 FR 14514 (March 6, 2013) (*Preliminary Determination*), and accompanying memorandum entitled ''Preliminary Determination Decision Memorandum for the Anti-Circumvention Inquiry on Certain Tissue Paper Products from the People's Republic of China Involving AR Printing and Packaging India Pvt. Ltd.

[2] *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China,* 70 FR 16223 (March 30, 2005) (*PRC Tissue Paper Order*).

[3] The petitioner is Seaman Paper Company of Massachusetts, Inc.

[4] For a complete description of the scope of the *PRC Tissue Paper Order, see* memorandum entitled ''Issues and Decision Memorandum for the Final Affirmative Determination of Circumvention of the Antidumping Duty Order on Certain Tissue Paper Products from the People's Republic of China (PRC) (Final Decision Memorandum),'' dated concurrently with this notice.

[5] *See PRC Tissue Paper Order.*

*Order.* We therefore determine that it is appropriate to include this merchandise within the scope of the *PRC Tissue Paper Order* and to continue to instruct U.S. Customs and Border Protection (CBP) to suspend entries of tissue paper products produced by ARPP from PRC-origin tissue paper.

**Continuation of Suspension of Liquidation**

In accordance with section 781(b) of the Act and 19 CFR 351.225(l)(3), the Department will continue to direct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the rate applicable to the exporter, on all unliquidated entries of tissue paper produced by ARPP from PRC-origin tissue paper (jumbo rolls and/or cut sheets) that were entered, or withdrawn from warehouse, for consumption on or after May 3, 2012, the date of initiation of the anti-circumvention inquiry.[6]

**Notice to Parties**

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This final affirmative circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

Dated: June 27, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix I

**Discussion of the Issues**

Comment 1: Whether the Department's Preliminary Affirmative Finding is Appropriate

Comment 2: Whether the Remedy Articulated in the Department's Preliminary Affirmative Finding is Appropriate

[FR Doc. 2013–16028 Filed 7–2–13; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

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

**FOR FURTHER INFORMATION CONTACT:** Stephanie Moore, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, telephone: (202) 482–3692.

**SUPPLEMENTARY INFORMATION:** Section 702 of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the periods July 1, 2012, through September 30, 2012, and October 1, 2012, through December 31, 2012.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: June 24, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

| Country | Program(s) | Gross[1] subsidy ($/lb) | Net[2] subsidy ($/lb) |
|---|---|---|---|
| 27 European Union Member States[3] | European Union Restitution Payments | $ 0.00 | $0.00 |
| Canada | Export Assistance on Certain Types of Cheese | 0.35 | 0.35 |
| Norway | Indirect (Milk) Subsidy | 0.00 | 0.00 |
| | *Consumer Subsidy* | 0.00 | 0.00 |
| | Total | 0.00 | 0.00 |
| Switzerland | Deficiency Payments | 0.00 | 0.00 |

[6] *See Certain Tissue Paper Products from the People's Republic of China: Notice of Initiation of Anti-circumvention Inquiry,* 77 FR 27430 (May 10, 2012).

[1] Defined in 19 U.S.C. 1677(5).

[2] Defined in 19 U.S.C. 1677(6).

[3] The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

[FR Doc. 2013–15899 Filed 7–2–13; 8:45 am]
BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Amendment 80 Economic Data Report for the Catcher/Processor Non-AFA Trawl Sector

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, 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.

**DATES:** Written comments must be submitted on or before September 3, 2013.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, at (907) 586–7008 or *patsy.bearden@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This request is for extension of a current information collection.

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area primarily allocates several Bering Sea and Aleutian Islands Management Area non-pollock trawl groundfish fisheries among fishing sectors, and facilitates the formation of harvesting cooperatives in the catcher/processor sector of the Non-American Fisheries Act Trawl Catcher/Processor Cooperative Program (Program). The Program established a limited access privilege program for the Non-AFA trawl catcher/processor sector.

The Amendment 80 economic data report (EDR) collects cost, revenue, ownership, and employment data on an annual basis and provides information unavailable through other means to review the Program. The purpose of the EDR is to understand the economic effects of the Amendment 80 program on vessels or entities regulated by the Program, and to inform future management actions. Data collected through the EDR is mandatory for all Amendment 80 quota share (QS) holders.

#### II. Method of Collection

EDR forms are available in fillable PDF format through the Internet on the National Marine Fisheries Service Alaska Region Web site at *http://alaskafisheries.noaa.gov*. Pacific States Marine Fisheries Commission (PSMFC) was designated by NMFS to be the Data Collection Agent for the Amendment 80 EDR Program. PSMFC mails EDR announcements and filing instructions to Amendment 80 QS permit holders by April 1 of each year. Methods of submittal include online, and mail or facsimile transmission of paper forms.

#### III. Data

*OMB Control Number:* 0648–0564.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Estimated Number of Respondents:* 28.

*Estimated Time per Response:* 20 hours.

*Estimated Total Annual Burden Hours:* 560.

*Estimated Total Annual Cost to Public:* $41 in recordkeeping/reporting costs.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 27, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–15937 Filed 7–2–13; 8:45 am]
BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Alaska Region Gear Identification Requirements

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, 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.

**DATES:** Written comments must be submitted on or before September 3, 2013.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *patsy.bearden@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This request is for extension of a current information collection.

Regulations at 50 CFR 679.24(a) require that all hook-and-line, longline pot, and pot-and-line marker buoys carried onboard or used by any vessel regulated under 50 CFR part 679 shall be marked with the vessel name and Federal fisheries permit number or Alaska Department of Fish and Game (ADF&G) vessel registration number. The regulations also specify the size and color of markings. The marking of gear aids law enforcement and enables other fishermen to report on misplaced gear.

#### II. Method of Collection

No information is submitted; this is a gear-marking requirement.

**III. Data**

*OMB Control Number:* 0648–0353.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Estimated Number of Respondents:* 1,692.

*Estimated Time per Response:* 15 minutes per buoy.

*Estimated Total Annual Burden Hours:* 3,138.

*Estimated Total Annual Cost to Public:* $16,920.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 27, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–15938 Filed 7–2–13; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC744**

### Endangered and Threatened Species; Notice of Intent To Prepare a Recovery Plan for Pacific Eulachon

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of intent to prepare a recovery plan; request for information.

**SUMMARY:** The National Marine Fisheries Service (NMFS) is announcing its intent to prepare a recovery plan for Pacific eulachon (*Thaleichthys pacificus*) (eulachon) and requests information from the public. NMFS is required by the Endangered Species Act of 1973 (ESA), as amended to develop plans for the conservation and survival of federally listed species, i.e., recovery plans.

**DATES:** To allow adequate time to conduct a review of information submitted, all information must be received no later than August 2, 2013.

**ADDRESSES:** Information may be submitted by any of the following methods:

- *Via email:* *EulachonRecovery.nwr@noaa.gov* (No files larger than 5MB can be accepted).
- *Via U.S. mail:* Robert Anderson, National Marine Fisheries Service, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232 ATTN: Eulachon Recovery Coordinator.
- *Hand delivered:* National Marine Fisheries Service, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232 ATTN: Eulachon Recovery Coordinator. Business hours are 8 a.m. to 5 p.m. Monday through Friday, except Federal holidays.
- *Via fax:* 503–230–5441. Please include the following on the cover page of the fax ''ATTN: Eulachon Recovery Coordinator.''

**FOR FURTHER INFORMATION CONTACT:** Robert Anderson, Eulachon Recovery Coordinator, (503) 231–2226.

**SUPPLEMENTARY INFORMATION:**

NMFS is charged with the recovery of eulachon, a species listed under the Endangered Species Act of 1973 (ESA). Recovery means that listed species and their ecosystems are restored, and their future secured, so that the protections of the ESA are no longer necessary. The ESA specifies that recovery plans must include: (1) A description of management actions necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would result in the species being removed from the list; and (3) estimates of the time and costs required to achieve the plan's goal and the intermediate steps towards that goal. Section 4(f) of the ESA, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We are soliciting relevant information on eulachon and their freshwater/marine habitats.

Such information should address the following ESA listing factors: (1) Destruction or modification of habitat; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human factors; and information on (a) strategies and/or actions to address limiting factors and threats; (b) estimates of the time and cost to implement recovery actions; (c) critical knowledge gaps and/or uncertainties that need to be resolved to better inform recovery efforts; and (d) research, monitoring and evaluation needs to address knowledge gaps and uncertainties, or to assess the species' status, limiting factors and threats relative to recovery goals. Upon completion, the proposed Recovery Plan will be available for public review and comment through the publication of a **Federal Register** Notice.

**Preliminary Conservation Strategy**

We have developed a Recovery Outline for eulachon as a preliminary conservation strategy that will guide recovery actions in a systematic, cohesive way until a recovery plan is available. The Recovery Outline may be accessed at *http://www.nwr.noaa.gov/protected_species/other/eulachon_columbia_river_smelt/pacific_eulachon.html.*

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: June 28, 2013.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–15965 Filed 7–2–13; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Ocean and Atmospheric Administration

**[Docket No. 120807313–3560–02]**

**RIN 0648–XC154**

### Endangered and Threatened Wildlife; 12-Month Finding on Petitions To List the Northeastern Pacific Ocean Distinct Population Segment of White Shark as Threatened or Endangered Under the Endangered Species Act

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

**ACTION:** Notice of 12-month finding and availability of status review documents.

**SUMMARY:** We, NMFS, announce a 12-month finding on two petitions to list the northeastern Pacific (NEP) population of white sharks

(*Carcharodon carcharias*) as threatened or endangered under the Endangered Species Act (ESA). We have completed a status review of the NEP white shark population in response to these petitions using the best available scientific and commercial data. Based on this review, we have determined that the NEP white shark population qualifies as a distinct population segment (DPS) under the ESA and does not warrant listing under the ESA. Based on the considerations described in this notice, we conclude that the NEP white shark DPS is neither in danger of extinction throughout all or a significant portion of its range nor likely to become so within the foreseeable future.

**DATES:** This finding was made on July 3, 2013.

**ADDRESSES:** The status review documents for the NEP white shark population are available by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Southwest Regional Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802, Attention: White Shark 12-month Finding. The documents are also available electronically at: *http://swr.nmfs.noaa.gov/.*

**FOR FURTHER INFORMATION CONTACT:** Craig Wingert, NMFS, Southwest Regional Office, (562) 980–4021 or Marta Nammack, NMFS, Office of Protected Resources, (301) 427–8469.

**SUPPLEMENTARY INFORMATION:**

## Background

On June 25, 2012, we received a petition from WildEarth Guardians to list the NEP population of the white shark as threatened or endangered and to designate critical habitat for the population under the ESA. On August 13, 2012, we received a second petition, filed jointly by Oceana, Center for Biological Diversity and Shark Stewards, to list the NEP white shark population under the ESA and to designate critical habitat for the population. Both petitions presented much of the same or related factual information on the biology and ecology of white sharks, and raised several identical or similar issues related to potential factors affecting the NEP population of this species. On September 28, 2012, we published a positive 90-day finding (77 FR 59582) announcing that both petitions presented substantial scientific or commercial information indicating that the petitioned action may be warranted. In our 90-day finding, we also announced the initiation of a status review of the NEP white shark population and requested information to inform our decision on whether this population constituted a DPS and warrants listing as threatened or endangered under the ESA.

## ESA Statutory Provisions

The ESA defines ''species'' to include any subspecies or DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(16)). The U.S. Fish and Wildlife Service (FWS) and NMFS have adopted a joint policy describing what constitutes a DPS under the ESA (61 FR 4722). The joint DPS policy identifies two criteria for making a determination that a population is a DPS: (1) The population must be discrete in relation to other conspecific populations; and (2) the population must be significant to the taxon to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA. If a population segment is found to be discrete under one or both of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. Factors that can be considered in evaluating significance may include, but are not limited to: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Section 3 of the ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Thus, we interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened). The ESA requires us to determine whether a species is endangered or threatened throughout all or a significant portion of its range because of any of the following five factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence.

The ESA does not define the term ''significant portion of its range'' in the definitions for threatened and endangered species. NMFS and U.S. Fish and Wildlife Service (FWS; together the Services) have proposed a ''Draft Policy on Interpretation of the Phrase 'Significant Portion of Its Range' in the Endangered Species Act's Definitions of 'Endangered Species' and 'Threatened Species' '' (76 FR 76987; December 9, 2011), which is consistent with our past practice as well as our understanding of the statutory framework and language related to this term. While the Draft Policy remains in draft form, the Services are to consider the interpretations and principles contained in the Draft Policy as non-binding guidance in making individual listing determinations, while taking into account the unique circumstances of the species under consideration. The Draft Policy provides that: (1) If a species is found to be endangered or threatened in only a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the Act's protections apply across the species' entire range; (2) a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time FWS or NMFS makes any particular status determination; and (4) if the species is not endangered or threatened

throughout all of its range, but it is endangered or threatened within a significant portion of its range, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species (or DPS) and after taking into account efforts being made to conserve the species. In evaluating the efficacy of conservation efforts we rely on the Services' joint ''Policy for Evaluating of Conservation Efforts'' (''PECE''; 68 FR 15100; March 28, 2003). The PECE provides guidance to the Services on how to consider conservation efforts that have not been implemented, or have been implemented but not yet demonstrated to be effective.

**Status Review and Biological Review Team**

As part of our comprehensive status review of the NEP white shark population, we formed a biological review team (BRT) comprised of Federal scientists from NMFS' Southwest Fisheries Science Center (SWFSC) having scientific expertise in shark biology and ecology, genetics, population estimation and modeling, fisheries management and conservation biology. We asked the BRT to compile and review the best available scientific and commercial information, and then to: (1) determine whether the NEP white shark population satisfied the criteria for being a DPS under the joint DPS policy; and (2) evaluate the extinction risk of the population, taking into account both threats to the population and its biological status.

In conducting its review, the BRT considered a wide range of scientific information from the literature, unpublished documents, personal communications with researchers working on white sharks in the NEP and relevant technical information submitted to NMFS. The BRT recognized that there is considerable uncertainty regarding many aspects of white shark biology, abundance, trends in abundance and threats in the NEP. To address this uncertainty, the BRT explicitly defined issues that were uncertain and used a structured expert decision making (SEDM) approach to evaluate the plausibility of different scenarios after taking into account the best available data on the species, including information on white sharks from other geographic areas where necessary. The BRT prepared a report containing information on the biology, ecology and habitat use of white sharks in the NEP; information on whether the population constitutes a DPS under the ESA; and its assessment of the population's risk of extinction based on the best available information (Dewar *et al.,* 2013). The BRT report was subjected to independent peer review as required by the Office of Management and Budget Final Information Quality Bulletin for Peer Review (M–05–03; December 16, 2004).

**NEP White Shark Life History, Ecology, Distribution and Population Structure**

White sharks in the NEP belong to the species *Carcharodon carcharias.* The white shark is a circumglobal species that lives in coastal regions as well as the open ocean (Compagno, 2001) and is most frequently observed in inshore temperate continental waters of the Western North Atlantic, Mediterranean Sea, southern Africa, southern and Western Australia, and the NEP. Young-of-the-year (in their first year of life, YOY) and juvenile white sharks in the NEP are thought to prefer shallow coastal waters, primarily in the southern California Bight (SCB) and the west coast of Baja California (Dewar *et al.,* 2001, Weng *et al.,* 2007b). Adult and subadult white sharks in the NEP are most commonly observed near pinniped rookeries, but also range far from shore, spending protracted periods in pelagic habitats (Klimley, 1985; Bonfil *et al.,* 1994; Domeier and Nasby-Lucas, 2007; Jorgensen *et al.,* 2010).

*Growth and Reproduction*

Life history information related to growth and reproduction is relatively limited for the NEP white shark population, and therefore the BRT compiled the best available information for the species throughout its global range to characterize these life history parameters (Dewar *et al.,* 2013). YOY white sharks range from 1.2 to 1.75 m in total length (TL) (Francis, 1996). Juvenile white sharks range from 1.75 to 3.0 m TL and subadult white sharks range from 3.0 m TL up to the sizes at which males, as inferred from total length (3.6 to 3.8 m TL) and calcification of their claspers, and females (4.5 to 5.0 m TL) mature (Cailliet *et al.,* 1985; Francis, 1996; Pratt, 1996; Winter and Cliff, 1999; Malcolm *et al.,* 2001).

A number of studies have used vertebral bands to construct von Bertalanffy growth curves for white sharks (Cailliet *et al.* 1985; Wintner and Cliff 1999; Malcolm *et al,.* 2001). These curves demonstrate that the growth of white sharks in the NEP (Cailliet *et al,* 1985) is similar to that for white sharks found off South Africa and Australia (Wintner and Cliff, 1999 and Malcolm *et al.,* 2001, respectively). Francis (1996) summarized data for pregnant female white sharks from around the globe and reported that size at maturity ranged from 4.5–5.0 m TL, which is similar to that reported by others (Malcolm *et al.,* 2001; Domeier and Nasby-Lucas, 2013). Length of gestation is uncertain, but is thought to be longer than a year and is estimated to be 18 months (Francis 1996; Mollet *et al.,* 2000; Domeier and Nasby-Lucas, 2013). Consistent with the long gestation period, the frequency of pupping has been suggested to range between 2–3 years. The most quantitative information on pupping frequency comes from a photo identification (ID) study conducted at Guadalupe Island, Mexico, which estimated that females pup every 2.2 years (Nasby-Lucas and Domeier, 2012). Mollet *et al.* (2000) reported that the average litter size of female white sharks was 8.9 pups.

*Foraging Ecology*

Information on white shark foraging ecology comes from stomach content analysis and visual observations of larger shark feeding events (Klimley, 1985; Compagno *et al.,* 1997; Skomal *et al.,* 2012). Stomach contents of YOY and juvenile white sharks off southern California were found to include a range of bony fishes, cartilaginous fishes and crustaceans (Klimley, 1985). As white sharks reach a larger size (i.e., about 3 m TL), their diet expands to include marine mammals (Klimley, 1985). The most important prey items include pinnipeds (i.e., seals, sea lions, and elephant seals) and fishes (including other sharks and rays) while less common prey items include marine reptiles (mostly sea turtles), larger cephalopods, gastropods, and crustaceans. White sharks have also been observed to scavenge large and small cetaceans (Compagno *et al.,* 1997).

*Distribution and Habitat Use*

Klimley (1985) found that YOY white sharks were caught south of Point Conception, California, whereas juveniles were caught both north and south of Point Conception. Based on this information, Klimley (1985) hypothesized that the SCB was a nursery area for white sharks. A more recent analysis of fishery interactions with white sharks in Southern California by Lowe *et al.* (2012) supports the notion that the SCB is a nursery area. These studies as well as those by Domeier (2012) indicate YOY first appear in incidental catch records

in April and peak in abundance in August. Both YOY and juvenile white sharks are caught predominantly in near-shore waters less than 50m in depth (Klimley, 1985; Lowe *et al.,* 2012). YOY and juvenile white sharks have also been incidentally caught off the coast of Baja California in near-shore habitats (Santana-Morales *et al.,* 2012), and juveniles have been incidentally caught in the Sea of Cortez (Galván-Magaña *et al.,* 2010).

Recent tagging studies indicate that YOY white sharks remain between Point Conception and Sebastián Vizcaíno Bay in Baja California (Dewar *et al.,* 2004; Weng *et al.,* 2007b; Weng *et al,.* 2012). Weng *et al.* (2007b) also reported that YOY white sharks exhibited seasonal movements between California coastal waters in the summer and the coastal waters of northern Baja California in the fall, but this was based on very limited data. Weng *et al.* (2007b) tagged a total of 4 YOY and the tags only recorded data for 1–2 months before falling off. Two of the tagged individuals lost their tags in California in August and September and the other two individuals lost their tags in the fall in Baja California. Although there is evidence of seasonal movement, it is uncertain what portion of the YOY population moves to Mexico and whether or not they return to the SCB. Additional and longer tag deployments on YOY white sharks may reveal more extensive movements within the nursery area. Weng *et al.* (2012) also released 5 tagged YOY following a period of captivity at Monterey Bay Aquarium, some of which did not go to Mexico while some were tracked moving to Cabo San Lucas and into the Gulf of California.

Klimley (1985) reported that sub-adult and adult white sharks were caught predominantly north of Point Conception with the largest concentration of sharks found off Central California near pinniped rookeries from Tomales Bay to Monterey Bay. The majority of attacks on humans and pinnipeds also occurred within these same areas, as well as in river mouths and harbors (McCosker and Lea, 1996). Klimley (1985) found that more females were caught south of Point Conception and hypothesized that females migrated south to give birth, suggesting that the area south of Point Conception is a nursery area.

Klimley (1985) reported that white sharks occurred as far north as the southern end of Queen Charlotte Island off British Columbia. Martin (2005) examined available records of subadult and adult white shark sightings, captures, and strandings from 1961–2004 in British Columbia and Alaska and found they were most frequently present in the summer and fall months, that El Nino events did not impact the frequency of sightings or captures, and that there was no discernable trend in the species' presence over the years examined. The southern extent of the white shark range in the NEP appears to be Mexico. Adult and subadult white sharks have been documented by sightings and in incidental fishery catches within the Sea of Cortez (Galván-Magaña *et al.,* 2010; Castro, 2012), with adults being most common from December to May and less common from June to October. Beginning in the late 1990s, subadult and adult white sharks were observed in increasing numbers at Guadalupe Island offshore from the Pacific coast of Baja California and by the early 2000s their presence was sufficiently predictable to support a commercial cage diving industry in the fall months. The western extent of the white shark's range in the NEP appears to be the Hawaiian Islands. White shark teeth have been found among artifacts in the Hawaiian Islands suggesting their historical presence in the area, but the species is rarely caught or observed there (Dewar *et al.,* 2013). From 1926 to 2011 there were 14 confirmed observations of subadult or adult white sharks in the vicinity of the Hawaiian Islands (Taylor, 1985; Weng and Honebrink, 2013). No YOY or juvenile white sharks have been captured in the Hawaiian Islands, suggesting it is unlikely to be a nursery area. Electronic tagging studies also indicate that some white sharks migrate offshore from the aggregation sites in central California and Guadalupe Island to waters near the Hawaiian Islands (Domeier and Nasby-Lucas, 2008; Jorgensen *et al.,* 2010).

The majority of adult white shark activity in the NEP is observed at coastal sites and islands that serve as pinniped rookeries (Dewar et al., 2013). The Southeast Farallon Islands off central California serve as a rookery for a number of different pinniped species (northern elephant seals, California sea lions, northern fur seals, Steller sea lions and harbor seals) and have been one of the most predictable sites for observing white sharks in the NEP. Other sites where white sharks have been predictably observed in central California include Tomales Point, Point Reyes and Año Nuevo Island. Similarly, Guadalupe Island offshore Baja California in Mexico has recently become an important aggregation site for white sharks. The consistent presence of white sharks at these aggregation sites has provided the opportunity for researchers to conduct photo-ID studies because of the unique identifying characteristics exhibited by white sharks and their predictable occurrence over time.

Anderson *et al.* (1996) initiated a photo-ID study of white sharks at Southeast Farallon Island in 1987, which was subsequently expanded to include coastal areas near Tomales Point in 1988. The study found that the same individuals returned to these areas repeatedly, with males typically returning on an annual basis and females on a semi-annual basis. Males were sighted nearly twice as often as females, though this ratio is most likely biased because it is easier to confirm the presence of male claspers rather than their absence. One specific male white shark has been found to occur at Southeast Farallon Island over a period of 22 years (Anderson *et al.,* 2010). Based on photo-ID studies conducted at Guadalupe Island, Domeier and Nasby-Lucas (2007) and Nasby-Lucas and Domeier (2012) found that adult male and female white sharks exhibit patterns of occurrence similar to those found for white sharks in central California, with males returning annually and mature females typically returning on a semi-annual basis. As was the case in central California, they also observed more males than females; however, the sex ratio shifted during fall months as males and females arrived at different times.

Studies using pop-up satellite archival tags (PSAT) have shown that sharks tagged at both Southeast Farallon Island and Guadalupe Island undertake long range migrations to an offshore focal area (OFA) in the NEP located approximately midway between the west coast of North America and the Hawaiian Islands and then return to the aggregation sites where they were originally tagged in the fall (Boustany *et al.,* 2005; Weng *et al.,* 2007a; Domeier and Nasby-Lucas, 2008; Jorgensen *et al.,* 2010). A relatively small number of white sharks tagged at these two aggregation sites move as far west as the Hawaiian Islands (Domeier and Nasby-Lucas, 2008; Jorgensen *et al.,* 2010). This OFA has been termed either the white shark café or the Shared Offshore Foraging Area by different research groups (Domeier, 2012; Jorgensen *et al.,* 2012).

Researchers have also used smart position and temperature (SPOT) tags to document white shark movements from both the central California and Guadalupe Island aggregation sites. SPOT tag data for white sharks from Guadalupe Island confirm that females typically do not return to the

aggregation site on a yearly cycle and instead remain offshore for about 15 months, which is presumed to be associated with their 18-month gestation cycle (Domeier and Nasby-Lucas, 2012). After spending 15 months offshore, 4 tagged females returned to coastal waters between April and August when YOY are seasonally present, suggesting that they may have migrated there to give birth. Two of the females were tracked into the Sea of Cortez in June and July when white sharks are rare according to information presented in Galván-Magaña *et al.* (2010), and two were tracked to the Pacific coast of Baja California near Sebastián Vizcaíno Bay (Domeier and Nasby-Lucas, 2013). All four females then returned to the Guadalupe Island aggregation site between late September and early October after the normal return time for male white sharks.

Analysis of both types of satellite tag data suggests that there is sexual segregation of white sharks in the OFA, with males from the aggregation sites in central California and at Guadalupe Island using a smaller and more predictable offshore area and females roaming over a larger and less predictable area (Jorgensen *et al.,* 2009; Domeier and Nasby-Lucas, 2012). The habitat function of the OFA and the coastal aggregation sites is a source of disagreement between different researchers and centers around whether the OFA or the coastal aggregation sites are used for mating. Jorgensen *et al.* (2010 and 2012) argue the OFA is a mating area and Domeier (2011) and Domeier and Nasby-Lucas (2013) argue the coastal aggregation sites are used for mating.

To complement data obtained from the PSAT and SPOT tagging studies, researchers in central California have used an acoustic array to document the movements of white sharks in and around the known sites where white sharks aggregate. Acoustic tracking data for white sharks tagged in central California showed that upon their return to the coast from offshore, tagged white sharks were detected by receivers at a number of central California locations. Tracking data during the coastal aggregation period (August through February) suggest that white sharks preferred a limited number of key hotspots and that some individual sharks showed a distinct preference for specific sites (Dewar *et al.,* 2013).

Despite their long-range offshore movements, satellite tagged white sharks from central California have not been tracked moving to Guadalupe Island or vice versa. However, a female white shark that was SPOT tagged at Guadalupe Island was found to migrate offshore and return back to the coast to an area just off Point Conception (M. Domeier, MCSI, personal communication) and a small number of acoustically tagged white sharks have been found to move between the two areas (Jorgensen *et al.,* 2012; S. Jorgensen, Monterey Bay Aquarium, personal communication as cited in Dewar *et al.,* 2013).

*Genetic Information on White Shark Population Structure and Population Size*

Genetic data provide valuable insight into white shark population structure and connectivity between populations in different ocean basins, as well as historical abundance. A comparison of mitochondrial DNA (mtDNA) samples taken from white shark populations in central California, South Africa and Australia/New Zealand showed strong clustering of samples from California with those from Australia/New Zealand. The analysis also provided evidence that the NEP white shark population forms a unique monophyletic clade (i.e., a group evolved from a single common ancestral form) that was derived relatively recently from the Australia/New Zealand population. It has been hypothesized that the NEP white shark population was founded by Australia/New Zealand migrants during the Late Pleistocene (~150,000 years ago) and that subsequent strong homing behavior and reproductive site fidelity has maintained the separation between the two populations (Jorgensen *et al.,* 2009).

The pattern of genetic diversity observed in white shark samples suggests the population has undergone a rapid demographic expansion since it colonized the NEP (Dewar *et al.,* 2013). Although the overall number of genetic samples is relatively low for all geographic areas, observations that the NEP white shark population lineage is monophyletic and that no shared haplotypes have been observed between samples from different regions strongly indicates the NEP population is genetically distinct (Dewar *et al.,* 2013). However, because only mtDNA data are presently available and this genetic material is inherited maternally, the available genetic information only reflects patterns of female gene flow and behavior. Future use of nuclear DNA markers is needed to determine whether male mediated gene flow follows a similar pattern (Dewar *et al.,* 2013).

The number of haplotypes (i.e., specific genetic sequences that are inherited from the maternal parent's haploid mitochondrial genome) expected in a given population depends, among other things, on its effective population size (Dewar et al., 2013). For populations that are naturally low in abundance, the number of haplotypes is expected to be low and normally there would be no truly rare haplotypes (defined by the BRT as haplotypes found at frequencies equal to or less than 5 percent). In shark and cetacean populations with a low number of haplotypes (e.g., 1–5 haplotypes), the abundance of females in the population is in the low hundreds of individuals or less (see Table 2.2 in Dewar *et al.,* 2013). In contrast, higher haplotype diversity is consistent with a population that is currently large or was larger in the past, but has suffered a significant decline in the last few generations (Hoelzel *et al.,* 1993, as cited in Dewar *et al.,* 2013). Based on an evaluation of the available genetic information on white sharks from central California (see Jorgensen *et al.,* 2010), the BRT found that the number of haplotypes and the number of low frequency haplotypes in the NEP white shark population were relatively high (Dewar *et al.,* 2013). The BRT compiled information on haplotype diversity and population abundance for a range of marine mammal and shark species that were long-lived, slow reproducers and not characterized by strong social structure, and compared this information to the haplotype numbers and diversity observed for white sharks in the NEP (see Table 2.2 in Dewar *et al.,* 2013). Based on this comparison, the haplotypic diversity of the NEP white shark population is comparable to that of other species where the abundance of females is in the high hundreds to low thousands of individuals. Given the relationship between haplotype diversity and female abundance and the observed haplotype diversity for white sharks in the NEP, the BRT suggested that the NEP white shark population is either much more abundant than indicated by recent estimates based on photo-ID data from central California and Guadalupe Island (Chapple *et al.,* 2011; Sosa-Nishizaki *et al.,* 2012) or that the population was historically larger and has declined substantially in the last few generations.

The BRT addressed the potential for a substantial decline in the NEP white shark population over the past two generations (i.e., approximately 40 years) by conducting a Monte Carlo modeling exercise that imposed a relatively high level of fisheries-related mortality on a white shark population to determine if it was feasible to induce a 90 percent population decline over two generations (see Appendix B in Dewar *et al.,* 2013). The modeled scenarios

assumed starting white shark populations consisting of only 500 and 1,000 adult females and imposed fishery-mortality rates that were high in comparison to current estimated rates. Under these scenarios, fisheries mortality caused population declines, but the modeling results indicate that present day abundance of female white sharks would still number several hundred individuals. Based on this analysis, the BRT determined that: (1) The NEP white shark population is not likely to have undergone a dramatic decline in abundance over the past two generations (40 years); and (2) the population's haplotypic diversity reflects a present day adult female population that is much larger than suggested by current population estimates (see Appendix B in Dewar *et al.,* 2013).

**NEP White Shark DPS Determination**

The BRT evaluated the best available information for the NEP white shark population to determine whether it meets the discreteness and significance criteria in the joint DPS policy (see ESA Statutory Provisions section). All relevant information related to the discreteness and significance criteria was thoroughly discussed by the BRT and arguments were developed for and against each factor that was considered. The BRT used a SEDM approach for expressing uncertainty about how different type of information (e.g., behavior, genetics, etc.) related to the discreteness and significance criteria (Dewar *et al.,* 2013).

*Discreteness*

Based on a careful review of the best available information, the BRT concluded that the NEP white shark population is markedly separated from other populations of the same taxon as a consequence of behavioral characteristics (Dewar *et al.,* 2013). Information supporting this conclusion includes: (1) The site fidelity exhibited by NEP white sharks from the two studied aggregation sites (i.e., central California and Guadalupe Island); (2) tagging information that shows movement of white sharks only within the NEP; and (3) the lack of shared mtDNA haplotypes between the NEP white shark population and white shark populations from other areas (e.g., Australia/New Zealand and South Africa) which suggests little movement of sharks or gene flow among these areas. All of the available tagging and photo-ID data from the two known aggregation sites in the NEP indicate that subadult and adult males and females exhibit consistent migration patterns with individuals moving between the aggregation sites and an offshore pelagic habitat located between the Hawaiian Islands and the North American mainland. Similarly, tagging studies of YOY and juvenile white sharks in the NEP also indicate that their movements are restricted to the coastal waters of North America. Results from genetic studies using mtDNA markers indicate that the NEP white shark population does not share any haplotypes with populations in other regions suggesting there is little to no gene flow between the NEP population and populations in other regions. The available mtDNA data are only indicative of female-mediated gene flow, and therefore additional information is needed to confirm that males do not move from the NEP to other areas such as Australia or New Zealand. Accordingly, the BRT found that the available evidence strongly supports a finding that NEP white sharks are markedly separate from white shark populations in other regions based on a consideration of behavioral factors (Dewar *et al.,* 2013).

*Significance*

The BRT evaluated the available information relating to the possible significance of the NEP white shark population and focused on two factors: (1) Genetic differences between the NEP white shark population and other populations found in the Pacific and Atlantic Oceans; and (2) whether the loss of the NEP white shark population would create a significant gap in the species' global range. Based on a thorough evaluation of the available information, the BRT found that the NEP white shark population is significant to the global taxon based on both of these two factors (Dewar *et al.,* 2013).

The BRT evaluated the genetic differences between the NEP white shark population and populations found in other regions by comparing the results of mtDNA analysis of white shark samples from Central California (the NEP white shark population), Japan, Australia/New Zealand and South Africa. A comparison of these data revealed that the NEP white shark population does not share mtDNA haplotypes with populations from any other area, suggesting it represents a unique monophyletic clade. The level of mtDNA differentiation between populations suggests that less than one migrant per generation migrates between areas and that enough time has passed to allow white sharks to adapt to habitat conditions in the NEP. Although the mtDNA data provide information only about potential female movement and gene flow among regions, many of the individuals analyzed from the NEP white shark population were adult males with haplotypes indicating that they were of NEP origin and photographic histories showing that they were repeatedly observed at the aggregation sites in the NEP. The BRT identified some issues with the available genetic data (e.g., small sample sizes for most genetic studies, the use of only maternally inherited markers, etc.), but concluded based on a SEDM assessment that the data show marked genetic differences between the NEP white shark population and other white shark populations that were analyzed (Dewar *et al.,* 2013).

The BRT also evaluated the range of the NEP white shark population in comparison with the species' global distribution to assess whether the loss of the NEP population would constitute a significant gap in the species' range (Dewar *et al.,* 2013). The BRT determined that the NEP white shark population occupies approximately half of the North Pacific Ocean and concluded that this area represents a significant part of the taxonomic species' global range. Based on these considerations, the BRT concluded that loss of the NEP white shark population would constitute a significant gap in the taxonomic species' global range (Dewar *et al.,* 2013).

*Conclusion*

Based on a consideration of the best available information, the BRT found that the NEP white shark population is: (1) Discrete to the global taxon because it is markedly separated from other white shark populations based on behavioral factors; and (2) significant to the global taxon based on evidence that the population differs markedly in its genetic characteristics from other populations and because loss of the population would result in a significant gap in the range of the global taxon. We concur with the BRT's findings, and therefore conclude that the NEP white shark population constitutes a DPS under the ESA.

**Significant Portions of the NEP White Shark Population's Geographic Range**

As part of its status review, the BRT evaluated whether there were portions of the NEP white shark population's geographic range that could potentially constitute a significant portion of its range. Although several portions of the geographic range occupied by the NEP white shark population are biologically important (e.g., central California and Guadalupe Island aggregation sites, SCB

and northern Baja coastal nursery habitat, offshore pelagic habitat), the BRT focused on evaluating whether there were important threats to the population that were concentrated in specific areas that might constitute a significant portion of the range of the population. Based on its threats evaluation, the BRT concluded that fisheries bycatch is the main threat to the population and the largest known current threat is the bycatch of YOY and juvenile white sharks in gillnet fisheries that occur in the coastal waters of the SCB and northern Baja California (see Evaluation of Threats section). Within this geographic area, which is considered to be the nursery area for YOY and juvenile white sharks in the NEP, most documented fisheries bycatch occurs along the Baja California coast from the U.S.-Mexico border to Sebastián Vizcaíno Bay, but there is also bycatch of YOY and juveniles in the SCB. Recent tagging studies (Weng *et al.,* 2007b; Weng *et al.,* 2012) have tracked some YOY white sharks moving from the SCB to coastal Mexican waters including Sebastian Vizcaino Bay and the Sea of Cortez, suggesting that the nursery habitat in the SCB is connected to the nursery habitat in northern Baja California. Because this nursery habitat is used by the entire NEP white shark population, the BRT concluded that fishery bycatch impacts in the nursery habitat affect the entire population rather than any specific population segment. Similarly, adult and subadult white sharks tagged at the known coastal aggregation sites in central California and at Guadalupe Island undertake seasonal offshore migrations and males and females use common areas in the NEP between the Hawaiian Islands and the coast of North America. While occupying this offshore habitat, adult and subadult white sharks from throughout the range of the NEP population are exposed to similar threats. Based on these considerations, the BRT determined that the most significant threats to the population affect the NEP population as a whole rather than any specific segments of the population. As a consequence, the BRT found, and we concur, that there are no identifiable portions of the NEP white shark population that constitute a significant portion of the population's range. Accordingly, the BRT's extinction risk assessment was based on the NEP white shark population throughout its entire range.

**Assessment of NEP White Shark Extinction Risk**

The BRT considered a wide range of information in assessing the extinction risk of the NEP white shark population including: (1) Potential threats to the population; (2) direct and indirect information regarding trends in population abundance; (3) population abundance estimates and factors that bias abundance estimates; and (4) population modeling to assess the risks associated with fisheries bycatch on the population under a range of population levels. The following discussion summarizes information considered by the BRT, the results of its analyses, and its overall extinction risk conclusions (see Dewar *et al.,* 2013).

*Evaluation of Threats*

The BRT identified and compiled information on a range of potential threats to the NEP white shark population (Dewar *et al.,* 2013). These included several fisheries (i.e., high seas driftnet fishery; coastal set net fisheries off of California; gillnet fisheries in Mexico and recreational fisheries off of California); depletion of white shark prey resources; potential small population effects; disease and predation; habitat degradation (i.e., environmental contamination) and climate change effects (i.e., ocean acidification and ocean warming). Following a review of this information, the BRT assessed the severity of each threat to the population and how certain each threat was likely to occur. In making this assessment, the BRT considered the current and foreseeable future risks of each threat to the population, and in some cases also assessed the historical risks of some threats where information was available to do so. The BRT also grouped individual threats into specific threat categories (e.g., habitat destruction, overutilization, etc.) which were then evaluated in terms of their overall risk (e.g., none, low, moderate and high) to the NEP white shark population. Where appropriate, we incorporated the BRT's analysis and findings about threats in our evaluation of the five factors that must be considered in accordance with section 4(a)(1) of the ESA. More detailed information regarding the threats assessment can be found in Dewar *et al.* (2013).

In summary, the BRT found that threats associated with habitat degradation, disease and predation, and small population size effects are currently a low risk to the NEP white shark population and are likely to remain low in the foreseeable future. The BRT found that high-seas driftnet fisheries and coastal gillnet fisheries were a moderate threat to the population in the past, but that the magnitude of this threat has diminished substantially in recent years. However, the BRT found that white shark mortality associated with coastal gillnet fisheries off southern California and Baja California were of concern and considered this threat to be a moderate risk to the NEP white shark population now and in the foreseeable future. For several other threats (e.g., disease and global warming related effects), the BRT concluded that the available information to assess the threats for the population was limited, and therefore, it expressed a relatively high degree of uncertainty in its assessments of those threats. Overall, the BRT concluded that bycatch of white sharks in coastal gillnet fisheries was currently the main threat to the population and was likely to remain so in the foreseeable future.

*Evaluation of Trend Information*

Trend information is considered highly informative in assessing a population's risk of extinction (Musick *et al.,* 1999); therefore, the BRT summarized and evaluated direct and indirect information related to trends in the abundance of the NEP white shark population from a variety of different sources. These information sources included: (1) White shark catch and effort data for coastal gillnet fisheries in southern California; (2) white shark abundance estimates at Guadalupe Island; (3) white shark attack frequency on marine mammals; and (4) information regarding possible range expansion of the population.

Population trends can be evaluated by examining trends in catch-per-unit-effort (CPUE). For analysis of CPUE, the BRT used white shark catch data and effort data for the California set gillnet fishery, which has accounted for a large majority of the bycatch of white sharks in California waters since the early 1980s (Dewar *et al.,* 2013). Across the entire time series of available logbook data (1981–2011), CPUE in this fishery appears to have declined from the early 1980s through the mid-1990s and generally increased since that time. The period of increasing CPUE since the mid-1990s also coincided with a steady decline in fishing effort as a result of changes in fishery regulations. The BRT was concerned that increasing CPUE during the 2000s could be caused by increased reporting rates associated with the Monterey Bay Aquarium white shark scientific collection program, which beginning in 2002 incentivized fishermen to report their catches, but concluded that increased reporting did not fully account for the observed trend in CPUE (Dewar *et al.,* 2013). The BRT was also concerned that the increase in CPUE during the 2000s could also have

been caused by an increase in the average soak time per set (i.e., the amount of time fishing nets are left in the water to fish before being retrieved) in recent years. The BRT used multiple linear regression analysis to examine the potential impact of soak time per set on CPUE over time for the period from 1994–2001 and found there was a significant increase in CPUE over that period and that soak time was not a significant contributing factor (Dewar *et al.,* 2013).

The white shark photo-ID study conducted at Guadalupe Island provided the BRT with an opportunity to examine trends in white shark abundance at that site over the period from 2001–2011. As discussed in Dewar *et al.* (2013), the BRT's re-analysis of photo-ID data for white sharks observed at Guadalupe Island allowed for the estimation of annual population abundance over this period. The time series of annual abundance estimates from this analysis showed there was an increasing trend in male abundance from 2001–2011, with the number of males approximately doubling, from about 40 males in 2001 to over 90 males in 2011. Over the same time period, females increased in abundance for the first several years of the study, and then their abundance level stabilized after 2006. The BRT believed that abundance of females may have been underestimated in the years after 2007 because sampling effort decreased in those years for the months of November and December when females were still present at Guadalupe Island.

Observations of white shark attacks on marine mammals have been documented at Southeast Farallon Island since the 1980s, providing a relatively long time series of information. Over the last 30 years researchers working at the islands have published a number of papers reporting an increase in white shark abundance based on the increased incidence of attacks on pinnipeds. Ainley *et al.* (1996) suggested that white shark populations were increasing in abundance in association with the increase in northern elephant seals (*Mirounga angustirostris*) at Southeast Farallon Island and they also reported an increase in the size of white sharks. Elephant seals were first seen at the Islands in the 1970s after which the presence of white sharks increased (Lowry, 1994). At a 1996 white shark symposium Pyle *et al.* (1996) and Klimley and Anderson (1996) concluded that the white shark population at Southeast Farallon Island was increasing, given the increased number of observed attacks on pinnipeds, even after taking into account the increased abundance of pinnipeds during the 1970s and 1980s. Brown *et al.* (2010) recently found that variation in the number of white shark attacks on northern elephant seals was correlated with the number of elephant seals present during their autumn haul-out to give birth, mate and molt. Their estimated shark abundance index explained very little of the annual variation in shark attacks, possibly indicating a stable shark population or that their index does not accurately reflect annual variation in shark abundance.

White shark attacks on marine mammals in other locations have also increased. At San Miguel Island, which is the westernmost of the northern Channel Islands, annual surveys of pinniped populations have been ongoing for several decades to monitor their abundance (Jeff Harris, SWFSC, personal communication as cited in Dewar *et al.,* 2013). Based on these surveys, the Channel Islands now support a population of over 100,000 California sea lions (*Zalophus californianus*). While it is only in the last couple years that there is evidence of attacks by white sharks on pinnipeds near the Channel Islands, the increase in shark-inflicted wounds is dramatic. In 2010 and in prior decades there were essentially no observed shark-inflicted wounds on California sea lions; however, in 2011 there were approximately 136 recorded bite marks, and in 2012 there were over 300 recorded bite marks (Jeff Harris, personal communication as cited in Dewar *et al.,* 2013). The bite wounds were observed primarily in the summer (June–August) on juveniles and females, although the occurrence of scars early in the year suggest that attacks may occur year round. Not all bite wounds have been validated to be from white sharks, but the size and shape of the wounds are consistent with those from white sharks (Dewar *et al.,* 2013). The only other potential predator that could cause such wounds is a large mako shark, but this species is rarely observed or caught in this region and has not been observed near pinniped rookeries (Dewar *et al.,* 2013).

In addition to pinnipeds, white shark bite marks have been observed on southern sea otters (*Enhydra lutris nereis*) in coastal central California. Researchers at the U.S. Geological Survey Western Ecological Research Center (USGS–WERC) have reported a dramatic increase in the number of southern sea otter mortalities linked to white shark bites over the past 5 years, particularly in the region between Estero Bay and Pismo Beach, but also in Monterey Bay and areas north of Santa Cruz. Overall, the proportion of beach-cast sea otter carcasses in which shark bites are considered the primary cause of death has increased 3–4 fold from the long-term average, and shark-bite trauma has now become the single most frequently observed cause of death (USGS–WERC, unpublished data). Although definitive evidence for the species of shark responsible for the trauma is only available for 10–20 percent of carcasses (i.e., where tooth fragments or tooth scrapes on bone are found), the evidence suggests that white sharks rather than other shark species are responsible for the observed mortality. A range of factors is likely impacting southern sea otter population trends in California; however, increased incidence of shark-bite mortality is thought to be linked to sea otter population declines in some areas.

In addition to trends in abundance and other indicators, information suggesting range expansion or contraction can provide insight into the status of a population. For example, the increase in the number of white sharks observed annually at Guadalupe Island since the early 1990s suggests the NEP population may be expanding its use of near-shore aggregation sites. The increased numbers of white shark bite marks on sea lions and southern sea otters in areas south of Monterey Bay also suggests an increased presence of white sharks in this region. While the coastal waters from the Channel Islands to Monterey Bay are clearly within the historical range of white sharks along the coast of California, the majority of white shark activity in the past 10 years has been reported in central California and at Guadalupe Island. There is no evidence to indicate that the increased abundance of white sharks at Guadalupe Island or in the region between the Channel Islands and Monterey Bay is due to sharks leaving the known aggregation sites in central California where they are typically found (Dewar *et al.,* 2013).

Based on a SEDM assessment, the BRT concluded that the available trend information indicates that the NEP white shark population is most likely stable or increasing rather than decreasing (Dewar *et al.,* 2013). The BRT also indicated that a stable or increasing NEP white shark population was consistent with: (1) the increased abundance of white shark prey resources (i.e., marine mammal and fish populations) over the past several decades; and (2) changes in the near-shore set gillnet and high seas drift gillnet fisheries over the past several

decades that have reduced fisheries-related impacts on the population. The BRT expressed some uncertainty about its assessment of white shark population trends because of the absence of historical information on abundance, uncertainty about female mortality levels, and uncertainty about whether changes in the range of the population are indicative of an overall increase in population size. Despite these uncertainties, the BRT found that the NEP white shark population is most likely stable or increasing (Dewar *et al.,* 2013).

*Abundance Estimates at Aggregation Sites*

Chapple *et al.* (2011) and Sosa-Nishizaki *et al.* (2012) analyzed white shark photo-ID data from central California (i.e., Farallon Islands and Tomales Point) and Guadalupe Island, respectively, using mark recapture methods to estimate the numbers of white sharks at the two aggregation sites. The combined abundance estimates from these two studies total approximately 339 subadult and adult white sharks. The BRT re-analyzed the original photo-ID data from these studies, as well as additional data provided by the researchers who had conducted the studies. The objectives of this re-analysis were to: (1) Examine both original data sets as well as the new data for white sharks from both sites; (2) evaluate potential bias in the population estimates by examining population demographics at both sites, including a key modeling assumption that all individuals have an equal probability of being captured (in this case photo-identified); (3) examine trends in abundance at Guadalupe Island, which had a much longer time series of data; and (4) calculate minimum estimates of the numbers of adult female white sharks and the male-to-female sex ratio at the two sites for use in extinction risk modeling.

The central California dataset used in the re-analysis was the same as that used by Chapple *et al.* (2011), but included updated information about the sex of many individuals that was previously unknown. The Guadalupe Island dataset included 2 more years of data than were used by Sosa-Nishizaki *et al.* (2012), as well as information on the number of days of sampling effort per month over the 11-year study. The BRT conducted its mark recapture analysis of data for both sites using open models, which allowed the populations to change either through emigration, immigration or mortality. Detailed methods and information about models used in the analysis are provided in Dewar *et al.* (2013).

The BRT's analysis indicated that the majority of white sharks at both aggregation sites were mature and that the sex ratio was strongly biased in favor of males at both sites (i.e., 1.6 to 1 at Guadalupe Island and 3.8 to 1 at the central California sites), although there were significant seasonal changes in the sex ratio at Guadalupe Island (Dewar *et al.,* 2013). Estimates of mature adults at the two aggregation sites ranged from approximately 85 percent in central California to 90 percent at Guadalupe Island. A total of 131 white sharks were recorded by photo-ID studies at the central California sites from 2006–2008. Re-analysis of the data by the BRT generated a 3-year super-population estimate (i.e., an estimate of all the individuals that were observed at the site during the study, including those that have died or emigrated from the site) of 166 white sharks, which is comparable to the open population model estimate of 156 white sharks reported by Chapple *et al.* (2011) and within the confidence limits of the larger closed population model estimate of 219 white sharks that they also reported (Dewar *et al.,* 2013). A total of 142 white sharks were recorded by photo-ID studies at Guadalupe Island from 2001–2011 and the BRT's re-analysis of these data generated a super-population estimate of 154 white sharks for the study period, which is higher than the estimate of 120 white sharks reported by Sosa-Nishizaki *et al.* (2012), presumably because additional data were analyzed. The BRT's analysis of the Guadalupe Island data also provided annual estimates of white shark abundance, which demonstrated an increasing trend in abundance over the study period, with males nearly doubling in abundance and females initially increasing in abundance followed by a period of stable numbers (see Evaluation of Trend Information section).

*Evaluation of Bias in White Shark Sex Ratios and Adult Population Size*

The BRT's estimates of white shark abundance at the central California and Guadalupe Island aggregation sites were within the bounds of those previously estimated by Chapple *et al.* (2011) and Sosa-Nishizaki *et al.* (2012). However, the BRT was concerned about potential sources of bias associated with these abundance estimates based on its examination of demographic and other data, and concluded that they were unlikely to represent a realistic estimate of the abundance of subadult and adult white sharks in the entire NEP population. Therefore, the BRT undertook an effort to more carefully evaluate bias in the estimated sex ratios at the two sites and bias in estimation of the total NEP population abundance. This information was then used to develop a range of plausible population abundance levels for the NEP white shark population that were subsequently used in the BRT's extinction risk modeling.

*Sex Ratio Bias*

Males dominate the available photo-ID data from the central California and Guadalupe Island aggregation sites, and therefore the sex ratios at both sites are highly skewed in favor of males. Given the apparent skew in the sex ratios at both aggregation sites and concerns about bias in the photo-ID studies, the BRT concluded that the direct empirical estimates of female abundance at the two sites likely underestimated the actual abundance of females, both at the sites and in the NEP population as a whole. The BRT identified several possible reasons for the observed sex ratio skew which also suggest the actual abundance of white sharks in the NEP has been underestimated.

First, white sharks may exhibit sexual segregation as do some other sharks in the family Lamnidae (e.g., salmon and mako sharks). In nearly all places where white sharks have been surveyed, the sex ratio of pups both in utero and in the environment is close to parity or 1:1 (Dewar *et al.,* 2013), but the sex ratio of older life stages (i.e., juvenile, subadult and adult) is skewed in favor of males (e.g., on the U.S. east coast, Casey and Pratt, 1985; and in New Zealand, C. Duffy, personal communication with Heidi Dewar in Dewar *et al.,* 2013). A recent study in South Africa found a skewed male-to-female sex ratio of 3 to 1 with both seasonal and spatial shifts in the sex ratios of juvenile and subadult white sharks over relatively small spatial scales (Robbins, 2007). In the NEP, sexual segregation is also apparent offshore, with females making more dispersed offshore movements than males, which have a more focused distribution (Jorgensen *et al.,* 2010; Domeier and Nasby-Lucas, 2012). Second, some females may not be sampled at the central California and Guadalupe Island aggregation sites because they arrive later in the season after most of the photo-ID sampling effort has ended. Due largely to weather conditions, the majority of the sampling effort at these sites occurs opportunistically over a period of 2 to 4 months in the late summer and fall, which does not cover the entire period that white sharks are present. Based on

work at Guadalupe Island, the observed male-to-female sex ratio shifts from 8 to 1 in August to 0.9 to 1 in November (Nasby-Lucas and Domeier, 2012), indicating that sampling at different times can influence estimates of the observed sex ratio in the local population. Third, it is possible that some females at the aggregation sites are simply not available to be sampled for behavioral reasons (see Sosa-Nishizaki *et al.,* 2012). Lastly, mature females have a presumed 18-month gestation period and many do not return each year to the aggregation sites. At the central California sites, for example, this behavior combined with the relatively short time series of available data may have resulted in poor estimation of the capture probability for females and consequently an underestimate of female abundance.

Because of the likely sex ratio bias associated with the white shark population estimates at the central California and Guadalupe Island aggregation sites, the BRT undertook a SEDM assessment to evaluate the relative plausibility of different sex ratio alternatives at each site. For each site, the least skewed alternative the BRT considered was a male to female sex ratio of 1 to 1 and the most skewed alternative was the sex ratio derived empirically from the BRT's mark-recapture analysis of the available data. Intermediate sex ratio alternatives were also considered for each aggregation site. Based on this assessment, the BRT concluded that the actual sex ratios at both sites were most likely not as strongly skewed in favor of males as suggested by the photo-ID data and that there are more females in these populations than suggested by mark-recapture analysis of the photo-ID data (Dewar *et al.,* 2013). The most important factor influencing the BRT's assessment was the timing of the sampling season at both sites relative to the late arrival of females, which would result in under sampling of females.

*Population Abundance Bias*

The BRT concluded that there are several factors which bias the estimation of white shark abundance in the NEP and that also indicate there are more adult female white sharks, and hence a larger overall NEP population, than have been estimated at the central California and Guadalupe Island aggregation sites (Dewer *et al.,* 2013).

First, the abundance estimates for the central California and Guadalupe Island aggregation sites do not include all white sharks in those areas. For example, abundance estimates at the central California sites do not include white sharks at other locations that are documented to be hotspots, such as Año Nuevo State Park. There is a long history of white shark activity at this location, which is the site of the largest mainland breeding colony of northern elephant seals. In addition, acoustic tagging studies in central California (Jorgensen *et al.,* 2010) have shown that some individual white sharks exhibit site fidelity to particular coastal sites such that they were unlikely to have been observed by the photo-ID studies conducted at the Southeast Farallon Island or Tomales Point sites. Similarly, photo-ID studies of white sharks have been conducted only at one of several locations around Guadalupe Island where they are known to occur, suggesting that not all white sharks at the island have been observed by the photo-ID studies.

Second, white sharks may occupy unknown or previously unoccupied areas in the NEP. For example, there appears to be an increased occurrence of white sharks near the northern Channel Islands in southern California and in some portions of central California. Other potential aggregation sites where pinnipeds are known to be common and white sharks may occur include the Coronado Islands and Cedros Island in Mexico, both of which are areas where Mexican fishermen have reported large white sharks (Sosa-Nishizaki, personal communication cited in Dewar *et al.,* 2013). White sharks have also been reported in areas away from the main aggregation sites off Alaska, British Columbia, Washington, Oregon, California, Baja California and the Gulf of California (Klimley, 1985; Martin, 2005; Galván-Magaña *et al.,* 2010). Although some white sharks tagged at the two aggregation sites have been observed to visit other coastal sites (S. Jorgensen, personal communication in Domeier and Nasby-Lucas, 2012), the data are limited and information on the extent of coastal areas used by white sharks tagged at these sites is still unknown.

Third, recent data using isotopes to characterize the diet of different life stages of white sharks suggest that not all adult white sharks transition to preying on marine mammals (Kim *et al.,* 2012), and thus these individuals may not be as likely to occur near pinniped aggregations and be available for observation.

Fourth, based on catch, attack and stranding data, some white sharks do not appear to undergo annual offshore migrations (Ainley *et al.,* 1985; Klimley, 1985). Very few satellite-tagged white sharks have remained along the coast, suggesting that white sharks not undergoing offshore migrations may represent a portion of the NEP that is not being sampled. It is possible that many of the white sharks remaining along the coast are subadults rather than adults, but the possibility that some adults remain in coastal areas year round cannot be ruled out.

Lastly, the high diversity of mtDNA haplotypes found in the NEP white shark population suggests the population may be much larger than indicated by the mark-recapture estimates for the central California and Guadalupe Island aggregation sites (see Genetic Information on White Shark Population Structure and Population Size section).

The BRT used a SEDM assessment to evaluate different levels of possible bias associated with extrapolating the adult female population estimates from the two aggregation sites to an overall adult female abundance estimate for the NEP white shark population. The BRT considered four levels of potential bias in this assessment: (1) No bias because all white sharks in the NEP are available for sampling at the central California and Guadalupe Island aggregation sites; (2) a bias indicating there are approximately 20 percent more adult females in the NEP population than estimated by the mark-recapture studies at the aggregation sites because a small portion of the population is not available for observation at those sites; (3) a bias indicating there are approximately two times more adult females in the NEP population than estimated by the mark-recapture studies at the two sites because white sharks occur at other sites or areas that are not sampled and/or because the timing of sampling at the aggregation sites misses a key portion of the population; and (4) a bias indicating there are up to 10 times more adult female white sharks in the NEP population than estimated by the mark-recapture studies, as suggested by the high haplotype diversity and the fact that most white sharks in the NEP population are not available for sampling at the aggregation sites.

Based on its assessment, the BRT concluded that the abundance of female white sharks in the NEP population is most likely at least 2 times larger and possibly much larger than the combined abundance estimate for the central California and Guadalupe Island aggregation sites. Several factors influenced the BRT's evaluation and conclusion regarding abundance bias. First, there are areas where white sharks are consistently observed, such as Año Nuevo State Park and possibly the Channel Islands, which have not been sampled. Second, the BRT thought it

was plausible that some females never visit either of the two known aggregation sites. Finally, the high level of haplotypic diversity in white sharks from the NEP indicates that the population is likely much larger than indicated by the population estimates for the two aggregation sites alone (see Genetic Information on White Shark Population Structure and White Shark Population Size section).

*Female Abundance Estimates for Fisheries Risk Assessment Modeling*

The BRT developed a range of plausible adult female abundance levels for the NEP white shark population for use in modeling the extinction risk associated with fisheries impacts. As described in Dewar *et al.* (2013), the BRT developed 48 estimates of female abundance for the NEP white shark population using the 12 combinations of sex ratio bias (i.e., four at the central California sites and three at Guadalupe Island) and four levels of population abundance bias that were evaluated by SEDM. Each of the female abundance estimates was weighted by the SEDM assessments for sex ratio and abundance bias and then grouped into four adult female abundance levels as follows: (1) Less than 125 adult females; (2) 125–200 adult females; (3) 200–400 adult females; and (4) greater than 400 adult females. The fisheries risk assessment modeling evaluated each of these female abundance levels as well as the minimum population estimate of 47 adult females derived from the BRT's re-analysis of photo-ID data at the central California and Guadalupe Island aggregation sites (Dewar *et al.,* 2013). The sum of the weights for individual female abundance estimates within each of the four abundance levels represented the BRT's assessment of the most likely adult female abundance level in the NEP white shark population as a whole. Based on this analysis, the BRT concluded that the adult female abundance in the NEP was most likely in the range of 200–400 adult individuals (see Dewar *et al.,* 2013 for more detailed information).

The BRT reassessed the most likely adult female abundance a second time after the initial extinction risk modeling indicated that the minimum population estimate of 47 adult females was unrealistic given current estimates of fishery mortality for YOY and juvenile white sharks. Based on this second SEDM assessment, which changed the weights assigned to each of the 48 adult female abundance estimates, the BRT concluded that the adult female abundance in the NEP was at least in the range of 200–400 adult females and most likely greater than 400 adult females (Dewar *et al.,* 2013).

*Fisheries Risk Assessment Modeling*

The BRT conducted population modeling to assess how fisheries-related mortality would impact NEP white shark population growth rates and how changes in population growth rates would affect adult female population abundance over time. A brief summary of the BRT's analytical approach is presented below with more detailed information presented in Dewar *et al.* (2013).

**Analytical Approach**

The BRT's fisheries risk assessment modeling for the NEP white shark population was based on: (1) Estimates of the maximum potential productivity of the population (i.e., intrinsic population growth rate) using information on key vital parameters of white sharks (i.e., reproduction and survival rates); (2) estimates of adult female white shark population abundance (see Female Abundance Estimates for Fisheries Risk Modeling section); and (3) estimates of current YOY, juvenile and adult white shark mortality in U.S and Mexican gillnet fisheries. Estimates of adult female abundance in the NEP white shark population, rather than total population abundance estimates, were used in the modeling because female reproduction (i.e., pup production) is a key factor controlling population growth rate and the purpose of the analysis was to evaluate how estimated fisheries mortality affects white shark population growth rates and population abundance over time.

Estimates of potential population productivity are fundamental to modeling how threats such as fisheries-related mortality may impact population growth because populations with higher potential productivity can sustain higher levels of mortality. Annual rates of population growth can be calculated using information on a species' vital rates (i.e., age-specific reproduction and survival rates) assuming the relative proportion of the population in different age classes is stable. Using a variety of information sources, the BRT developed estimates of age-specific reproduction and survival rates for female white sharks and then used this information to develop estimates of the population's maximum growth rate.

As discussed in the Female Abundance Estimates for Fisheries Risk Assessment Modeling section, the BRT defined four adult female abundance levels for the NEP white shark population based on its assessment of sex ratio and abundance bias. Extinction risk modeling analyzed adult female abundance within these four abundance levels, as well the minimum adult female abundance estimate (i.e., 47 adult females) derived from the BRT's mark-recapture analysis of photo-ID data from the two aggregation sites.

**Modeling Analysis**

The BRT developed estimates of YOY and juvenile white shark fishery-related mortality using current fishery bycatch estimates in U.S. and Mexican gillnet fisheries. Because the BRT did not have estimates of actual adult female white shark bycatch, a SEDM assessment was used to evaluate potential levels of adult female mortality in U.S. and Mexican nearshore fisheries, as well as high seas IUU fishing. Based on available information informing potential fisheries-related mortality levels for adult females (see Appendix H in Dewar *et al.,* 2013), the BRT evaluated adult female mortality levels ranging from 0 to 10 adults females per year. Based on its assessment, the BRT concluded that adult female mortality was most likely between 1 and 5 adult females per year. Fishery-related mortality for each life stage (i.e., YOY, juveniles and adults) was incorporated into the modeling analysis.

The BRT used the information on maximum population growth rates, estimates of adult female population abundance, and fishery mortality to model the impact of fishery bycatch on the adult female population in the NEP in three stages. First, bycatch rates and mortality rates for YOY and juvenile white sharks were calculated for each of the four adult female abundance levels defined by the BRT. These rates were then used to calculate how the estimated fisheries mortality for each of the four adult female abundance levels impacted the maximum population growth rate and the probability of population decline over time. Second, estimates of adult female mortality were added to the YOY and juvenile mortality estimates for each of the four adult female abundance levels and the impact on the maximum population growth rate and probability of population decline were re-calculated. Finally, the maximum population growth rates for each of the four adult female abundance levels were reduced by the estimated fishery mortality for all life stages and then used to project adult female population abundance into the future using a stochastic age-structured density-dependent growth model. These modeling results were then used to calculate the probability that adult female abundance would decline below

defined population abundance thresholds over specific time horizons.

**Definition of Risk Categories and Foreseeable Future**

The BRT defined four levels of overall extinction risk (i.e., high, medium, low and very low) for its analysis. The specific criteria for each level of extinction risk were based on the current estimated abundance of the NEP white shark population, white shark population trajectories over specific time horizons, and the probability of a white shark population decline below specified thresholds. To evaluate population trajectories, the BRT used a range of time horizons (i.e., 40, 60 and 100 years) that were based on the white shark generation time (~20 years). The 40-year time horizon (or two white shark generations) was defined by the BRT as the foreseeable future for the white shark risk assessment and the 60-year (3 white shark generations) and 100-year (5 white shark generations) time horizons were used for different levels of risk. The BRT also defined two white shark population abundance levels corresponding to ''near extinction'' (50 mature individuals) and ''dangerously small'' (250 mature individuals), which are discussed in more detail in Dewar *et al.,* (2013). The two highest risk categories have criteria that are intended to address risks faced by a declining population and risks faced by small populations, both of which are indicators that a species is potentially at a high risk of extinction.

The BRT considered the foreseeable future in its analysis to be the timeframe over which predictions about the future status of the NEP white shark population could reliably be made. In quantifying the foreseeable future (40 years), as well as other timeframes used in the analysis, the BRT considered several factors to be particularly relevant. First, overutilization (i.e., fishery related mortality) is the most significant potential threat to the population. Second, the primary life history stage or age category suffering mortality in the U.S. and Mexican gill net fisheries that impact the population are YOY individuals. Third, white sharks are long-lived species. Given these factors, the BRT concluded that the definition of foreseeable future should be based on white shark generation time since fishery impacts on YOY individuals will influence population abundance and risk on that timeframe. The BRT concluded that it was appropriate to address the threat from overutilization (i.e., fishery mortality) over longer timeframes (60 and 100 years) based on other precedents for defining and assessing extinction risk (Dewar *et al.,* 2013).

Based on these considerations, the BRT defined the following extinction risk levels for evaluating the status of the NEP white shark population:

*High Risk:* The population is at high risk if it has a 5 percent chance of falling below 50 mature individuals (25 mature females) in 60 years (3 generations) or the current population is less than 250 mature individuals (125 mature females).

*Medium Risk:* The population is at medium risk if it has a 5 percent chance of falling below 50 mature individuals (25 mature females) in 100 years (5 generations) or the population has a 5 percent chance of falling below 250 mature individuals (125 mature females) in 40 years.

*Low Risk:* The population does not meet the criteria for medium or high risk, but the probability of a net population decline within 100 years ($N_{t=100} < N_{t=0}$) is greater than 10 percent.

*Very low Risk:* The population does not meet any of the above criteria for high, medium, or low risk and the population has a high probability of being stable or increasing.

**Modeling Results**

The BRT's estimation of YOY and juvenile mortality and its impact on maximum population growth rates for the minimum adult female abundance estimate from the aggregation sites and the four adult female abundance levels that were defined resulted in two key findings. First, the estimates of annual YOY and juvenile fishery-related mortality for the minimum population estimate of 47 adult females were equal to or greater than the total number of pups and 1-year-old individuals that would be expected to be produced by a population with that number of adult females. The BRT found this result to be unrealistic and concluded that the actual adult female abundance in the NEP population must be substantially higher than the population estimates based on photo-ID data from the two aggregation sites. For this reason, the BRT excluded this minimum adult female population abundance estimate from all further analysis. Second, the analysis indicated that there was a low or negligible probability that a NEP white shark population having at least 125–200 adult females would decline, given the estimated YOY and juvenile mortality from fisheries.

The BRT's estimation of the combined fisheries mortality for YOY, juvenile and adult females for the four adult female abundance levels and its impact on maximum population growth rates resulted in several findings. First, there was a high probability that a white shark population having less than 125 adult females would decline, given the estimated YOY and juvenile mortality and any level of adult female mortality. Second, there was a small or trivial probability that a white shark population having at least 125–200 adult females would decline to near extinction within 60 to 100 years, given the estimated YOY and juvenile mortality and a low level (1 or 2 individuals per year) of adult female mortality. If adult female mortality were higher (in excess of five individuals), which the BRT felt was less plausible, then the probability of adult female population decline would be higher. Third, there was a very low probability that a white shark population having at least 200 adult females would decline given the combined fishery mortality estimates for all life stages.

Overall, the BRT's modeling results indicate that if the NEP white shark population presently has 200 or more adult females, there is a low to very low risk of extinction associated with fisheries mortality on adult females, YOY, and juvenile white sharks over any of the time periods that were analyzed. If adult female abundance is actually lower than 200 adult females, the risk to the population would range from medium to high depending on the current population size and mortality of adult females. Detailed modeling results are presented in Dewar *et al.* (2013).

*Overall BRT Extinction Risk Conclusions*

The BRT conducted a final SEDM assessment to evaluate overall extinction risk for the NEP white shark population that considered all information from the status review report. This information included the assessment of threats to the population, direct and indirect indicators of population trends, information on population abundance, including updated mark-recapture analysis, genetic information related to population size, the evaluation of factors biasing the available population abundance estimates, and the results of extensive population modeling to assess risks associated with fisheries bycatch mortality. Based on this information and uncertainty about the future, the BRT allocated plausibility points among the four risk categories previously defined (see Definition of Risk Categories and Foreseeable Future section). The BRT allocated the vast majority of its plausibility points in the low and very low risk categories (86 percent of plausibility points—see Table 4.17 in

Dewar *et al.,* 2013) indicating that the NEP white shark population is currently considered to be larger than 250 mature individuals (see Female Abundance Estimates for Fisheries Risk Assessment Modeling section), that the population is likely to be stable or increasing in abundance (see Evaluation of Trend Information section), and that the population is not likely to fall below critical population thresholds in the foreseeable future (40 years) or beyond (60 and 100 years) (see Fisheries Risk Assessment Modeling section). Based on its overall risk assessment and the results of this SEDM assessment, the BRT concluded that the NEP white shark population is likely to be at a low to very low risk of extinction and is likely to remain so in the foreseeable future.

The level of extinction risk facing a population depends on information about its abundance, trends in abundance or other population indicators, potential threats to the population over time and uncertainty about the future. Fisheries-related mortality was the only factor the BRT found to be a potentially important threat to the NEP white shark population. The BRT acknowledged that other threats such as physiological effects of contaminants in the environment or the trophic implications of ocean acidification from climate change could adversely affect the population, but these threats were considered to have relatively minor population-level effects within the foreseeable future compared to direct fisheries-related mortality. The BRT concluded that depletion of white shark prey (e.g., pinnipeds and various fish species) from human activities may have had historical impacts on the NEP white shark population, but because pinniped populations have increased substantially over the last several decades and many fish stocks preyed upon by white sharks have similarly recovered or are in the process of recovering, this factor is no longer a threat and is not likely to become one in the foreseeable future.

The BRT concluded that the available information informing trends in abundance of the NEP white shark population is most consistent with a stable or increasing population. White shark CPUE has increased since the mid-1990s in the U.S. west coast set gillnet fishery, which would be expected for an increasing population. This period of increasing CPUE coincides with fishery management changes (i.e., high seas drift gillnet ban, time-area closures for gillnet fisheries offshore California, protection for white sharks by the State of California) and declining fishing effort that have reduced the potential for fishery interactions with white sharks. Increasing abundance of white sharks at Guadalupe Island and the increased incidence of white shark attacks on marine mammals at different sites along the California coast also suggest that the NEP white shark population is increasing.

Modeling conducted by the BRT to assess the risks from U.S. and Mexican fisheries-related mortality on the NEP white shark population indicate that the population is likely at a low to very low risk of extinction and is likely to remain so in the foreseeable future if the population includes more than 200 or more adult females. As discussed below, the BRT determined that the current population includes at least 200 adult females. However, the BRT's modeling results indicate that if there are fewer than 200 adult females in the population, then the population would be at a higher risk of extinction.

The BRT indicated that there were several lines of evidence suggesting that the NEP white shark population includes at least 200 adult females. The most important evidence comes from its analysis of fisheries mortality. Based on its analysis, the BRT concluded that the level of YOY and juvenile bycatch mortality estimated for U.S. gillnet fisheries and reported for Mexican gillnet fisheries is inconsistent with the NEP white shark population being smaller than several hundred females. If adult female abundance is presently less than 200 individuals, then the estimated fisheries bycatch would correspond to removing on the order of 20 to 70 percent of the estimated annual pup production, which the BRT considered highly unlikely for several reasons. First, population removal rates for sharks in fisheries using more selective fishing gear than gillnets (e.g., pelagic longlines) are probably less than 20 percent (Worm *et al.,* 2013). Second, for populations of marine mammals and sea turtles known or suspected to be declining because of high bycatch mortality, the mortality rate on age classes affected by gillnet bycatch is typically less than 10 percent. Third, even a 20 percent mortality rate on YOY and juveniles seems unlikely given that most of the estimated fishery mortality comes from a small number of fishermen (i.e., artisanal fishermen) that operate in only a relatively small portion of the population's nursery habitat (e.g., Sebastián Vizcaíno Bay). Although YOY white sharks have been found to move from the SCB to nursery habitat in Baja California, and thus could subject more of the YOY population to fishery impacts in Mexico, the available information regarding such movements is limited and there is no information indicating what portion of the population undertakes such movements. Based on these considerations, the BRT concluded that if the U.S. and Mexican gillnet fisheries are removing less than 20 percent of the annual pup production, as seems most likely, the estimated level of YOY and juvenile bycatch from fisheries is most consistent with a NEP white shark population that includes at least several hundred adult females. Finally, the BRT found that the available information on the haplotyic diversity for the NEP white shark population was most consistent with a NEP white shark population numbering several hundred or more adult females (see Genetic Information on White Shark Population Structure and Population Size section).

If the current adult female abundance of white sharks in the NEP exceeds 200 individuals, as the BRT has concluded is most likely the case, then the empirical estimates of subadult and adult white shark abundance at the central California and Guadalupe Island aggregation sites do not represent an accurate estimate of abundance for the entire NEP population (Dewar *et al.,* 2013). The BRT determined that this underestimate of the NEP population abundance could be explained by a combination of highly plausible factors including: (1) Under sampling of females at the aggregation sites due to a temporal mismatch of sampling effort with respect to the timing of female arrival at the sites; (2) under sampling of females relative to males at the aggregation sites because of spatial-behavioral factors (see Soza-Nishizaki *et al.,* 2012); (3) under sampling of males and/or females at the aggregation sites because of strong site fidelity or area preferences by one or both sexes around pinniped rookery areas (see Jorgensen *et al.,* 2010) and the use of fixed sampling locations; and (4) under sampling of both males and females that do not use the surveyed aggregation areas (e.g., individuals that use other pinniped rookery areas or do not feed substantially on marine mammal prey).

**Summary of Factors Affecting the NEP White Shark Population**

Section 4(a)(1) of the ESA and our implementing regulations (50 CFR part 424) state that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: (1) The present or threatened destruction,

modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or man-made factors affecting its continued existence. This section summarizes findings regarding threats to the NEP white shark population. Additional information regarding threats to the population can be found in the BRT's status review report (Dewar *et al.,* 2013) and a report prepared by NMFS' Southwest Region (NMFS, 2013).

**A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range**

Potential threats to the habitat of the NEP white shark population include pollution, depletion of white shark prey species, ocean acidification, and ocean warming associated with climate change. Each of these threats is discussed in the following sections.

*Pollution*

The SCB is important habitat for the NEP white shark population and serves mainly as a nursery area for YOY and juvenile white sharks. The SCB has a history of pollution due to discharges from publicly owned treatment works as well as non-point sources; however, pollutant inputs to this area from all sources have decreased since the 1970s despite increasing urbanization and human population growth along the southern California coast (Raco-Rands, 1999, cited in Schiff *et al.,* 2000). Pollutants introduced into the SCB include heavy metals (e.g., mercury), chlorinated hydrocarbons (e.g., pesticides), petroleum hydrocarbons (e.g., polycyclic aromatic hydrocarbons or PAHs), nutrients, and bacteria (Schiff *et al.,* 2000). Although banned from use in the 1970s, legacy pollutants such as DDT and PCBs remain in the SCB sediments (Schiff *et al.,* 2000) and have likely been distributed throughout the area by water and sediment transport (Schiff *et al.,* 2000).

Mull *et al.* (2012) observed high levels of mercury, DDT and PCBs in the tissues of YOY and juvenile white sharks caught in the SCB. According to Mull *et al.* (2013), the high contaminant levels observed in white sharks from the SCB are thought to be linked to maternal offloading. Although the observed contaminants could potentially impair the physiological and reproductive development of white sharks, there is no information indicating that contaminants such as organochlorines adversely impact sharks (Fowler *et al.,* 2005; Mull *et al.,* 2012). In addition, no hepatic lesions or other visible effects have been observed in white sharks in the SCB (K. Lyons, CSULB, personal communication cited in Dewar *et al.,* 2013).

These contaminants may also affect the prey species used by various life stages of the NEP white shark population. Adult white sharks are typically characterized as marine mammal predators (e.g., northern elephant seals, harbor seals, California sea lions), but they also prey upon a variety of bony fish species (ranging from benthic rockfish and flatfish to large pelagic species such as swordfish and bluefin tuna), other elasmobranchs, cephalopods, crustaceans, and even some bird species (Fowler *et al.,* 2005). Both marine mammal populations and some fish species in the SCB have been found to have high tissue levels of contaminants such as mercury, DDT, and PCBs, but impacts of the contamination on these populations is unclear. Since the 1970s the incidence of fish diseases linked to these contaminants has declined, most likely due to reductions in pollutant input into the SCB (Schiff *et al.,* 2000) and there is strong evidence that most fish species preyed upon by white sharks have been increasing in abundance (Dewar *et al.,* 2013). Although pinniped species in the SCB continue to have high tissue concentrations of DDTs and PCBs (Blasius and Goodmanlowe, 2008), their populations have exhibited dramatic increases in abundance over the past several decades (Schiff *et al.,* 2000; Carretta *et al.,* 2013), suggesting that contaminants have had little impact on the populations.

Overall, contaminants continue to be present in the SCB and are found in white sharks and their prey species, and thus have the potential to affect the health of white sharks. However, the potential threat from contamination has likely decreased over time as a result of substantial reductions in pollutant inputs into the SCB since the 1970s. Potential impacts to the NEP white shark population from this contamination remain uncertain.

Another source of pollution that may affect the NEP white shark population is marine debris. Marine debris is known to concentrate in an area of the North Pacific Ocean referred to as the ''Great Pacific Garbage Patch'', but this area has a limited overlap with the offshore habitat used seasonally by male and female white sharks. Debris may also be a concern in other areas used by white sharks, including the SCB, as well as the aggregation areas in central California and at Guadalupe Island offshore Baja California. The main risks of marine debris to white sharks are entanglement and ingestion. Plastics are of particular concern because they make up a large portion of the marine debris in the oceans (Moore *et al.,* 2001; Derraik, 2002), can be transported over long distances, decompose slowly, cannot be digested, and have been found to accumulate pollutants such as PCBs, DDTs, and polycyclic aromatic hydrocarbons (Moore *et al.,* 2001; Rios *et al.,* 2010).

The BRT found no evidence that white sharks observed off Guadalupe Island or caught in southern California gillnet fisheries were reported to be entangled in marine debris, and therefore concluded that the risk of entanglement was likely to be low (Dewar *et al.,* 2013). Compagno (2001) indicated that inedible garbage has occasionally been found in the stomachs of white sharks (referring to the global population, not the NEP population), but that white sharks are not generally known to ingest debris. The BRT noted that sharks are capable of evacuating their stomachs and have been observed to swallow satellite tags and spit them back up (Dewar *et al.,* 2013). These capabilities are likely to help white sharks minimize the impacts of ingesting marine debris. It is not known to what extent white sharks are feeding when they are offshore and in the area that overlaps with the garbage patch. Stable isotope analysis of dermal and muscle tissue samples taken from small to large white sharks at coastal aggregation sites in central California indicates that white sharks feed when offshore, but at a lower rate than in coastal habitats (Carlisle *et al.,* 2012). It is also possible that the primary purpose of these offshore migrations is reproduction (Jorgensen *et al.,* 2010 and 2012; Carlisle *et al.,* 2012). Without specific information about the extent to which white sharks forage in offshore waters and what they are feeding on, it is difficult to evaluate the potential risk of ingestion of marine debris by white sharks in offshore waters. Overall, marine debris may pose a potential risk to NEP white sharks via entanglement or ingestion, but the risk is likely to be low (Dewar *et al.,* 2013).

*Depletion of Prey Resources Due to Human Exploitation*

Several species of pinnipeds including northern elephant seals, California sea lions, Pacific harbor seals and Guadalupe fur seals are an important part of the diet of white sharks in the NEP. Historically, these species were subject to human exploitation, and on the west coast of

North America they were hunted to near extinction (Townsend, 1931 as cited in NMFS, 2000; NMFS, 2007) or greatly reduced in abundance (NMFS, 2011a). These species have been protected since 1972 under the Marine Mammal Protection Act (MMPA) and are no longer subject to harvest. Population trends for these species began increasing in the 1950s and 1960s and have continued to increase under MMPA protections (NMFS, 2000; Gallo-Reynoso *et al.,* 2005; NMFS, 2007; 2011a; 2011b; Carretta *et al.,* 2013). The most recent stock assessments estimate that northern elephant seals have almost reached their carrying capacity for pups per year and that harbor seals may be at carrying capacity. Guadalupe fur seals that are found mainly at Guadalupe Island have been increasing at an average rate of about 13.7 percent each year (NMFS, 2000). Thus, even though human exploitation significantly reduced these pinniped species in the past, they have been increasing in abundance over the past several decades and are not thought to be currently limiting the NEP white shark population (Dewar *et al.,* 2013).

The NEP white shark population also forages on a diversity of other species that may be affected by human exploitation, including a wide range of bony fishes, elasmobranchs (sharks, skates and rays) and invertebrates (Klimley, 1985; Compagno, 2001). Many of these prey species are either targeted directly in fisheries or are caught incidentally in fisheries and have been reduced in abundance. For example, gillnet fisheries targeting white seabass, angel sharks and California halibut offshore of California expanded in the 1970s, leading to declines in their abundance, as well as the abundance of other species, in the 1980s and 1990s. The State of California responded to these population declines by adopting regulations in 1994 that prohibited the use of gillnets in California state waters (i.e., within 3 nautical miles of shore). As a result of these regulatory changes, populations of many of these species have increased in abundance, including white seabass, leopard shark and soupfin shark (Dewar *et al.,* 2013).

As part of its threats evaluation, the BRT evaluated the potential risks to YOY and juvenile white sharks in the NEP resulting from the depletion of known and potential prey species (Dewar *et al.,* 2013). The BRT reviewed available stock assessment information for 23 species of fish and invertebrates either confirmed as white shark prey or as species that occur in YOY and juvenile habitats. The BRT found that many of the prey species have recovered from past overfishing and are currently considered to be healthy. Based on the status of these prey species and information suggesting that the white shark population as well as other species (e.g., pinnipeds, leopard sharks, soupfin sharks, and giant seabass) that use these prey species are increasing, the BRT concluded that these species are not limiting the NEP white shark population (Dewar *et al.,* 2013).

Overall, harvest activities historically affected the abundance of several fish and invertebrate prey resources that are known to be used by or are potentially used by the NEP white shark population. Many of these species experienced declines in abundance from the 1970s through the 1990s, but have since recovered. Based on the BRT's assessment of the white shark's fish and invertebrate prey resources, we conclude that prey species are not currently limiting the NEP white shark population.

*Ocean Acidification*

Ocean acidification (i.e., a reduction in the pH of ocean waters due to the uptake of increased atmospheric carbon dioxide) has been identified as a potential concern for the nearshore waters of the California Current System (Gruber *et al.,* 2012), an area which includes the nursery habitat and coastal aggregation sites for the NEP white shark population. Gruber *et al.* (2012) predicted that by 2050 oceanic uptake of carbon dioxide will lower the pH and the saturation state of aragonite (a mineral form of calcium carbonate used by calcifying organisms) in this area to levels well below the natural range. These predicted changes could affect fish species and the marine food web in the NEP as well as white sharks. For example, recent studies have shown that high carbon dioxide and low pH levels in seawater can impair olfactory responses and homing ability in clownfish (Munday *et al.,* 2009) and can lead to metabolic depression (Cruz-Neto and Steffensen, 1997) or cardiac failure (Ishimatsu *et al.,* 2004) in some other fish species. However, the extent of such impacts on individual species and how they may compensate for any impacts is uncertain. For example, some fish species may experience metabolic responses to elevated carbon dioxide levels at the cellular level, but are able to compensate for those responses on the organismic level, rendering them less sensitive to the effects of ocean acidification (Portner, 2008). No information is available regarding the impacts of low pH on sharks, and therefore, any potential effects on the NEP white shark population are highly speculative at this time (Dewar *et al.,* 2013). Finally, it is difficult to extrapolate the effects of ocean acidification to the ecosystem level, such as changes in prey availability or changes in predator-prey relationships, particularly for a top-level predator such as the white shark that utilizes a broad range of prey (see Foraging Ecology section).

*Climate Change*

Climate change is predicted to result in increased sea surface temperatures (SST) and associated shifts in the distribution and habitat of marine species. Hazen *et al.* (2012) predicted SST changes in the NEP ranging from less than 1°C to 6°C between 2001 and 2100, with the largest temperature changes occurring in the North Pacific Transition Zone (at approximately 43° N latitude) and minimal changes (less than 1°C) occurring in the California Current System.

Based on model predictions from Hazen *et al.* (2012), adult and subadult white shark and elephant seal habitat is predicted to increase by approximately 7 percent and 5 percent, respectively, between 2001 and 2100, whereas California sea lion habitat is predicted to decrease by approximately 0.5 percent. The actual impact of climate change on the ecosystem is certainly more complicated than can be predicted by climate change models, but several factors suggest that white sharks have a greater capacity to adapt to, and could potentially benefit from, climate-related impacts to environmental conditions in the California Current System. First, white sharks are likely better able to adapt to climate-related changes due to their diverse diet and broad thermal tolerance (see O'Connor *et al.* 2009; Harley 2011; and Parmesan, 2006 cited in Hazen *et al.,* 2012). Second, the relatively small increases in SST predicted by Hazen *et al.* (2012) may allow white sharks to expand their habitat. For example, tagging studies show that YOY white sharks can use a broad range of water temperatures and spend more time in areas with warmer temperatures (Dewar *et al.,* 2004; Weng *et al.,* 2007a; Weng *et al.,* 2007b; see also Klimley *et al.,* 2002). Tagged YOY and juvenile NEP white sharks spent much of their time in the warmer surface waters of the mixed layer, but made excursions to cooler waters below the thermocline, potentially for benthic foraging (Dewar *et al.,* 2004; Weng *et al.,* 2007b). YOY white sharks seemed to use the upper thermocline, whereas older juvenile white sharks made deeper dives to cooler waters, indicating an expansion in thermoregulatory ability

and thermal tolerance as they grow older (Dewar *et al.,* 2004; Weng *et al.,* 2007b). The potential for climate change to increase SSTs and deepen the thermocline in the California Current System (King *et al.,* 2011) may expand foraging habitat and opportunities for young NEP white sharks. However, climate-related changes in the distribution of prey resources could also result in potential mismatches between predator and prey distributions (Hazen *et al.,* 2012).

The model predictions in Hazen *et al.* (2012) represent only one analysis of how climate change may affect the NEP white shark population and do not account for factors such as species interactions, food web dynamics, and fine-scale habitat use patterns that need to be considered to more comprehensively assess the effects of climate change on this ecosystem. The complexity of ecosystem processes and interactions complicate the interpretation of modeled climate change predictions and the potential impacts on populations such as the NEP white shark population. Thus, the potential impacts from climate change on the NEP white shark population and its habitat are highly uncertain, but the diverse diet and broad thermal tolerance of white sharks suggest the population has the capability to adapt to some level of climate-related SST change. The BRT also noted that the potential impacts of global warming and climate change on NEP white sharks are speculative at this time (Dewar *et al.,* 2013).

*Analysis of the Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range*

Habitat used by the NEP white shark population has been modified by the threats identified and discussed in this section. However, consistent with the BRT's assessment of threats (Dewar *et al.,* 2013), we do not find evidence indicating that the impacts of pollution, depletion of prey species, ocean acidification, or climate change are a significant threat to the NEP white shark population. Although legacy pollutants remain in the SCB, pollutant inputs to this area have decreased since the 1970s as a result of improved discharge management (Raco-Rands, 1999 as cited in Schiff *et al.,* 2000). White shark prey resources have substantially increased in abundance over the last several decades due to protections for marine mammals and improved fisheries management (Dewar *et al.,* 2013). The effects of ocean acidification and climate change now and in the foreseeable future remain highly uncertain, but the best available information indicates that habitat used by the NEP white shark population is not likely to be substantially impacted or that the white shark population will be able to compensate for any habitat changes. Overall, the best available information suggests that identified threats related to the destruction, modification or curtailment of white shark habitat in NEP are not contributing to increasing the population's risk of extinction now or in the foreseeable future.

**B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes**

Potential threats to the NEP white shark population from overutilization for commercial, recreational, scientific or educational purposes include bycatch in a range of fisheries, international trade, ecotourism and scientific research. Each of these potential threats is discussed in the following sections.

*High Seas Driftnet Fisheries*

As part of its threats evaluation, the BRT considered historical interactions between high seas driftnet fisheries and white sharks (Dewar *et al.,* 2013). From the 1970s to the early 1990s there were large scale drift gillnet fisheries in the North Pacific Ocean targeting salmon, flying squid, tuna and billfish that had significant amounts of shark bycatch. The salmon fishery was located west of 180°W and is not likely to have interacted with white sharks from the NEP population. The areas used by the fisheries targeting flying squid, tuna and billfish were centered farther west and only overlapped with a small portion of the pelagic habitat used by NEP white sharks around the Hawaiian Islands, primarily west of the OFA area (Dewar *et al.,* 2013). Catch of white sharks was reported in both the flying squid and large mesh drift gill net fisheries targeting tuna and billfish, but the available data are scarce and it is uncertain what population of white sharks was impacted by the fisheries (Dewar *et al.,* 2013). Because of concerns about the bycatch of many species, including sharks, the high seas drift net fisheries were phased out in 1992 following a United Nations resolution banning their use. It is uncertain whether any unregulated driftnet fishing occurs in the NEP; however, a survey of NMFS personnel involved in international affairs and Illegal, Unreported and Unregulated (IUU) fishing did not yield any information indicating these fisheries continue to operate in waters east of the Hawaiian Islands (Dewar *et al.,* 2013).

*Hawaii Long-Line Fisheries*

Based on the best available information, there is limited interaction between long line fisheries based in the Hawaiian Islands and white sharks. Observer data for the shallow set swordfish fishery based in Hawaii includes seven records of white sharks captured from 1997–2008. The records were not verifiable (i.e., no photographs, etc., were taken) and were considered suspect by NMFS personnel familiar with the observer database (Dewar *et al.,* 2013).

*U.S. West Coast Commercial Fisheries*

Previous reports have described white shark bycatch in California fisheries (Klimley, 1985; Lowe *et al.,* 2012). Data compiled for these studies from logbook records, landing receipts, fishery observer reports and scientific research studies indicate that historically most white sharks have been caught in gillnet fisheries. In general, most of the white shark bycatch in California gillnet fisheries occurred in southern California and consisted of YOY and juvenile sharks; however, both juveniles and adults were historically caught north of Point Conception when set and drift gillnet fisheries more commonly operated in those areas. Based on these studies, catches of white sharks were sporadic throughout the 1970s, followed by an increase in the 1980s as the small and large mesh net fisheries expanded. White shark catches subsequently decreased, reaching a low in 1994 when white sharks were protected by the State of California and gill and trammel nets were banned within 3 nmi of the mainland and 1 nmi of the Channel Islands (Lowe *et al.,* 2012).

As part of its threats evaluation and risk assessment, the BRT compiled and analyzed U.S. gillnet fisheries catch and effort data for white sharks from several sources including logbooks, Pacific Fisheries Information Network landing records, fishery observer records, and the Monterey Bay Aquarium scientific white shark collection program (Dewar *et al.,* 2013). Based on this analysis, most reported catches of white sharks were in the coastal set gillnet and large-mesh drift net fisheries prior to the mid-1990s. Reported catch numbers peaked during the mid-1980s and declined steadily thereafter as fishing effort decreased as a result of changes in fishing regulations and implementation of the 1994 near-shore set gillnet ban in California. The set gillnet fisheries operated primarily over the continental shelf and as a consequence of the 1994 ban they were restricted to just a few areas in the SCB including the Ventura

Flats, Channel Islands, Huntington Flats, and Oceanside where the continental shelf extends beyond the 3 nmi closure area. A time-area closure was implemented for the large mesh drift gillnet fleet in 2001 that essentially eliminated this fishery from near-shore waters north of Morro Bay. Since 1999 only one white shark capture has been reported in the drift gillnet fishery. Most catch of white sharks now occurs in the set gillnet fishery which has reported increasing catches since the mid-2000s. Lowe *et al.,* (2012) suggested that the increased number of YOY and juvenile white sharks caught since the mid-2000s could be the result of past reductions in fishery mortality that led to an increasing white shark population and associated YOY and juvenile production. The BRT found that CPUE of white sharks in gillnet fisheries was substantially higher over the period from 2002–2011 compared with the period from 1990–2001 (Dewar *et al.,* 2013) and noted that these findings are consistent with the increase in white shark abundance suggested by Lowe *et al.* (2012).

*Recreational Fisheries*

Interactions between recreational fisheries off California and white sharks are known to occur, but there is relatively little documentation of such interactions. From 1980–2011, 7 white sharks were reported in logbooks from commercial passenger fishing vessels and 1 white shark was reported caught by a private angler (CDFW, 2013). White sharks are occasionally caught off public fishing piers in southern California and two citations were issued by CDFW for illegal take of juvenile white sharks off piers in 2012 (CDFW, 2013).

*Mexican Fisheries*

As part of its threats evaluation, the BRT reviewed available information on the catch of white sharks in Mexico including recently published information and unpublished information from researchers in Baja California (Dewar *et al.,* 2013). Information on white shark bycatch from the Pacific coast of the Baja Peninsula and from the Gulf of California has been reported by several researchers (Galván-Magaña *et al.* 2010; Castro, 2012; Santana-Morales *et al* 2012).

Santana-Morales *et al.* (2012) summarized the results of white shark catch records from various fisheries for the period from 1999–2010 and found that 80 percent of the white sharks taken were YOY and that most were caught in Sebastián Vizcaíno Bay during the summer. More recent efforts to quantify catch of white sharks have been conducted by researchers who have worked directly with local fish distributors operating in Sebastián Vizcaíno Bay (Sosa-Nishizaki, personal communication cited in Dewar *et al.,* 2013). Although there are potential problems associated with the identification of white sharks in Baja California because of the way shark species are processed, this approach allowed the researchers to work directly with the point of contact for all fishermen in the area. According to Sosa-Nishizaki (personal communication cited in Dewar *et al.,* 2013), distributors reported receiving 186 white sharks in 2011 from fishermen operating in Baja California, with the vast majority having been caught in Sebastián Vizcaíno Bay. To reduce impacts on sharks, the Mexican government prohibited shark fishing along the Pacific coast of Mexico from June 1—July 31 in 2012, and, beginning in 2013, has expanded the closure to include the month of May. The reported catch of white sharks in 2012 was substantially reduced by this action and further catch reductions are possible with the expanded closure. White sharks are also caught along the Pacific coast of the southern portion of the Baja California peninsula, but that information has not been quantified.

White sharks are known to be caught on fishing gear in the Gulf of California, but incidental catch records are not well quantified. Galván-Magaña *et al.* (2010) reported that small numbers of adult, subadult and juvenile white sharks were caught in the Gulf of California based on records from 1964 to 2010. To date there is only one record of a YOY white shark being captured in the Gulf of California (Sosa-Nishizaki, personal communication cited in Dewar *et al.,* 2013), although large females are documented to come into this area.

As previously discussed (see Fisheries Risk Assessment Modeling section), the BRT conducted population modeling using white shark catch and mortality data to assess the impact of mortality from U.S. and Mexican fisheries on white shark population growth rates and changes in adult female population abundance over time (Dewar *et al.,* 2013). Based on the results of this modeling analysis, the BRT concluded that the NEP white shark population is at a very low to low risk from the U.S. and Mexican fisheries if the population includes at least 200 adult females as the BRT believes is likely to be the case (Dewar *et al.,* 2013).

*International Trade*

International trade of white shark fins, jaws, and teeth for consumption or as trophies or curios has been identified as a threat to white shark populations worldwide (CITES, 2004; Clarke *et al.,* 2004; Fowler *et al.,* 2005; Shivji *et al.,* 2006) and the high value of these white shark products may act as an incentive for poaching and illegal trade (Compagno, 2001). The extent of international trade in white shark products is difficult to determine (Clarke *et al.,* 2004); however, genetic analysis of confiscated white shark fins in a law enforcement case on the U.S. East coast confirmed the illegal trade of white shark fins (Shivji *et al.,* 2005). This case provides evidence for illegal trade impacts on the global population of white sharks, and therefore, it is possible that white sharks from the NEP may be part of this trade. However, there is no information currently available to assess whether white sharks from the NEP are part of this illegal trade and there are no documented cases of illegal trade in white shark parts in California (CDFW, 2013).

*Ecotourism Activities*

White shark ecotourism activities, including cage diving, shark watching operations, and filming, are known to be conducted off the Farallon Islands in central California and at Guadalupe Island off Baja California (CITES, 2004; DOF, 2004 and 2006; Domeier and Nasby-Lucas, 2006; NOAA, 2008). While ecotourism provides benefits to white sharks as a non-consumptive use that raises public awareness of the species, there is the potential for these activities to harass white sharks and alter their natural behaviors (CITES, 2004; Fowler *et al.,* 2005; Laroche *et al.,* 2007; NOAA, 2008). White sharks are believed to hunt by swimming at depth so that they can spot pinnipeds in the water above them without being seen; however, ecotourism activities often try to attract white sharks to the surface by setting out bait or decoys and keep them at the surface for as long as possible (Fowler *et al.,* 2005; Laroche *et al.,* 2007). Frequent or cumulative encounters with humans and vessels due to these activities could result in altered behavior (e.g., conditioning of sharks to associate vessels with food rewards), changes to feeding strategies (e.g., increased time spent at the surface versus swimming at depth), and increased or decreased residency times in the area (Laroche *et al.,* 2007). Laroche *et al.* (2007) conducted an experimental study to examine the effects of chumming activities on white

shark behavior in South Africa and observed only minor, short-term changes in behavior; however, the study was limited in scope and may not apply to all ecotourism operations.

Regulations on ecotourism activities have been adopted in some areas to address the potential impacts of these activities on white sharks. In 2002, the State of Hawaii banned shark feeding in state marine waters due to concerns that such activities were altering the natural behavior of sharks as well as altering the environment and potentially increasing the risk of shark attacks (Fowler *et al.,* 2005). In 2008, the Gulf of the Farallones National Marine Sanctuary adopted regulations to prohibit attracting white sharks within the Sanctuary's waters and to prohibit approaching within 50 m of any sharks in waters within 2 nmi of the Farallon Islands. These regulations are meant to minimize the disturbance of white sharks and interference with their natural behaviors from ecotourism activities (primarily cage diving) and scientific research activities conducted around the Farallon Islands (NOAA, 2008). A similar prohibition on attracting white sharks was adopted for the Monterey Bay National Marine Sanctuary, although cage diving operations are not known to occur in waters off Monterey Bay (NOAA, 2008).

Commercial cage diving operations began off Guadalupe Island in 2002 (Domeier and Nasby-Lucas, 2006) and visit the same sites each year (Sosa-Nishizaki *et al.,* 2012). According to Sosa-Nishizaki (personal communication to Susan Wang, NMFS, 2013), Mexico limits commercial cage diving to 6 vessels at 3 locations and requires all vessels to have permits, licenses, and adhere to a code of conduct designed to protect white sharks at the island. The code of conduct prohibits fishing for white sharks, approaching within 50m of white sharks foraging on marine mammals, the use of decoys to attract white sharks, and the feeding or touching of white sharks. The code of conduct does allow use of bait with several restrictions.

Overall, ecotourism activities have the potential to disturb and alter the natural behavior of NEP white sharks, but the potential impacts of such activities are poorly understood and at least one study suggests that the impacts may be minor. Regulations currently exist for waters around the Hawaiian Islands, Farallon Islands and Guadalupe Island that likely minimize disturbance of white sharks from ecotourism activities.

*State-Permitted Scientific Research Activities in California*

In California, the take of white sharks is prohibited except as permitted for scientific or educational purposes. Reports submitted by CDFW permit holders from 2007 through 2011 indicate that a total of 107 white sharks were tagged and released alive and that six white sharks were retained for live display (CDFW, 2013). Thus, a relatively large number of white sharks have been captured and handled as part of state-permitted research activities in California since 2007.

Effective March 1, 2013, the California Fish and Game Commission designated white sharks as a candidate species for listing under the California Endangered Species Act (CESA), thereby initiating a formal review of the species' status. As a candidate species, white sharks in California are afforded the full legal protection of a listed species under CESA and their take is prohibited except as expressly permitted under CESA. On March 1, 2013, the State revoked all previously issued scientific collection permits and notified researchers that they must obtain new permits under CESA in order to continue their scientific research and collection activities. The CDFW is currently reviewing research reports and working with former permit holders to evaluate their past research activities in order to assess the overall effects of past research on white sharks in California waters and the extent of targeted fishing for white sharks in association with this research (CDFW, 2013).

*Analysis of Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

High seas drift net fisheries may have had historical impacts on the NEP white shark population, but those impacts are likely to have been limited because those fisheries did not overlap extensively with the offshore habitat used by the population. Those fisheries were banned in the early 1990s and we have no current information indicating that there are illegal high seas fisheries in the offshore areas used by the NEP white shark population. Historically and at present, various types of gillnet fisheries along the U.S west coast, primarily in southern California, have taken white sharks. However, white shark catch and mortality associated with these fisheries have declined substantially since the late 1980s and early 1990s as fishing effort declined as a result of protections implemented by the State of California (e.g., State protection of white sharks, changes in fishing regulations, and a ban on gillnet fishing in much of southern California). Recent evidence indicates that CPUE of white sharks in southern California has actually increased in recent years despite reduced fishing effort, suggesting that the white shark population may be increasing (Dewar *et al.,* 2013). Various artisanal fisheries in Mexico also take white sharks, primarily along the northern coast of Baja California which is part of the NEP white shark's nursery habitat for YOY and juvenile sharks. Recent information suggests that this area currently has the highest level of white shark catch and mortality, but reported catches were substantially reduced after Mexico implemented a seasonal (June and July) ban on shark fishing on the Pacific coast of Mexico in 2012. This ban was expanded to include the month of May beginning in 2013 and thus white shark catch levels may be reduced even more in the future. The BRT conducted extinction risk modeling to evaluate the present and future risks of U.S. and Mexican fishery mortality on the NEP white shark population and found the estimated mortality levels are sustainable and that risks to the population are low to very low (Dewar *et al.,* 2013). Other activities, such as international trade in white sharks, ecotourism and scientific collection of white sharks, most likely have minimal impacts on the NEP white shark population. Overall, the best available information indicates that these threats are not contributing substantially to the population's risk of extinction now or in the foreseeable future.

**C. Disease and Predation**

Limited information is available for white sharks regarding disease and predation. Although common parasites such as large copepods and intestinal cestodes have been found in white sharks, it is not known how these parasites affect individual animals or populations (Compagno, 2001). Young white sharks caught off the coast of southern California have been found to have high concentrations of mercury and organochlorines (DDT and PCBs) in their liver and muscle tissues, but the potential impacts on the health of white sharks are unknown (Mull *et al.,* 2012). Exposure to contaminants such as DDT and PCBs has been linked to increased incidence of diseases in certain fish species within the SCB (Mearns and Sherwood, 1977; Cross, 1988; Stull, 1995; Allen *et al.,* 1998; all cited in Schiff *et al.,* 2000), but no such linkages have yet been studied or documented in white sharks.

Little is known about predation on white sharks by other species; however, given the species' size and status as a top-level predator it is likely that predation on any life history stage is relatively low (Dewar et al., 2013). The BRT concluded that the most likely predators of white sharks are killer whales and other larger sharks (Dewar *et al.,* 2013). There is one confirmed predation event on a white shark indicating that at least smaller white sharks may be vulnerable to predation by large predatory marine mammals. In 1997, fishermen and researchers observed an adult transient killer whale kill and partially ingest an intermediate-sized white shark (likely a subadult) near the Southeast Farallon Islands (Pyle *et al.,* 1999). Pyle *et al.* (1999) suggested that the white shark killed in this event was likely attracted to the surface by a recently killed pinniped carcass because white sharks at this site typically are near the bottom rather than the surface (Goldman *et al.,* 1996, cited in Pyle *et al.,* 1999). In November 2000 another predation event was observed around the Farallon Islands involving a killer whale and a ''large prey item'' that could have been a white shark (Pyle and Anderson, unpublished observations cited in Weng *et al.,* 2007). Other predation events such as these may occur, but are not well documented in the literature most likely because of their rarity. Compagno (2001) suggested that large pinnipeds and other large shark species may kill or injure white sharks, but except for occasional seal bite marks on sharks there is little evidence of such behavior.

*Analysis of Disease and Predation*

The best available information indicates that the effects of disease, predation and competition on the NEP white shark population are limited. The BRT concluded that disease and predation are low-level threats to the population (Dewar *et al.,* 2013). Overall, there is no information indicating that these factors are contributing to increasing the population's risk of extinction or that they are likely to do so in the foreseeable future.

**D. The Inadequacy of Existing Regulatory Mechanisms**

Existing regulatory mechanisms include Federal, state, and international regulations and management measures. Below, we describe the current domestic and international regulatory mechanisms that affect the NEP white shark population, followed by an evaluation of their adequacy.

*U.S. Federal Regulations*

Federal regulations that provide protection for white sharks in the NEP include white shark-specific regulations under the West Coast Highly Migratory Species Fishery Management Plan (HMS FMP) and in west coast National Marine Sanctuaries, as well as general shark protections under the Shark Finning Prohibition Act of 2000 and the Shark Conservation Act of 2010.

Under the West Coast HMS FMP white sharks are a prohibited species, meaning that their retention is prohibited and they must be released immediately if caught (PFMC, 2011; NMFS, 2011). This prohibition applies to all U.S. vessels that fish for highly migratory species using authorized gear (e.g., large mesh drift gillnet, deep-set longline, tuna troll and purse seine) within the U.S. exclusive economic zone and the state waters of California, Oregon and Washington, as well as U.S. vessels fishing for highly migratory species on the high seas that land their fish in California, Oregon or Washington (PFMC, 2011).

The large mesh drift gillnet fishery for swordfish and thresher shark is one of the federally-managed fisheries authorized under the West Coast HMS FMP. Based on logbook records, bycatch of white sharks in this fishery has steadily declined since the early 1980s with only one individual reported caught since 2000 (Dewar *et al.,* 2013). This reduction in bycatch is most likely due to changes in the management of the fishery over time, including a delay in the start of the fishing season, gear changes, and a time/area closure that largely eliminated the fishery from areas north of Morro Bay (Dewar et al., 2013). Prior to adoption of the West Coast HMS FMP, the State of California was responsible for the management of the large mesh drift gillnet fishery and implemented a series of restrictions which provided additional protections for white sharks. All of these regulations have been incorporated into the FMP for this fishery.

Other measures that have been implemented to reduce the bycatch of marine mammals and sea turtles in the drift gillnet fishery are also likely to have reduced interactions with white sharks in the NEP. For example, the Pacific Offshore Cetacean Take Reduction Plan requires the use of extenders to lower drift gillnets in the water column to avoid cetaceans swimming near the surface, which likely reduces potential interactions with small white sharks that typically spend the majority of their time near the surface of the water column (Dewar *et al.,* 2013). Similarly, the Pacific Leatherback Conservation Area (PLCA), which prohibits use of drift gillnet gear over a large area off central California from August 15 to November 15 and over a large portion of the SCB from June 1 to August 31 during declared El Niño events to protect loggerhead sea turtles, is likely to provide some level of protection to adult and subadult white sharks in these areas and at these times.

The Gulf of the Farallones National Marine Sanctuary (GFNMS) and Monterey Bay National Marine Sanctuary (MBNMS) have prohibited efforts to attract white sharks. The GFNMS also prohibits vessels from approaching within 50 m of any white shark anywhere within 2 nmi around the Farallon Islands. The Sanctuaries adopted these prohibitions primarily to regulate adventure tourism activities (e.g., commercial white shark viewing enterprises such as cage diving operations), filming, and scientific research activities that can disturb white sharks and interrupt their natural feeding and daily activities (NOAA, 2008). Although there is no prohibition on approaching white sharks within the GFNMS outside of the 2 nmi boundary around the islands, the area inside this boundary is where white sharks are most prevalent when they are feeding, and thus, interactions with white sharks are reduced by this action (NOAA, 2008). The Sanctuaries have issued permits to allow some white shark approach or attraction activities for legitimate research or educational purposes. These permitted activities are reviewed on a case-by-case basis and are subject to reporting requirements and other terms and conditions as deemed necessary to protect Sanctuary resources.

The Shark Finning Prohibition Act of 2000 amended the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to prohibit the practice of shark finning (i.e., removing the fins of a shark, including the tail, and discarding the carcass of the shark at sea) by any person under U.S. jurisdiction. This Act also amended the MSA to prohibit having custody, control, or possession of shark fins aboard a fishing vessel without the corresponding carcass or landing shark fins without the corresponding carcass; however, a provision does permit some level of shark finning to occur. In 2011, the Shark Conservation Act of 2010 was signed into law to further strengthen the prohibitions on shark finning under the MSA as well as under the High Seas Driftnet Fishing Moratorium Protection Act. These amendments to the MSA clarify that it is illegal for all vessels to

have custody of, transfer, or land a shark fin unless it is naturally attached to the corresponding shark carcass, but it does allow some retention of shark fins after the sharks have been landed (NMFS, 2011). The 2010 Act also amended the High Seas Driftnet Act to include shark conservation measures, including measures to prohibit shark finning at sea in international agreements negotiated by the United States. (NMFS, 2011). These provisions under the MSA and the High Seas Driftnet Act provide some protections for white sharks in domestic and international waters by regulating shark finning activities.

*State Regulations*

State fisheries regulations vary by state and by fishery from general shark management measures to specific protections for white sharks. Below is an overview of state regulations that may affect the NEP white shark population, but with a focus on California regulations, as the majority of fishery interactions with white sharks along the west coast of the U.S. occur offshore California.

In 1994, white sharks received special protected status in the State of California by the addition of Sections 5517 and 8599 to the State's Fish and Game Code (CDFW, 2013). Section 5517 prohibited the take of white sharks, except by special permit from the CDFW. Section 8599 prohibited commercial take of white sharks except for scientific and educational purposes under State-issued scientific collection permits, but did allow for the incidental take of white sharks by round haul or gillnet and the sale of any live-landed white sharks for scientific or live display purposes under scientific collection permits. On March 1, 2013, the State of California accepted a petition to list white sharks under the CESA. This action conferred candidate species status to white sharks while the State undertakes a year-long status review of the NEP population. As a candidate species, white sharks have full legal protection under CESA, which includes a prohibition on the take of white sharks in fisheries and for scientific or educational purposes. While a candidate for listing under CESA, the take of white sharks is only allowed in fisheries or for scientific purposes pursuant to a special CESA permit and to date no such permits have been issued by CDFW. It is uncertain what the outcome of the status review will be or whether the State will list white sharks under CESA, but white sharks will continue to have legal protection as a candidate species until the State renders its listing decision.

Changes to commercial fishing regulations in California since the 1980s have provided additional protection for white sharks and reduced fishery interactions and bycatch. The majority of reported captures of white sharks off California have occurred in coastal gill net fisheries (Lowe *et al.,* 2012). Since 1994, gillnet use has been banned in the Marine Resources Protection Zone in southern California which includes all state waters south of Point Arguello (i.e. areas inside 3 nmi from the mainland coast) and waters less than 70 fathoms (fm) deep or within 1 nmi of the California Channel Islands. Since 2000, gillnet use has also been prohibited in waters shallower than 60 fm along the California coast between Point Arguello and Point Reyes, which has effectively restricted gill net use to a few limited areas in southern California. These actions have served to reduce or eliminate gill net fishing effort and thereby reduce interactions with white sharks in California. Seasonal closures and the timing of gill net fisheries that continue to exist in southern California for white seabass and California halibut are also likely to reduce fishery interactions with white sharks (CDFW, 2013). As a result of these area and time closures in southern California, current gill net fishing effort overlaps with less than a third of the available YOY white shark habitat based on satellite tagging studies (Chris Lowe, California State University, Long Beach, personal communication cited in Dewar *et al.,* 2013).

In Oregon, the take of white sharks is prohibited in sport fisheries and they must be released immediately and unharmed if taken. In contrast, the take of white sharks is not specifically prohibited or regulated in commercial fisheries. Washington and Alaska do not have fishing regulations that specifically address white sharks, but include white sharks in general bottomfish or shark categories for which fishing is regulated. Hawaii does not have fishing regulations that specifically address white sharks, but prohibits the feeding of sharks within the State's marine waters. California, Oregon, Washington, and Hawaii have all adopted shark finning prohibitions making it unlawful to possess, sell, offer for sale, trade, or distribute shark fins, and this may provide some protection for white sharks in the NEP.

*International Authorities*

Canada and Mexico, the two other nations within the range of the NEP white shark population, have each adopted regulations that directly and/or indirectly provide protections for white sharks. In addition, the status of the global population of white sharks (including the NEP population) has been assessed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the International Union for Conservation of Nature (IUCN), and the Convention on the Conservation of Migratory Species of Wild Animals (CMS). Several international authorities have also addressed protections applicable to all shark species that may provide some protection for the NEP white shark population. We briefly describe these protections below.

In Canada, the Atlantic population of white sharks was listed as endangered by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) in 2006 and under the Species At Risk Act (SARA) in 2011 (Environment Canada, 2011; SARA Annual Report for 2011; *http://www.sararegistry.gc.ca/virtual_sara/files/reports/LEP-SARA_2011_eng.pdf),* whereas the Pacific population of white sharks was listed as ''Data Deficient'' by COSEWIC in 2006 (COSEWIC, 2006) and is currently not listed under SARA. Data deficient is a category that applies when the available information is insufficient to resolve a species' eligibility for assessment or to permit an assessment of the species' risk of extinction. White sharks in the NEP were listed as data deficient primarily due to their rarity in Canadian waters and the lack of abundance trend information for Pacific Canadian waters and adjacent U.S. waters (COSEWIC, 2006). Although Canada does not have any Federal or provincial laws that explicitly protect white sharks on the Pacific Coast, hook-and-line fisheries on Canada's Pacific Coast are prohibited from keeping any species of shark except for dogfish (COSEWIC, 2006), and this likely provides some protection for the NEP white shark population.

Mexico listed white sharks as a threatened species in 2001 (NORM–059–ECOL–2001) based on a review of available literature and data analysis, but this action did not provide any specific protections to the species. Since then, Mexico has adopted regulations for the protection of white sharks and sharks in general. In 2007, Mexico published an Official Norm (DOF, 2007; NOM–029–PESC 2006) on responsible shark and ray fishing that prohibits the catch and retention of white sharks, whether alive or dead, whole or in part. The Official Norm also prohibits the landing of shark fins unless the shark bodies are also on board fishing vessels, prohibits any increases in the total allowable fishing effort for sharks and

rays, and establishes various gear and area restrictions for fisheries targeting sharks and rays (DOF, 2007; Barreira, 2008). Despite the prohibition on catch and retention, studies have documented the catch and retention of white sharks in fisheries off Baja California (Cartamil *et al.,* 2011; Santana-Morales *et al.,* 2012). In 2012, Mexico adopted a seasonal ban on fishing for all shark species in national waters of the Pacific Ocean from June through July beginning in 2012 and between May through July each subsequent year (DOF, 2012). This ban is expected to provide increased protection for YOY and juvenile white sharks by reducing their interactions with coastal gillnet fisheries. Based on limited information, for example, this seasonal ban reduced the documented catch and retention of YOY and juveniles by approximately 50 percent in 2012 (Sosa-Nishizaki, personal communication cited in Dewar *et al.,* 2013), although it is possible that not all white shark catches were reported. Expansion of the shark fishing ban to include the month of May starting in 2013 is expected to further reduce impacts to white sharks in these coastal gillnet fisheries, but more effective monitoring of the fisheries and enforcement of this ban are needed to ensure that impact reductions are realized.

Other than the white shark catch information that was considered by the BRT in its fisheries risk assessment modeling (Dewar *et al.,* 2013), there do not appear to be any estimates of total white shark bycatch in Mexico. Improved collection and reporting of white shark catch data are needed to better evaluate impacts to the population and the effectiveness of Mexican fisheries regulations for white sharks. Regulation and enforcement of gillnet fisheries that interact with and take white sharks in Mexico is important because coastal waters of northern Baja California are part of the nursery area for the NEP white shark population and some portion of the YOY and juvenile component of the population uses this habitat (Weng *et al.,* 2007; Chris Lowe, California State University, Long Beach, personal communication, 2012; Dewar *et al.,* 2013).

Under CITES, species may be listed in three appendices: Appendix I (species threatened with extinction), Appendix II (species not necessarily threatened with extinction, but that might become so unless trade is subject to regulation), or Appendix III (species protected in at least one country that has asked for assistance from other Parties to CITES for help in controlling international trade). CITES requires countries to regulate and monitor trade in products from species listed in the appendices using a permitting system that has different requirements depending upon the Appendix in which a species is listed. In 2004, white sharks were listed under Appendix II of CITES, meaning that international trade in white shark specimens must be authorized by export permits or re-export certificates. Granting of these permits or certificates is based on an evaluation of whether certain conditions are being met, including a determination that trade will not be detrimental to the species' survival in the wild.

The IUCN Red List is an assessment of a species' extinction risk on a worldwide basis. Listing a species on the IUCN Red List does not provide any regulatory protections for the species, but serves as an evaluation of the species' status. The global population of white shark species was assessed and categorized as ''vulnerable'' in 1996, 2000 and 2009, meaning that the species was considered to be facing a high risk of extinction in the wild (IUCN, 2001). The criteria for assessing whether a species should be listed on the IUCN Red List are different than the standards for making a determination that a species warrants listing as threatened or endangered under the ESA, and hence, the ''vulnerable'' assessment for the global white shark species does not directly inform our analysis of extinction risk for the NEP white shark population.

The Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) is an intergovernmental treaty under the United Nations Environment Programme. Migratory species may be listed under Appendix I (species categorized as being in danger of extinction throughout all or a significant portion of their range) or Appendix II (species that need or would significantly benefit from international cooperation) of the CMS. The CMS supports protection and conservation of the species listed under the appendices through legally binding treaties (called Agreements) and non-legally binding Memoranda of Understanding (MOU). The United States, Mexico, and Canada are not Parties to the CMS, but the United States is a signatory to some MOUs under the CMS. In 2002, the global population of white sharks was listed under both Appendix I and II of the CMS, and in 2010 the CMS adopted a non-binding MOU on the Conservation of Migratory Sharks to improve the conservation status of white sharks and other shark species listed under the appendices. This MOU, to which the United States is a signatory, does not provide regulatory protections for these shark species, but encourages Signatories to adopt and implement measures to protect the species and its habitat. Measures include prohibitions on shark finning activities, prohibitions on take of the species, and implementation of National Plans of Action for sharks, as called for under the United Nations Food and Agriculture Organization's (FAO) 1999 International Plan of Action for sharks.

In 1999, the FAO adopted the International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks) to ensure the conservation and management of sharks and their long-term sustainable use (FAO, 1999). Under the IPOA-Sharks, members and non-members of the FAO are encouraged to develop national plans of action to address shark conservation and management needs, including sustainable management and monitoring of shark catches in fisheries; minimization of incidental catch, waste, and discards; and assessments of threats to shark populations (FAO, 1999). The United States, Mexico and Canada, as well as several other nations, have each adopted and implemented a National Plan of Action for the Conservation and Management of Sharks under the IPOA-Sharks. These plans may provide some conservation benefit to the NEP white shark population by improving the management of shark fisheries and conservation of shark species in these nations; however, the effectiveness of such plans has not yet been demonstrated (Lack and Sant, 2011).

International efforts have also focused on minimizing waste and discards through the regulation or prohibition of shark finning activities. Two regional entities in the Pacific Ocean, the Western and Central Pacific Fisheries Commission (WCPFC) and the Inter-American Tropical Tuna Commission (IATTC), have adopted resolutions to regulate shark fishing and shark finning activities among member and cooperating non-member nations (including the United States, Mexico and Canada). The WCPFC and IATTC resolutions state that members and cooperating non-member nations shall require full utilization of retained catches of sharks and shall prohibit vessels from having on board shark fins that total more than 5 percent of the weight of sharks on board (IATTC, 2005; WCPFC, 2010). The resolutions also call on member and cooperating non-member nations to encourage the live release of sharks in their fisheries when they are caught incidentally and not

used for food. The WCPFC Convention Area encompasses waters around the Hawaiian Islands and the IATTC Convention Area encompasses offshore waters used by the NEP white shark population, including the OFA.

*Analysis of Inadequacy of Existing Regulatory Mechanisms*

Protective efforts have been implemented under both U.S. Federal and state authorities since the early 1990s to reduce impacts on the NEP white shark population, including prohibitions on take of white shark in fisheries and more protective fishery regulations (e.g., time and area closures, etc.). These efforts have reduced fishing effort in areas used by white sharks, particularly in the SCB, and this has substantially reduced fishery impact on the NEP white shark population. We conclude that these regulatory measures provide adequate protection to the NEP white shark population from fishery impacts in U.S. waters and in State waters offshore California where the species is most abundant. However, protective efforts could be improved for white sharks in State waters offshore Oregon and Washington, and observer coverage of gillnet fisheries in California could be expanded to provide more information about white shark bycatch.

White sharks are also protected in Mexico, and fishery regulations have been implemented since the early 2000s to reduce fishery impacts. Nevertheless, white sharks, primarily YOY and juveniles, continue to be caught and retained in gillnet fisheries along the coast of Baja California, primarily by fishermen operating from remote artisanal fishing camps. Enforcement of the existing regulations needs to be improved, but monitoring fishing activities in remote artisanal fishing camps is difficult. In addition to improved enforcement, additional monitoring of the fisheries is necessary as are efforts to educate the fishing community about shark species identification and shark conservation. A seasonal shark fishing ban recently adopted by Mexico resulted in a reduction in the reported catch of white sharks along the Baja California coast in 2012, but enforcement is necessary to ensure that fishermen comply with the ban and the ban needs to be evaluated over time to assess its long-term effectiveness in reducing impacts to white sharks.

The recently-adopted prohibitions on attracting and approaching white sharks in the GFNMS and MBNMS provide a high level of protection for white sharks by reducing human interactions and the potential disruption of natural behaviors from activities such as cage diving operations, shark viewing operations, and scientific research. In waters off Guadalupe Island, where ecotourism operations have been conducted since the early 2000s, Mexico requires permits for commercial cage operations, limits the number of permits and the locations where permit holders can operate, and requires that permit holders adhere to a code of conduct designed to protect white sharks at the island. The code of conduct prohibits fishing for white sharks, approaching within 50m of white sharks foraging on marine mammals, the use of decoys to attract white sharks, and the feeding or touching of white sharks.

In 1994, California prohibited the take of white sharks except as permitted for scientific or educational purposes. Under these scientific collection permits, researchers often collaborated with fishermen to obtain white sharks incidentally caught in commercial fisheries for tagging and other studies. Because white sharks are now a candidate species for listing under the CESA, all scientific collection permits have been revoked and the CDFW is currently reviewing this program to evaluate the effects of state-permitted research activities on NEP white sharks. It is uncertain if and when permits will be issued under CESA and whether or not additional restrictions will be placed on permit holders.

We conclude that existing Federal and State regulatory mechanisms provide adequate protection of the NEP white shark population. Federal and State regulations, particularly in California, have reduced impacts to white sharks from fisheries and other activities in nursery habitat and other areas where they aggregate and forage. However, regulatory mechanisms for fisheries in Mexico, primarily those related to monitoring, enforcement, and education of fishermen, need to be improved to ensure that existing regulations are implemented, to evaluate the effectiveness of existing regulations and to determine if additional regulations are needed. The BRT evaluated the impact of U.S. and Mexican fisheries on the NEP white shark population under the current regulatory regime and concluded the population is at a low to very low risk from these fisheries if the population includes at least 200 adult females as seems most plausible (Dewar *et al.,* 2013). Overall, the best available information indicates that existing regulatory mechanisms are adequate and that they are not contributing to increasing the population's risk of extinction now or in the foreseeable future.

**E. Other Natural or Man-Made Factors Affecting the Population's Continued Existence**

*Natural Factors*

Because of concerns raised about the possible small size of the NEP white shark population, the BRT evaluated the population's vulnerability to the risks often associated with small populations (Dewar *et al.,* 2013). These risks include increased difficulty finding mates, loss of genetic diversity, demographic stochasticity (variation in productivity), and stochastic and catastrophic events. The BRT generally found that the behavior and life history characteristics of white sharks are likely to mitigate these small population risks. For example, the offshore migratory behavior and aggregation of subadults and adults at coastal sites with pinniped colonies increases the probability that individuals will find mates for reproduction, even if the number of individuals in the population is relatively small. The BRT found that the NEP white shark population has a high level of genetic diversity based on a relatively high number of unique mtDNA haplotypes (Jorgensen *et al.,* 2010) and suggested that giving birth to live young and the practice of multiple paternity increases the effective size of the population and contributes to maintaining this genetic diversity (Hoekert *et al.,* 2002). Because white sharks give birth to large, live young, their survival is increased, which contributes to decreasing the population's vulnerability to demographic stochasticity. Finally, the BRT noted that several characteristics of the NEP white shark population indicate that NEP white sharks should be resilient to catastrophic and stochastic events, including their migratory behavior, the population's broad offshore distribution, and the large degree of spatial separation between life stages as well as between adult males and females. Overall, the BRT's analysis indicated that even if the NEP white shark population is relatively small, its size is not likely to contribute significantly to the population's risk of decline or extinction (Dewar *et al.,* 2013).

*Manmade Factors—Bioaccumulation of Contaminants*

The bioaccumulation of contaminants by white sharks in the SCB is a potential risk to the NEP white shark population. Life history factors, including a long life span, a high trophic position, and a large lipid-rich liver, make white sharks susceptible to bioaccumulation (Mull *et al.,* 2012). As described previously (see

Present or threatened destruction, modification, or curtailment of habitat or range), DDT and PCBs still exist in the SCB due to inputs through the 1970s, despite cessation of the production and use of these pesticides since the 1970s (Schiff *et al.,* 2000). Although the input of pollutants into the SCB has declined since the 1970s, inputs by other sources (e.g., surface runoff from urban and agricultural watersheds) have remained steady or increased over time (Schiff *et al.,* 2000).

Mull *et al.* (2012) observed high concentrations of mercury, DDT, and PCBs in the liver and muscle tissues of YOY and juvenile white sharks caught in the SCB. The observed concentrations were 50 times higher than those observed in juvenile white sharks from South Africa (Schlenk *et al.,* 2005) and in other species of sharks sampled from other parts of the world (Mull *et al.,* 2012). Despite these high contaminant loads, deleterious physiological effects have not been documented in elasmobranchs (Mull *et al.,* 2012). The high contaminant concentrations found in the tissues of young white sharks from the SCB suggest the potential for physiological effects, but such effects are unclear. The elevated selenium levels in the muscle tissues of the young SCB white sharks suggest a physiological response to counteract the elevated muscle mercury concentrations (Mull *et al.,* 2012). In other species, uptake of selenium has been observed to counteract the toxicity of increased muscle mercury concentrations (Wiener *et al.,* 2003). In addition, hepatic lesions and other visible physical effects of high contaminant loads have not been observed in young NEP white sharks (Lyons, personal communication cited in Dewar *et al.,* 2013).

Overall, high contaminant concentrations have been observed in the tissues of young NEP white sharks, but the physiological effects of these high levels are not known. The high contaminant concentrations could indicate bioaccumulation from feeding in the SCB (Mull *et al.,* 2012) and/or maternal transfer of contaminants (Adams and McMichael, 1999; Maz-Courrau *et al.,* 2012; personal communication with Lyons, cited in Dewar *et al.,* 2013). There is no information indicating that the NEP white shark population is being adversely affected at the population level as a result of contaminant bioaccumulation, and the BRT concluded that the risks of contaminants to the population was low overall (Dewar *et al.,* 2013).

*Competition*

In the 2 months immediately following an observed killer whale predation event on a white shark at the Southeast Farallon Islands, sightings of white sharks in the area dropped significantly compared with the frequency of sightings in previous years (Pyle *et al.,* 1999). Although changes in prey abundance or environmental factors may have caused this decline in sightings, it is possible that it may have been the result of competitive displacement or predator avoidance (Pyle *et al.,* 1999). Competitive displacement of white sharks by killer whales is possible given the overlap in the two species' distribution and prey, but interactions between the two species are poorly understood (Compagno, 2001).

*Analysis of Other Natural or Manmade Factors*

Overall, the best available information regarding natural or manmade factors affecting the NEP white shark population do not indicate that these factors are contributing significantly to the risk of extinction for this population

**Additional Information Received**

Oceana, Center for Biological Diversity, and Shark Stewards sent an email to the Secretary on May 23, 2013, attaching four 2013 white shark publications to ensure that we were aware of them. The BRT reviewed the first three publications (Domeier and Nasby-Lucas (2013); Mull *et al.* (2013); and Weng and Honebrink (2013)) before finalizing its status review report, so they were already considered. We have reviewed the fourth publication (Semmens *et al.* (2013)), and while we find the estimate of metabolic needs for white sharks interesting, metabolic and feeding rate estimates are not relevant to the question of whether the NEP white shark DPS is at risk of extinction. We have determined that prey are at low risk of being depleted or unavailable to the NEP white shark DPS, given improving stocks of fishes and marine mammals, and there is no evidence that food availability is affecting the DPS, so specific energetic requirements are not particularly relevant to our determination.

**Listing Determination**

Based on our comprehensive status review including the BRT's findings (Dewar *et al.,* 2013), which we agree with, our analysis of the five factors under Section 4(a)(1) of the ESA, and our review of public comments on the 90-day finding, we reached the following conclusions: (1) The NEP white shark population meets the discreteness and significance criteria of the joint NMFS–FWS DPS policy, and therefore, is a DPS under the ESA; (2) there are no identifiable portions of the NEP white shark DPS that constitute a significant portion of its range, and therefore, we evaluated the status of the DPS as a whole; (3) the total abundance of the NEP white shark DPS is uncertain, but information and analysis presented by the BRT (Dewar *et al.,* 2013) indicates the population abundance is larger than the minimum estimates based on photo-ID studies at the central California and Guadalupe Island aggregation sites (Chapple *et al.,* 2011 and Sosa-Nishizaki *et al.,* 2012) and most likely includes at least 200 adult females; (4) the available information informing abundance trends suggests the NEP white shark DPS is most likely increasing or stable; (5) the main current and foreseeable future threat to the NEP white shark DPS is fishery-related mortality from U.S. and Mexican gillnet fisheries located in coastal waters of southern California and Baja California; (6) fisheries risk assessment modeling conducted by the BRT indicates the NEP white shark DPS is at a low to very low risk of extinction from U.S. and Mexican gillnet fisheries-related impacts and is likely to remain so in the foreseeable future; (6) the NEP white shark DPS is at a low to very low overall risk of extinction and is likely to remain so in the foreseeable future based on a consideration of the DPS' current biological status (i.e., current abundance includes at least 200 adult females and population is likely increasing in abundance or stable) and known threats, including fishery-related mortality; (7) identified threats related to habitat destruction or modification, disease and predation, or other natural and manmade factors are not considered significant and are not contributing to increasing the extinction risk of the DPS; and (8) existing regulatory mechanisms throughout the range of the NEP white shark DPS are adequately addressing threats to the population, although improvements are needed in Mexico to monitor and reduce fishery impacts.

Based on these findings, we conclude that the NEP white shark DPS is not currently in danger of extinction throughout all or a significant portion of its range nor is it likely to become so within the foreseeable future. Accordingly, the NEP white shark DPS does not meet the definition of a threatened or endangered species and our listing determination is that the NEP

white shark DPS does not warrant listing as threatened or endangered at this time.

**References**

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 28, 2013.

**Alan D. Risenhoover,**

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

[FR Doc. 2013–16039 Filed 7–2–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office (USPTO).

*Title:* Legal Processes.

*Form Number(s):* None.

*Agency Approval Number:* 0651–0046.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 88 hours annually.

*Number of Respondents:* 299 responses per year.

*Avg. Hours per Response:* The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to 6 hours to gather the necessary information, prepare the appropriate documents, and submit the information in this collection to the USPTO.

*Needs and Uses:* This collection covers information requirements related to civil actions and claims involving current or former employees of the United States Patent and Trademark Office (USPTO). The rules for these legal processes may be found under 37 CFR Part 104, which outlines procedures for service of process, demands for employee testimony and production of documents in legal proceedings, reports of unauthorized testimony, employee indemnification, and filing claims against the USPTO under the Federal Tort Claims Act (28 U.S.C. 2672). The public uses this collection to serve a summons or complaint on the USPTO, demand employee testimony or documents related to a legal proceeding, or file a claim against the USPTO under the Federal Tort Claims Act. Respondents may petition the USPTO to waive or suspend the rules for legal processes in extraordinary situations. This collection is also necessary so that current and former USPTO employees may properly forward service and demands to the Office of General Counsel, report unauthorized testimony, and request indemnification. No forms are provided by the USPTO for submitting the information in this collection.

*Affected Public:* Individuals or households; businesses or other for-profits; not-for-profit institutions; and the Federal Government.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov*.

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *www.reginfo.gov.*

Paper copies can be obtained by:

- *Email: InformationCollection@uspto.gov*. Include ''0651–0046 copy request'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 2, 2013 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: June 28, 2013.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2013–15953 Filed 7–2–13; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Withdrawal Of Notice of Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Federal Flood Control Project For Hunting Bayou, Harris County, TX

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent; Withdrawal.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps), Galveston District, is issuing this notice to advise Federal, state, and local government agencies and the public that the Corps is withdrawing its Notice of Intent to prepare a Supplemental Environmental Impact Statement (SEIS) for the reformulation of a new flood damage reduction plan for the Hunting Bayou watershed in Houston, Harris County, TX.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Murphy, Chief, Environmental Section at (409) 766–3044 or by mail at U.S. Army Corps of Engineers, P.O. Box 1229, Galveston, TX 77553–1229. Email address: *carolyn.e.murphy@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** The Corps of Engineers published a notice of intent to prepare a Supplemental Environmental Impact Statement in the August 30, 2002 issue of the **Federal Register** (67 FR 55824). Since that time, public and resource agency involvement through meetings, changes in plan formulation, and re-evaluation of the project have reduced the magnitude and extent of proposed flood damage reduction remedies and associated environmental impacts to the point that an SEIS is no longer necessary or required. Therefore the Corps has decided to document, evaluate, and further coordinate project impacts in an Environmental Assessment.

**Diana Laird,**

*Chief, Planning and Environmental Branch.*

[FR Doc. 2013–16030 Filed 7–2–13; 8:45 am]

**BILLING CODE 3710–58–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Notice of Intent to Prepare a Draft Environmental Impact Statement (EIS) for the Reaches 8, 9, and 10 Comprehensive Shoreline Stabilization Project in Palm Beach County, Florida

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of Intent (NOI).

**SUMMARY:** The U.S. Army Corps of Engineers (Corps), Jacksonville District, has received two permit applications for Department of the Army permits under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344) from the Town of Palm Beach (Town) and Palm Beach County (County) to discharge fill in Waters of the United States for the purpose of shoreline stabilization. The two projects being considered and their Department of the Army file numbers are the Town of Palm Beach—Reach 8 South (SAJ–2005–07908) and the Palm Beach County—Central Palm Beach County Comprehensive Erosion Control (SAJ–2008–04086). The projects overlap (i.e. had proposed the discharge of fill in the same location) along approximately 2,000 linear feet from approximately R–132 to R–134 (see Location for further information) when initially submitted and now abut one another. The Corps determined that the proposed beach nourishment projects are connected actions and is evaluating the environmental effects of these connected actions together.

The primary Federal involvement associated with the Proposed Activities is the discharge of fill within Waters of the United States and the construction of low profile groins within Navigable Waters of the United States. The proposed project site is a beach situated directly adjacent to extensive hardbottom resources and experiences year-round recreational usage. The Proposed Activities may result in localized shoreline accretion or erosion on the adjacent beach segments and potential adverse effects on federally listed species. Issuance of Federal authorizations for the Proposed Activities would constitute a ''Major Federal Action.'' The Corps is preparing an EIS in compliance with the National Environmental Policy Act (NEPA) to identify and assess the effects of the Proposed Action and its alternatives, including the No Action Alternative, in order to provide a basis for rendering an informed decision on the proposed project.

The Corps' decision will be to either issue, issue with modifications, or deny Department of the Army permits for the Proposed Action. The Draft EIS (DEIS) is intended to be sufficient in scope to address federal, state, and local requirements and environmental issues concerning the Proposed Action and permit reviews.

**DATES:** The Corps plans to hold a public scoping meeting on August 12, 2013, at 5:30pm Eastern Standard Time (EST).

**ADDRESSES:** The public scoping meeting will be held at Town of Palm Beach Council Chambers, 2nd floor, Town Hall, 360 South County Road, Palm Beach, Florida.

**FOR FURTHER INFORMATION CONTACT:** Questions about the Proposed Action and Draft EIS should be directed to Mr. Garett Lips, Corps Regulatory Project Manager, by telephone at (561) 472–3519 or by email at *Garett.G.Lips@usace.army.mil.* Written comments should be addressed to the U.S. Army Corps of Engineers, Attn: Mr. Garett Lips, 4400 PGA Boulevard, Suite 500, Palm Beach Gardens, Florida 33410.

**SUPPLEMENTARY INFORMATION:**

*a. Project Location, Background.* The Corps will study the environmental impacts of the Proposed Action within Central Palm Beach County. The area between the Palm Beach Inlet and the South Lake Worth Inlet has been roughly divided into 11 beach segments known as ''reaches'' to facilitate area location. Reaches 1–8 fall mainly within the Town of Palm Beach. Reaches 9–11 are associated with the Town of South Palm Beach, Town of Lantana, and Town of Manalapan. The Study Area comprises approximately 2.07 miles of shoreline and nearshore environment within the southern extent of Reach 8, throughout all of Reach 9, and the northern extent of Reach 10. The Florida Department of Environmental Projection (FDEP) utilizes range monuments (R-monuments), a statewide network of survey monuments, to more closely identify specific locations on the state's sandy beach shoreline. The northern limit of the Study Area is located at R–128+955 (south of Lake Worth Municipal Beach located within the Town) and extends south to R–138+551 (the Ritz Carlton Hotel in Manalapan). The existing structural armoring in the Study Area includes rock revetments, concrete seawalls, steel sheet pile walls, a small wood retaining structure, a concrete ramp, and a concrete waffle revetment. The Town and the County have completed dune nourishments within the Study Area on several occasions and have planted native dune vegetation at several locations.

b. *Purpose and Need.* The basic purpose of the Proposed Action is to stabilize the shoreline. The overall purpose is to stabilize the shoreline within the southern portion of Reach 8, all of Reach 9, and the northern portion of Reach 10.

c. *Prior EAs, EISs.* The FDEP and the Corps, under the Coast of Florida Study, conducted an extensive offshore geotechnical investigation of the region which extended south to R–132, but did not cover the entire Study Area.

The Corps issued a Notice of Intent for the Central Palm Beach County Comprehensive Erosion Control Project EIS on Monday, May 3, 2010. The project was subsequently withdrawn and no authorization was issued.

d. *Proposed Action.* The Applicants' Proposed Action is to construct beach nourishment and dune restoration projects between R–128+955 and R–138+551 with sand placement and the construction of seven (7) low profile, shore-perpendicular groins (groin field). All sand is proposed to be sourced from an upland sand mine. The Proposed Action consists of the following two projects:

The Town of Palm Beach—South Reach 8 Project—does not include structures and extends from FDEP monument R–128+955 to R–134+135. The Town proposes to place approximately 74,300 cubic yards of beach quality sand in this area.

Palm Beach County—Central Palm Beach County Comprehensive Erosion Control Project—includes construction of a groin field as well as sand placement between approximately R–135+195 and R–137. The groins would be located landward of the nearshore and offshore hardbottom. Approximately 75,000 cubic yards of beach quality sand is proposed to be placed between R–134+135 and R–135+551 to elevate the existing berm and help offset any potential impacts to downdrift beaches from capture of sand by the groins. The current proposed project does not include structures within Manalapan.

Between 2000 and 2012, the quantity of the exposed hardbottom within the Study Area has varied significantly. Reach 8 has averaged 6.28 acres of exposed hardbottom with a low of 0.45 acre and a high of 11.37 acres. Reach 9 has averaged 6.94 acres with a low of 0.61 acre and a high of 18.77 acres. Reach 10 has averaged 20.86 acres with a low of 3.27 acres and a high of 38.48 acres. Construction of the Applicants' proposed projects would impact 0.6 acre

of intertidal and subtidal hardbottom in Reach 8 and 1.05 acres of nearshore hardbottom in Reaches 9 and 10 based on in-water surveys conducted in 2010 and 2012, respectively.

e. *Alternatives.* An evaluation of alternatives to the Applicants' Proposed Action initially being considered includes a No Action alternative; beach nourishment and dune restoration through filling activities, groins, upland coastal structural reinforcement/replacement, and combinations of these alternatives; alternatives that would avoid, minimize, and mitigate impacts to the aquatic resources; alternative practices or analysis methods for minimizing or evaluating cumulative effects of shoreline stabilization; and other reasonable alternatives that will be developed through the project scoping process which may also meet the identified purpose and need.

f. *Issues.* The following issues have been identified for analysis in the DEIS. This list is preliminary and is intended to facilitate public comment on the scope of the DEIS. The DEIS will consider the effects on Federally listed threatened and endangered species, Essential Fish Habitat, cumulative impacts, geology/soils, environmental justice, socioeconomic issues, traffic/circulation, noise/vibration, aesthetics, general environmental concerns, wetlands and other aquatic resources, historic properties, cultural resources, fish and wildlife values, recreation, air quality, water quality, considerations of property ownership, sediment budget, in general, the needs and welfare of the people, and other issues identified through scoping, public involvement, and interagency coordination. At the present time, the primary areas of concern are the loss of hardbottom and coral habitat, adequate characterization of impacts, mitigation of the loss of aquatic resources, the proposed projects' effect on fisheries and essential fish habitat and on Federally-listed threatened and endangered species, the potential effect of structures on downdrift beaches, and potential cumulative effects. The issues of concern and the methods used to evaluate those issues will be defined through the scoping process.

g. *Scoping Process.* CEQ regulations (40 CFR 1501.7) require an early and open process for determining the scope of an EIS and for identifying significant issues related to the Proposed Action. The Corps is furnishing this notice to advise other Federal and State agencies, affected federally recognized Tribes, and the public of our intentions. This notice announces the initiation of a 45-day scoping period which requests the public's involvement in the scoping and evaluation process of the DEIS. Stakeholders will be notified through advertisements, public notices and other means. All parties who express interest will be given an opportunity to participate in this process. The process allows the Corps to obtain suggestions and information on the scope of issues and an opportunity to provide reasonable alternatives to be included in the Draft EIS. (See **DATES** and **ADDRESSES** for meeting schedules)

h. *Public Involvement.* The Corps invites Federal agencies, American Indian Tribal Nations, state and local governments, and other interested private organizations and parties to attend the public scoping meetings and provide comments in order to ensure that all significant issues are identified and the full range of issues related to the permit request are addressed.

i. *Coordination.* The Proposed Action is being coordinated with a number of Federal, state, regional, and local agencies including but not limited to the following: U.S. Fish and Wildlife Service, U.S. National Marine Fisheries Service, U.S. Environmental Protection Agency, Florida Department of Environmental Protection, Florida State Historic Preservation Officer, local cities, and other agencies as identified in scoping, public involvement, and agency coordination.

j. *Agency Role.* The Corps will be the lead agency for the EIS. The Corps expects to receive input and critical information from the U.S. Fish and Wildlife Service, U.S. National Marine Fisheries Service, U.S. Environmental Protection Agency, and other federal, state, and local agencies.

k. *Availability of the Draft EIS.* The Corps currently expects the DEIS to be made available to the public by April 2014. A public meeting will be held during the public comment period for the DEIS. Written comments will be accepted at the meeting.

**Donald W. Kinard,**

*Chief, Regulatory Division.*

[FR Doc. 2013–16027 Filed 7–2–13; 8:45 am]

BILLING CODE 3710–58–P

## DEPARTMENT OF EDUCATION

**[Docket ID ED–2013–OESE–0016]**

## Request for Information (RFI) to Gather Technical Expertise Pertaining to the Identification and Placement of Native American Students Who Are English Learners in Language Instruction Educational Programs

**AGENCY:** Office of Elementary and Secondary Education, U.S. Department of Education.

**ACTION:** Request for information; notice to reopen the public comment period.

**SUMMARY:** On March 4, 2013, we published in the **Federal Register** an RFI that established a May 3, 2013, deadline for the submission of written comments. We are reopening the public comment period to give interested parties additional time to submit written comments.

**DATES:** Written submissions must be received by the Department on or before August 2, 2013.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID and the term ''Identification of English Learner Native American Students response'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site.''
- *U.S. Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this RFI, address them to Supreet Anand, Office of Elementary and Secondary Education, Attention: Native American English Learner RFI, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W106, Washington, DC 20202–6132.
- *Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

*Submission of Proprietary Information:* Given the subject matter, some comments may include proprietary information as it relates to confidential commercial information. The Freedom of Information Act defines ''confidential commercial information'' as information the disclosure of which could reasonably be expected to cause substantial competitive harm. You may wish to request that we not disclose what you regard as confidential commercial information.

To assist us in making a determination on your request, we encourage you to identify any specific information that you consider confidential commercial information. Please list the information by page and paragraph numbers.

While this RFI is seeking to gather information related to policies and practices, you should still make certain your comments do not include disclosures of personally identifiable information from students' education records in a manner that violates the Family Educational Rights and Privacy Act of 1974 (FERPA).

**FOR FURTHER INFORMATION CONTACT:** Supreet Anand, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W106, Washington, DC 20202–6132 by phone at 202–401–9795.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–(800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## Background

On March 4, 2013, we published an RFI in the **Federal Register** (78 FR 14084) to collect information about practices used by local educational agencies (LEAs) receiving Title III of the Elementary and Secondary Education Act, as amended (ESEA) funds to accurately identify Native American students in grades K–12 as English learners and to appropriately place these students in language instruction educational programs (LIEPs). The deadline for written submissions during the initial comment period was May 3, 2013. We are reopening the comment period for written submissions in response to the RFI notice through August 2, 2013. We are reopening the comment period to maximize opportunities for State educational agencies, LEAs, schools, tribes, and other interested entities to identify and share practices for accurately identifying Native American students who are English learners.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 28, 2013.

**Deborah S. Delisle,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2013–16026 Filed 7–2–13; 8:45 am]

BILLING CODE 4000–01–P

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# DEPARTMENT OF ENERGY

## Environmental Management Site-Specific Advisory Board, Savannah River Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Monday, July 22, 2013—1:00 p.m.–5:30 p.m.

Tuesday, July 23, 2013—8:30 a.m.–5:00 p.m.

**ADDRESSES:** North Augusta Community Center, 495 Brookside Avenue, North Augusta, SC 29841.

**FOR FURTHER INFORMATION CONTACT:** Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

**SUPPLEMENTARY INFORMATION:** Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

## Tentative Agenda

*Monday, July 22, 2013*

1:00 p.m. Combined Committees Session—Order of Committees:
- Facilities Disposition and Site Remediation Committee
- Administrative and Outreach Committee
- Waste Management Committee
- Strategic and Legacy Management Committee
- Nuclear Materials Committee

5:15 p.m. Public Comment Session
5:30 p.m. Adjourn

*Tuesday, July 23, 2013*

8:30 a.m.
Opening, Pledge, Approval of Minutes, Chair and Agency Updates
Public Comment Session
Waste Management Committee Report
Break
Facilities Disposition and Site Remediation Committee Report
1:00 p.m. Lunch Break
2:30 p.m.
Public Comment Session
Administrative and Outreach Committee Report
Nuclear Materials Committee Report
Strategic and Legacy Management Committee Report
Public Comment Session
5:00 p.m. Adjourn

*Public Participation:* The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC on June 28, 2013.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2013–15979 Filed 7–2–13; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### National Petroleum Council

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the National Petroleum Council. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Tuesday, July 16, 2013, 9:00 a.m. to 11:30 a.m. (EDT).

**ADDRESSES:** St. Regis Hotel, 923 16th and K Streets NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Nancy Johnson, U.S. Department of Energy, Office of Oil and Natural Gas (FE–30), Washington, DC 20585; telephone (202) 586–5600 or facsimile (202) 586–6221.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, or the oil and natural gas industries.

*Tentative Agenda:*

- Call to Order and Introductory Remarks
- Remarks by the Honorable Ernest Moniz, Secretary of Energy
- Administrative Matters
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council
- Adjournment

*Public Participation:* The meeting is open to the public. The Chair of the Council will conduct the meeting to facilitate the orderly conduct of business. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Nancy Johnson at the address or telephone number listed above. Request for oral statements must be received at least three days prior to the meeting. Those not able to attend the meeting or having insufficient time to address the Council are invited to send a written statement to *info@npc.org.* Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting.

Additionally, the meeting will also be available via live video webcast. The link will be available at *http://www.npc.org.*

*Transcripts:* Transcripts of the meeting will be available by contacting Ms. Johnson at the address above, or *info@npc.org.*

Issued at Washington, DC, on June 27, 2013.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2013–15971 Filed 7–2–13; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Proposed Subsequent Arrangement

**AGENCY:** Office of Nonproliferation and International Security, Department of Energy.

**ACTION:** Proposed subsequent arrangement.

**SUMMARY:** This notice is being issued under the authority of section 131a. of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Nuclear Energy Between the Government of the United States of America and the Government of Canada and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community.

**DATES:** This subsequent arrangement will take effect no sooner than July 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sean Oehlbert, Office of Nonproliferation and International Security, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–3806 or email: *Sean.Oehlbert@nnsa.doe.gov.*

**SUPPLEMENTARY INFORMATION:** This subsequent arrangement concerns the retransfer of 302,188 kg of U.S.-origin natural uranium trioxide (UO3) (82.73% U), 250,000 kg of which is uranium, from Cameco Corporation (Cameco) in Saskatoon, Saskatchewan, Canada, to Springfields Fuels Ltd. in Lancashire, United Kingdom. The material, which is currently located at Cameco, Blind River, Ontario, will be used for toll conversion by Springfields at its facility in Lancashire. The material was originally obtained by Cameco from Power Resources Inc., Cameco Resources-Crowe Butte Operation, and White Mesa Mill pursuant to export license XSOU8798.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the retransfer of nuclear material of United States origin will not be inimical to the common defense and security of the United States.

Dated: June 19, 2013.

For the Department of Energy.

**Anne M. Harrington,**

*Deputy Administrator, Defense Nuclear Nonproliferation.*

[FR Doc. 2013–15983 Filed 7–2–13; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Proposed Subsequent Arrangement

**AGENCY:** Office of Nonproliferation and International Security, Department of Energy.

**ACTION:** Proposed subsequent arrangement.

**SUMMARY:** This notice is being issued under the authority of section 131a. of the Atomic

Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Between the Government of the United States of America and the Government of the Argentine Republic Concerning Peaceful Uses of Nuclear Energy and the Agreement Between the Government of the United States of America and Australia Concerning Peaceful Uses of Nuclear Energy.

**DATES:** This subsequent arrangement will take effect no sooner than July 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sean Oehlbert, Office of Nonproliferation and International Security, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–3806 or email: *Sean.Oehlbert@nnsa.doe.gov.*

**SUPPLEMENTARY INFORMATION:** This subsequent arrangement concerns the retransfer of 86 kg of U.S.-origin uranium, 17 kg of which is in the isotope of U–235 (19.74 percent enrichment), in the form of low enriched uranium-silicide Open Pool

Australian Lightwater (OPAL) research reactor fuel clad in aluminum, from the Australian Nuclear Science and Technology Organisation (ANSTO) in Lucas Heights, Sydney, Australia, to the Deposito de Materiales Nucleares (DEMANU) and/or Deposito de Uranio Enriquecido (DUE) warehouses of Comision Nacional de Energia Atomica (CNEA) in Buenos Aires, Argentina. The material, which is currently located at ANSTO's OPAL reactor, will be transferred to the CNEA DEMANU and/or DUE warehouses for storage. ANSTO originally obtained the material pursuant to export license XSNM03282, Amendment No. 01, and export license XSNM03348, Amendment No. 01.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the retransfer of nuclear material of United States origin will not be inimical to the common defense and security of the United States.

Dated: June 19, 2013.

For the Department of Energy.

**Anne M. Harrington,**

*Deputy Administrator, Defense Nuclear Nonproliferation.*

[FR Doc. 2013–15978 Filed 7–2–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Proposed Subsequent Arrangement

**AGENCY:** Office of Nonproliferation and International Security, Department of Energy.

**ACTION:** Proposed subsequent arrangement.

**SUMMARY:** This notice is being issued under the authority of section 131a. of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Nuclear Energy Between the Government of the United States of America and the Government of Canada and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community.

**DATES:** This subsequent arrangement will take effect no sooner than July 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sean Oehlbert, Office of Nonproliferation and International Security, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–3806 or email: *Sean.Oehlbert@nnsa.doe.gov*.

**SUPPLEMENTARY INFORMATION:** This subsequent arrangement concerns the retransfer of 591,716 kg of U.S.-origin natural uranium hexafluoride (UF6) (67.60% U), 400,000 kg of which is uranium, from Cameco Corporation (Cameco) in Saskatoon, Saskatchewan, Canada, to URENCO in Capenhurst, Chester, United Kingdom. The material, which is currently located at Cameco, Port Hope, Ontario, will be used for toll enrichment by URENCO at its facility in Capenhurst. The material was originally obtained by Cameco from Power Resources Inc., Cameco Resources-Crowe Butte Operation, and White Mesa Mill pursuant to export license XSOU8798.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the retransfer of nuclear material of United States origin will not be inimical to the common defense and security of the United States.

Dated: June 19, 2013.

For the Department of Energy.

**Anne M. Harrington,**

*Deputy Administrator, Defense Nuclear Nonproliferation.*

[FR Doc. 2013–15975 Filed 7–2–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Proposed Subsequent Arrangement

**AGENCY:** Office of Nonproliferation and International Security, Department of Energy.

**ACTION:** Proposed subsequent arrangement.

**SUMMARY:** This notice is being issued under the authority of section 131a. of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Nuclear Energy Between the Government of the United States of America and the Government of Canada and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community.

**DATES:** This subsequent arrangement will take effect no sooner than July 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sean Oehlbert, Office of Nonproliferation and International Security, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–3806 or email: *Sean.Oehlbert@nnsa.doe.gov.*

**SUPPLEMENTARY INFORMATION:** This subsequent arrangement concerns the retransfer of 591,716 kg of U.S.-origin natural uranium hexafluoride (UF6) (67.60% U), 400,000 kg of which is uranium, from Cameco Corporation (Cameco) in Saskatoon, Saskatchewan, Canada, to URENCO in Almelo, Netherlands. The material, which is currently located at Cameco, Port Hope, Ontario, will be used for toll enrichment by URENCO at its facility in Almelo. The material was originally obtained by Cameco from Power Resources Inc., Cameco Resources-Crowe Butte Operation, and White Mesa Mill pursuant to export license XSOU8798.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the retransfer of nuclear material of United States origin will not be inimical to the common defense and security of the United States.

Dated: June 19, 2013.

For the Department of Energy.

**Anne M. Harrington,**

*Deputy Administrator, Defense Nuclear Nonproliferation.*

[FR Doc. 2013–15981 Filed 7–2–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Wave Energy Converter Prize Administration Webinar

**AGENCY:** Office of Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy (DOE).

**ACTION:** Notice of a webinar and request for information.

**SUMMARY:** The Wind and Water Power Technologies Office (WWPTO) is considering releasing a Funding Opportunity Announcement (FOA), tentatively titled, ''Wave Energy Converter Prize Administration''. The Office is planning a webinar in advance of any potential FOA to seek input from the public regarding possible approaches to structuring a prize competition related to wave energy converters. The WWPTO anticipates a multi-stage challenge that would culminate in the demonstration of Wave Energy Converter (WEC) devices in a wave tank test. The WWTPO anticipates that the top prize would be awarded to

the entity capable of exceeding predetermined operational performance thresholds. Moreover, WWPTO is considering the competition to be administered by a third-party that may have involvement in defining, developing, and advertising the competitive challenge, as well as involvement in the awarding of any prizes.

**DATES:** The WWPTO will hold a webinar on Thursday, July 18, 2013 from 2:00 p.m. to 4:00 p.m. EST. Written comments will be accepted through Thursday, July 25, 2013.

**ADDRESSES:** The webinar can be accessed at *https://www1.gotomeeting.com/join/123267576*.

You may submit written comments by any of the following methods:

- *E-Mail: WECworkshopweb@go.doe.gov*.
- *Postal Mail:* Alison LaBonte, Marine and Hydrokinetic Energy Technology Development Manager, Wind and Water Power Technologies Office EE–2B, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Please submit one signed paper original. Due to the potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages respondents to submit comments electronically to ensure timely receipt.

Minutes and video recorded proceedings of the webinar will be made available for public review on the DOE Office of Energy Efficiency and Renewable Energy (EERE) Web site at: *http://water.energy.gov*.

**FOR FURTHER INFORMATION CONTACT:** Alison LaBonte, Marine and Hydrokinetic Energy Technology Development Manager, Wind and Water Power Technologies Office EE–2B, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, *WECworkshopweb@go.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

## Webinar Purpose

*Purpose:* The purpose of this notice is to gain public input regarding the development and implementation of a prize challenge for wave energy converters. The information collected by the webinar and this notice will be used for internal DOE planning including the potential development of a FOA. The webinar is open to all interested parties. All interested parties are encouraged to submit written comments. Parties interested in participating in the webinar and interested in providing comments might include, but are not limited to (1) Non-profit organizations, companies, and universities involved in the development of wave energy converters, (2) entities with experience in testing wave energy converters in tank test facilities, and (3) entities with experience in developing and administering technical competitions.

## Wave Energy Converter Prize Background

In principle, challenges set a high technical bar for competitors to be eligible for a prize, and offer an attractive prize purse to the winner, thus facilitating rapid advancements through technical innovation at a relatively low cost to the sponsoring agency. A successful challenge strategy is one that quickly yields a number of viable solutions to increase the performance of WEC technologies above an aggressive but achievable performance threshold.

It is intended that a WEC Prize could spur game changing innovations for next generation WEC technologies to drastically increase WEC performance.

Intellectual property rights will be retained by the competitors. The prize competition will be conducted in accordance with the prize authority established in the America COMPETES Reauthorization Act of 2010 (15 U.S.C. 3719).

## Challenge Stage Gates and Criteria for Evaluation

The WWTPO anticipates that there could be many ways to formulate the challenge structure (i.e. number of stages and stage gates) for the WEC Prize. However, to engage in a more robust dialogue during the webinar, an example strategy is provided below. The WWPTO encourages commenters to provide alternative strategies and approaches for the prize administration.

A multi stage-gate challenge structure requires competitors to pass through a series of stage gates based on various criteria. Generally, the criteria are designed to ensure that the prize winner holds the most commercially viable technology and has the highest potential for success in the actual open-ocean wave energy harvesting environment. The quantitative performance threshold for the final tank test is anticipated to be a function of absorbed energy; characteristic mass; surface area; and/or power take-off force criteria.

Example challenge structure stages and stage-gates might include:

*Full Proposal Submission Stage:* WEC prize competitors would initially submit full applications with proposed design concepts which would be evaluated against WEC prize performance goals. The applications would provide supporting evidence such as numerical simulation performance calculations, levelized cost of energy calculations demonstrating techno-economic viability of the concept at a commercial stage, and engineering justification to support concept design reliability and survivability at commercial scale.

*First Stage-gate:* A judging panel would evaluate and select proposals based on pre-published criteria. Selected proposals would advance to a detailed design phase.

*Design Stage:* Proposals selected to advance to the design stage would develop a detailed design demonstrating proof-of-concept via prototype bench top testing; WEC numerical modeling, validation, and refinement; and any design stage wave tank testing results.

*Second Stage-gate:* A judging panel would conduct a critical design review and select up to 10 competitors to advance to the ''build stage.'' Those selected at this stage would receive a monetary award (e.g., $350,000) intended to be used to support scaled prototype fabrication.

*Build Stage:* The selected competitors would proceed to the build stage and would be responsible for the procurement and construction of a scaled prototype WEC device ready for tank testing.

*Test and Evaluate Stage:* The selected competitors would test their scaled prototype in a wave tank to quantitatively measure performance of the WEC device against performance criteria.

*Final Stage-gate:* The judging panel would evaluate the tank test performance results and the overall device design against pre-determined performance criteria to select one winner to receive the prize purse. The WWPTO is considering a purse prize value of $1 million.

## Administration Implementation

The WWPTO is considering having the WEC Prize challenge administered by a single awardee of the anticipated ''Wave Energy Converter Prize Administration'' FOA. In addition to being responsible for the overall implementation of the challenge the awardee would potentially administer the prize purse (including seed funding) to the selected competitors. The WWTPO plans to separately arrange for a tank testing facility to be used in the challenge competition and technical experts to assist the administration entity with the development of quantitative performance threshold and other criteria the competitors will be

evaluated against throughout the various stages of challenge.

The anticipated scope for the administrative entity may include, but may not be limited to, the following:

1. Work with the WWPTO to refine WEC Prize and to develop challenge strategy, including rule development, structure, planning, judging and evaluations, to meet those objectives.
2. Collaborate with the technical expert as identified by the WWPTO to finalize testing and evaluation criteria for rule development.
3. Coordinate with the tank test facility identified by the WWPTO for planning, scheduling, and executing the test and evaluate stage of the challenge.
4. Promote the challenge to attract competitors to apply.
5. Publish challenge rules and implement the challenge strategy to accomplish the objectives.
6. Increase the awareness of MHK technology through the WEC Prize challenge with marketing and public relations.
7. Provide the necessary qualified personnel, facilities, equipment, supplies, services, subcontractors, and related administrative and information technology support to accomplish the objectives.
8. Coordinate and compensate judging panels, as applicable.
9. Provide on-site coordination and logistics for judging panels and tank testing.
10. Ensure the tank testing is in accordance to the rules of the prize.
11. Provide the WWPTO access to the observation of all test and evaluation activities.
12. Allow WWPTO access to records, files, and other data derived from this work.
13. Provide winners with seed funding and prize award.

Outside of the anticipated ''Wave Energy Converter Prize Administration'' FOA, the WWPTO anticipates that technical experts will assist the administrator with the following:

- Assist the administration entity with the development of quantitative performance threshold and other criteria the competitors will be evaluated against throughout the various stages of the challenge
- Collaborate with the tank test facility operators to determine tank test conditions for the testing and evaluation phase to ensure the conditions are consistent for WEC device competitors
- Provide technical direction to the administrative entity developing the challenge rules
- Provide technical direction to the administrative entity in selecting experts for judging panels
- Development of the tank test instrumentation and data acquisition interface (in conjunction with the tank test facility)

For the tank test facility in the final Test and Evaluate Stage, the WWPTO is considering arranging an agreement with the Naval Surface Warfare Center, Carderock Division, Maneuvering and Seakeeping Basin in West Bethesda, Maryland. The indoor freshwater basin is anticipated to be online in 2013 with 216 independently controlled wave paddles capable of producing model sea state spectra of any distribution. The basin overall length is 110 m (360 ft), overall width is 73 m (240 ft), and depth of 6.1 (20 ft) and it includes a 10.7 m (35 ft) deep by 15.2 m (50 ft) wide trench parallel to the long side of the south side.

*Webinar Discussion Topics and Requested Information*

The questions below request information on both the structure of a potential prize competition as well as the technical criteria that may be considered in the evaluation of such a competition. Interest parties are encouraged to provide responses to the following questions or other topics relevant to a WEC Prize.

- What administrative resources are required to design, promote, and implement a prize challenge?
- How could a challenge be structured to efficiently, timely, and adequately allow comparison of the various technologies and techniques that may be applied to WEC?
- How can a judging panel be secured for multiple phases?
- Is the sample challenge structure, with multiple stages, too lengthy or complex that some potential competitors may not participate? Does offering seed funding at an early stage incentivize competitors where they otherwise would not compete?
- What distribution of funding is appropriate for administrative costs, seed funding, and prize? Should seed funding be given, or should there instead be a larger winning prize, or first, second and third place prizes?
- What criteria should be used to evaluate proposed WEC designs and WEC performance?

*Public Participation*

*Webinar and Comments Instructions:* The webinar will be held on Thursday, July 18, 2013 from 2:00 p.m. to 4:00 p.m. EST. Webinar attendees are encouraged to RSVP to *WECworkshopweb@go.doe.gov* by Monday, July 15, 2013. In addition, entities are welcomed to provide an additional written response to *WECworkshopweb@go.doe.gov* by 5:00 p.m. EST on Thursday, July 25, 2013. Written responses may be submitted electronically or by postal mail and must be five pages or less in length. Electronic responses must be provided as attachments (in Microsoft Word or Adobe PDF format). The subject line should read ''Wave Energy Converter Prize Administration (insert name-organization)''. One inch margins and 12 point font should be used. Any entity providing a written response is requested to include the following information: Company/institutional name; individual contact information (mailing address, phone number, email address); facility location(s) (zip code); and area of expertise/interest.

*Disclaimer and Important Notes:* The notice is issued solely for information and FOA planning purposes; the notice and webinar do not constitute a formal solicitation for proposals or abstracts. Your response to this notice and responses provided through the webinar will be treated as information only. In accordance with the Federal Acquisition Regulations, 48 C.F.R. 15.201(e), responses to this notice including those provided through the webinar are not offers and cannot be accepted by the Government to form a binding contract. DOE will not provide reimbursement for costs incurred in responding to this notice. Any of the information contained in this notice is subject to change. Any amounts proposed for funding are subject to the availability of Congressional appropriations.

DOE may or may not decide at a later date to issue a FOA or other type of solicitation based on consideration of the input received from this notice or the webinar, and there is no guarantee that future funding opportunities or other activities will be undertaken as a result of this notice or the webinar. Because information received in response to this notice and during the webinar may be used to structure future funding opportunities and/or may otherwise be made available to the public, respondents are strongly advised to not include any information in their responses that might be considered business-sensitive, proprietary, or otherwise confidential. If, however, a respondent chooses to submit business-sensitive, proprietary, or otherwise confidential information, it must be clearly and conspicuously marked as such in the response pursuant to the instructions below.

In order to avoid any possible conflict with future funding opportunities, DOE will not reply to any respondent questions or comments received after

the closure of the submission period specified in the **DATES** section. Respondents are advised that DOE is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this notice or through the webinar. Responses to this notice do not bind DOE to any further actions related to this topic. The DOE thanks you for your assistance and input.

*Confidential Business Information:* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or postal mail. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in a public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Issued in Washington, DC, on June 27, 2013.

**Jose Zayas,**

*Director, Wind and Water Power Technologies Office, Energy Efficiency and Renewable Energy, Department of Energy.*

[FR Doc. 2013–15967 Filed 7–2–13; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2179–019; ER10–2181–019; ER10–2182–019.
*Applicants:* Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, R.E. Ginna Nuclear Power Plant, LLC.
*Description:* Notice of Non-Material Change in Status of Calvert Cliffs Nuclear Power Plant, LLC, et al.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5103.
*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER11–2560–000; ER11–3156–000.
*Applicants:* Entergy Arkansas, Inc.
*Description:* Refund Report in Docket Nos. ER11–2560 and ER11–3156 to be effective N/A.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5066.
*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1206–001.
*Applicants:* PacifiCorp.
*Description:* OATT Revised Schedules 3 and 3A Deficiency Filing to be effective 6/1/2013.
*Filed Date:* 6/20/13.
*Accession Number:* 20130620–5139.
*Comments Due:* 5 p.m. ET 7/11/13.

*Docket Numbers:* ER13–1737–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* 1636R10 Kansas Electric Power Cooperative, Inc. NITSA and NOA to be effective 6/1/2013.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5039.
*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1738–000.
*Applicants:* Alcoa Power Generating Inc.
*Description:* Market-Based Rate Tariff Revisions to be effective 6/21/2013.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5041.
*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1739–000.
*Applicants:* Alcoa Power Marketing LLC.
*Description:* Market-Based Rate Tariff Revisions to be effective 6/21/2013.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5042.
*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1740–000.
*Applicants:* Wisconsin Public Service Corporation.
*Description:* Revised BAOCA between WPSC and WEPCO to be effective 6/21/2013.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5050.
*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1741–000.
*Applicants:* Upper Peninsula Power Company.
*Description:* Revised BAAOCA Between UPPCO and WEPCO to be effective 6/21/2013.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5054.
*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1742–000.
*Applicants:* New England Power Pool Participants Committee, ISO New England Inc.
*Description:* MR1 Clarifications to Full Inte. Rules for Price-Res. Demand-Net Supply to be effective 8/21/2013.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5055.
*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1743–000.
*Applicants:* Entergy Arkansas, Inc.
*Description:* Compliance Filing in Docket Nos. ER11–2560 and ER11–3156 to be effective 3/1/2012.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5063.
*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1744–000.
*Applicants:* DPL Energy, LLC.
*Description:* Rate Schedule No. 3 to be effective 6/21/2013.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5067.
*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1745–000.
*Applicants:* GenOn Bowline, LLC.
*Description:* Notice of Succession to be effective 6/24/2013.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5070.
*Comments Due:* 5 p.m. ET 7/12/13.

*Docket Numbers:* ER13–1746–000.
*Applicants:* GenOn Marsh Landing, LLC.
*Description:* Notice of Succession to be effective 6/24/2013.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5086.
*Comments Due:* 5 p.m. ET 7/12/13.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA13–6–000.
*Applicants:* Alcoa Power Generating Inc.
*Description:* Request for Waiver of Alcoa Power Generating Inc.
*Filed Date:* 6/21/13.
*Accession Number:* 20130621–5094.
*Comments Due:* 5 p.m. ET 7/12/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 21, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–15991 Filed 7–2–13; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2005–0231; FRL–9384–5]**

## Metaldehyde; Amendment To Terminate Uses

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's order for the amendment to terminate uses, voluntarily requested by the registrant and accepted by the Agency, of a product containing metaldehyde, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows a March 23, 2012 **Federal Register** Notice of Receipt of a Request from the registrant listed in Table 2 of Unit II. to voluntarily amend to terminate uses of this product registration. This is not the last product containing this pesticide registered for use in the United States. In the March 23, 2012 notice, EPA indicated that it would issue an order implementing the amendment to terminate uses, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrant withdrew its request. The Agency received comments on the notice but none merited its further review of the requests. Further, the registrant did not withdraw its request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested amendment to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

**DATES:** The amendment is effective July 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jill Bloom, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; fax number: (703) 308–8005; email address: *bloom.jill@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2005–0231, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

### II. What action is the agency taking?

This notice announces the amendment to terminate uses, as requested by the registrant of a product registered under FIFRA section 3. The EPA registration number and product name are shown in Table 1 of this unit.

TABLE 2—METALDEHYDE PRODUCT REGISTRATION AMENDMENT TO DELETE USES

| EPA Registration No. | Product name | Uses deleted—all but the following: |
|---|---|---|
| 6836–107 ..... | Lonza Meta Metaldehyde Technical Molluscicide. | Artichokes, blueberries, caneberries (bingleberry, black raspberry, blackberry, boysenberry, dewberry, lowberry, marionberry, olallieberry, red raspberry, youngberry) and other berries (currant, elderberry, gooseberry, huckleberry, loganberry, lingonberry, juneberry, salal), citrus, lettuce, cole crops and other leafy greens (broccoli, Brussels sprouts, cabbage, cauliflower, cavalo broccolo, collards, kale, kohlrabi, mizuna, mustard greens, mustard spinach, rape greens), grass grown for seed, ornamentals, prickly pear cactus, tomato, strawberry, watercress, and use sites with directions for use in state and/or Federal invasive mollusk eradication operations. |

Table 2 of this unit includes the names and address of record for the registrant of the product in Table 1 of this unit, in sequence by EPA company number. The company number corresponds to the first part of the EPA registration number of the product listed above.

TABLE 3—REGISTRANTS OF AMENDED PRODUCTS

| EPA company No. | Company name and address |
|---|---|
| 6836 ..... | Lonza, Inc.<br>90 Boroline Road<br>Allendale, NJ 07401 |

### III. Summary of Public Comments Received and Agency Response to Comments

A summary of the public comments in response to March 23, 2013 notice and the Agency's responses to those comments are provided below.

IR–4 Project Headquarters at Rutgers University (IR–4) requested that certain uses for which the registrant has

requested termination remain registered. IR–4 submitted a petition (PP#2E8070) on July 30, 2012, in support of proposed tolerances for grass grown for seed, leaf petioles, peppermint, spearmint, wetland, Caneberry subgroup 13–07A, Bushberry subgroup 13–07B and Berry low growing subgroup 13–07G. IR–4 noted that, since the petition is currently under review by the Agency, it would be most efficient to maintain the registrations until the data have been evaluated. IR–4 also noted that it is currently conducting residue studies in support of minor uses of metaldehyde on legume subgroups 6A, 6B, and 6C, ginseng, and Pacific Northwest only uses on wheat and root vegetables, in addition to completing a residue study supporting the use on clover grown for seed. IR–4 is requesting that these uses also be retained. Finally, IR–4 requests clarification on whether or not use is permitted on ornamentals in greenhouses, hoophouses, and other indoor production structures.

Oregon State University commented that losing the use of metaldehyde on the crops included in the IR–4 petition and the ongoing residue studies would negatively impact slug and snail management in Oregon, and that growers would be likely to suffer significant economic losses if metaldehyde was no longer an option for control of these pests.

Virginia Polytechnic Institute and State University, University of Delaware, and the Pennsylvania State University commented on the need for metaldehyde to control slugs in the Mid-Atlantic region, particularly on corn, soybean, canola, and other field crops. All three commenters indicated that while the increased adoption of no-till cultural practices has many advantages for the grower and the environment, reduced tillage can result in increased slug populations. Pest pressure may cause farmers to return to conventional tillage, with its potential for increased run-off into the Chesapeake Bay. Additionally, the use of the highly toxic carbamate insecticide methomyl as a control for slugs has been increasing in the Mid-Atlantic States since the pest was added via a FIFRA Section 2(ee) recommendation from the manufacturer. One commenter expressed the view that that recent studies show methomyl to be of limited efficacy.

*EPA response to all comments:* Some of the uses the commenters have asked the Agency to retain have already been approved, including grass grown for seed, strawberries, blueberries, and caneberries and bushberries in the former commodity subgroups 13A and 13B, thus they need not be covered by this use termination order. The other uses that IR–4 and other commenters requested be retained have never been listed explicitly on the label for Registration Number 6836–107. That label was amended in 2012 to allow formulation only into products for use on sites determined to be eligible for reregistration and sites subsequently approved in registration or tolerance actions.

The metaldehyde uses that would be terminated based on the registrant's request have not undergone complete human health and ecological risk assessments, either during the course of reregistration or subsequently through registration or tolerance actions. The IR–4 program has developed or is developing residue data on some of the uses the commenters would like to have retained. The tolerance assessments for the uses of metaldehyde covered by the already submitted petition are scheduled to be complete in November 2013.

The risk concerns cited in the metaldehyde Reregistration Eligibility Decision include risks to wildlife. Until both the human health and ecological risk assessments are conducted for any uses other than those covered in Table 1 in Unit II, decisions on the registration of metaldehyde for other uses, including acceptable use parameters and directions for use, cannot be made.

The Agency acknowledges the particular role pesticides play in managing pest problems in no-till or reduced tillage farming, as well as the positive impact these farming systems can have on run-off and water quality. In order for the use of metaldehyde to be permitted in no-till/reduced tillage field crops, or any other use site mentioned by the commenters, a full Suite of data, covering both human health and ecological risk, must be submitted in support of an application to register that use. The decision to make such applications and to submit supporting data is typically made by the registrant, although other entities may take on those responsibilities. Thus the uses that the commenters would like to have retained could be approved in the future if the necessary steps to registration are undertaken.

While we acknowledge the value of metaldehyde in controlling slugs and snails, particularly outside of conventional tillage, we are unable at this time to approve the uses the commenters would like to retain. For this reason, the Agency does not believe that the comments submitted during the comment period merit denial of the requests for voluntary use deletion.

In response to the question about the use of metaldehyde on ornamentals, the Agency wishes to clarify that approved ornamental uses include ornamentals in greenhouses, hoophouses, and other indoor ornamentals production facilities, as well as outdoor plants.

To address concerns about the efficacy of methomyl for slugs, the Agency has notified the methomyl registrant about the new efficacy data from Delaware and is reviewing the information internally.

## IV. Order for the Amendment To Terminate Uses

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendment to terminate uses of the metaldehyde registration identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registration identified in Table 1 of Unit II. is amended to terminate the affected uses. The effective date of the amendments that is the subject of this notice is July 3, 2013. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

## V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on March 23, 2012 (77 FR 17052–17055) (FRL–9342–6). The comment period closed on September 19, 2012.

## VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

Registrants are permitted to sell or distribute products listed in Table 1 of Unit II. under the previously approved labeling until July 3, 2014, a period of 12 months after publication of the cancellation order in this **Federal**

**Register**, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the deleted uses identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of products whose labels include the deleted uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the deleted uses.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: June 21, 2013.

**Richard P. Keigwin, Jr.,**

*Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2013–16035 Filed 7–2–13; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9830–4; EPA–HQ–OEI–2012–0952]**

## Notification of Deletion of System of Records: Kid's Club Membership List (EPA–57)

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency is deleting the system of records for the Kids Club Membership List (EPA–57) published in the **Federal Register** on March 2, 2006, from its inventory of Privacy Act systems. The system is no longer active and the Web site has been taken down.

**DATES:** This notice is effective immediately upon publication in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Megan Gavin, (312) 353–5282.

**SUPPLEMENTARY INFORMATION:**

**General Information**

The Kid's Club Membership List (EPA–57) contains non-sensitive personally identifiable information (PII) provided by children in grades K–4 and their parents. The system was created to promote environmental stewardship among children. Participants received certificates, membership cards and stickers for joining the club. Completed projects were posted on the Internet. The Office of Public Affairs deactivated the system and the Web site has been taken down.

*How can I get copies of this document and other related information?*

EPA has established a docket for this action under Docket ID No. EPA–HQ–OEI–2012–0952. Copies of the docket materials are available at *www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center 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. The telephone number for the OEI Docket Center is (202) 566–1752.

*How can I get electronic access to this document?*

You may access this **Federal Register** document electronically under the ''**Federal Register**'' listings at *www.regulations.gov.*

Dated: June 20, 2013.

**Malcolm D. Jackson,**

*Assistant Administrator and Chief Information Officer.*

[FR Doc. 2013–16069 Filed 7–2–13; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2005–0057; FRL–9389–6]**

## Chlorpyrifos; Cancellation Order for Certain Pesticide Registrations

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's order for the cancellations, voluntarily requested by the registrant and accepted by the Agency, of products containing chlorpyrifos, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a March 9, 2005 **Federal Register** Notice of Receipt of Request from the registrant listed in Table 2 of Unit II. to voluntarily cancel these product registrations. These are not the last products containing this pesticide registered for use in the United States. In the March 9, 2005 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrant withdrew their request. The Agency did not receive any comments on the notice. Further, the registrant did not withdraw their request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

**DATES:** The cancellations are effective July 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Tom Myers, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8589; fax number: (703) 308–7070; email address: *myers.tom@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. How can I Get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2005–0057, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**II. What action is the agency taking?**

This notice announces the cancellations, as requested by the registrant, of the products registered under FIFRA section 3. These registrations are listed in sequence by

registration number in Table 1 of this unit.

TABLE 1—CHLORPYRIFOS PRODUCT CANCELLATIONS

| EPA Registration number | Product name |
|---|---|
| 062719–00014 | Dursban ½ G Granular. |
| 062719–00035 | Dursban Turf Insecticide. |
| 062719–00038 | Lorsban 50–SI Wettable Powder. |
| 062719–00039 | Lorsban 50–W Wettable Powder. |
| 062719–00054 | Dursban 1–D. |
| 062719–00068 | Dursban 50w. |
| 062719–00167 | Equity. |
| 062719–00255 | Dursban 50W–N in Water Soluble Packets. |
| 062719–00293 | Dursban 75WG. |
| 062719–00295 | Lorsban 30G. |
| 062719–00316 | Dursban Plus Fertilizer 2. |
| 062719–00349 | Lentrek 6. |
| 062719–00350 | XRM–5222. |
| 062719–00354 | Dursban 30 SEC. |
| 062719–00380 | Lorsban 12.6%. |
| 062719–00382 | Chlorfos 4E Insecticide. |
| 062719–00383 | Chlorfos 15G. |
| CA940017 | Lorsban 4E–HF. |
| FL920007 | Lorsban 50W. |
| ID860017 | Dow Dursban 4E Insecticide. |
| LA960005 | Dursban TC Concentrate. |
| LA960007 | Equity Termiticide Concentrate. |
| MN960003 | Lorsban 4E–SG. |
| MS910008 | Equity Termiticide Concentrate. |
| MS930012 | Dursban 4E Insecticide. |
| MS960008 | Dursban TC Concentrate. |
| MS960009 | Equity Termiticide Concentrate. |
| MS960010 | Dursban TC Concentrate. |
| MS960014 | Dursban TC Concentrate. |
| ND950006 | Lorsban 4E–SG. |
| SC960003 | Dursban TC Concentrate. |
| SC960004 | Dursban TC Concentrate. |
| SC960005 | Equity Termiticide Concentrate. |
| TN900007 | Dursban Turf Insecticide |

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit, by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANT OF CANCELLED PRODUCTS

| EPA Company number | Company name and address |
|---|---|
| 62719 | Dow AgroSciences, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268. |

## III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the March 9, 2005 **Federal Register** notice announcing the Agency's receipt of the request for voluntary cancellations of products listed in Table 1 of Unit II.

## IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of chlorpyrifos registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are subject of this notice is July 3, 2013. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

## V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on March 9, 2005 (70 FR 11634) (FRL–7701–3). The comment period closed on September 6, 2005.

## VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The **Federal Register** Notice of March 9, 2005, proposed to allow without limitation the distribution or sale of existing stocks by non-registrants, as well as the use of existing stocks. However, over 8 years have now passed since that notice was published and it is EPA's understanding that the registrant has not produced the products since that time. As a result, EPA believes there is likely little if any product remaining in the channels of

trade and believes what little there may be of these old products should no longer be put to use. Accordingly, the cancellation order issued in this notice includes the following existing stocks provisions: The cancellation order issued in this notice includes the following existing stocks provisions.

The distribution, sale or use of existing stocks will not be lawful under FIFRA with the date of this cancellation order except for the purpose of returns and relabeling, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: June 10, 2013.

**Richard P. Keigwin, Jr.,**

*Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2013–15865 Filed 7–2–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 9830–3]**

## Proposed CERCLA Administrative Settlement Agreement and Order on Consent for the Mercury Refining Superfund Site, Towns of Guilderland and Colonie, Albany County, New York

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

**ACTION:** Notice; request for public comment

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 2, of a proposed *de minimis* administrative settlement agreement and order on consent pursuant to Section 122(g)(4)of CERCLA, 42 U.S.C. 9622(g)(4). The settlement agreement includes settlement of penalties under Section 104(e)(5) of CERCLA, 42 U.S.C. 9604(e)(5) under the authority of the Attorney General of the United States to compromise and settle claims of the United States. The settlement is between EPA and Titan Wheel Corporation of Illinois (hereafter ''Titan'') pertaining to the Mercury Refining Superfund Site (''Site'') located in the Towns of Guilderland and Colonie, Albany County, New York. The settlement requires Titan to pay $23,000 to the EPA Hazardous Substance Superfund. The settlement amount covers Titan's fair share of cleanup costs incurred and anticipated to be incurred in the future, plus a ''premium'' that accounts for, among other things, uncertainties associated with the costs of that future work at the Site plus a penalty for Titan's failure to comply with an information request letter sent pursuant to Section 104(e) of CERCLA, 42 U.S.C. 9604(e). The settlement includes a covenant not to sue pursuant to Sections 106, 107 and 104(e)(5) of CERCLA, 42 U.S.C. 9606, 9607, and 9604(e)(5) relating to the Site, subject to limited reservations, and protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5). For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

**DATES:** Comments must be submitted on or before August 2, 2013.

**ADDRESSES:** The proposed settlement is available for public inspection at EPA Region 2 offices at 290 Broadway, New York, New York 10007–1866. Comments should be sent to the individual identified below and should reference the Mercury Refining Superfund Site, Index No. CERCLA–02–2013–2012. To request a copy of the proposed settlement agreement, please contact the individual identified below.

**FOR FURTHER INFORMATION CONTACT:** Sharon E. Kivowitz, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3183. Email: *kivowitz.sharon@epa.gov.*

Dated: June 6, 2013.

**Nicoletta DiForte,**

*Acting Director, Emergency and Remedial Response Division, EPA, Region 2.*

[FR Doc. 2013–16071 Filed 7–2–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 9830–6]**

## Proposed Consent Decree, Clean Air Act Citizen Suit

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

**ACTION:** Notice of Proposed Consent Decree; Request for Public Comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: *Sierra Club* v. *Perciasepe,* No. 1:12–cv–01917 (D.D.C). On November 28, 2012, Sierra Club filed a complaint alleging that EPA failed to take action on state implementation plan (''SIP'') submissions from the States of Wyoming and Connecticut by the statutory deadlines established by the Act. The proposed consent decree establishes deadlines for EPA to take action on the SIP submissions.

**DATES:** Written comments on the proposed consent decree must be received by *August 2, 2013.*

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA–HQ–OGC–2013–0500, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Matthew C. Marks, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–3276; fax number (202) 564–5603; email address: *marks.matthew@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by the Sierra Club seeking to compel the Administrator to

take final action under section 110(k) of the CAA, 42 U.S.C. 7410(k), on a SIP submittal for the State of Wyoming regarding the infrastructure SIP requirements of the CAA with respect to the 1997 fine particulate matter National Ambient Air Quality Standard (''NAAQS''). In addition, the proposed consent decree would require the Agency to take final action on a SIP submittal for the State of Connecticut regarding the attainment demonstration requirements of the nonattainment SIP for the Greater Connecticut 1997 ozone NAAQS nonattainment area.

The proposed consent decree provides that no later than October 15, 2013, EPA shall sign a notice of the Agency's final rulemaking taking action on the Wyoming SIP submittal. The proposed consent decree also provides that no later than December 16, 2013, EPA shall sign a notice of the Agency's final rulemaking taking action on the Connecticut SIP submittal.

Within 15 business days following signature of each final rule described in the proposed consent decree, EPA is also required to send the signed notice to the Office of the Federal Register for review and publication in the **Federal Register**. After EPA fulfills all of its obligations under the consent decree, the proposed consent decree provides that this case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

## II. Additional Information About Commenting on the Proposed Consent Decree

### *A. how can I get a copy of the consent decree?*

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2013–0500) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center 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 OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

### *B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 26, 2013.

**Lorie J. Schmidt,**

*Associate General Counsel.*

[FR Doc. 2013–16070 Filed 7–2–13; 8:45 am]

BILLING CODE 6560–50–P

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Sunshine Act; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

**DATES:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 11, 2013, from 9:00 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance

should make arrangements in advance. The matter to be considered at the meeting is:

**Open Session**

*A. Approval of Minutes*

- June 13, 2013—Regular Board Meeting.
- June 19, 2013—Special Closed Board Meeting.

*B. New Business*

- Regulatory Burden—Notice of Intent; Request for Comment.

Dated: June 28, 2013.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2013–16180 Filed 7–1–13; 4:15 pm]

**BILLING CODE 6705–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[MD Docket No. 13–163; DA 13–1400]**

### Office of Managing Director Creates Docket for Petitions Seeking Review of Application Fee Refund Denials

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Office of Managing Director has created the new docket shown above for petitions seeking review of application fee refund denials. Consolidating all these related pleadings in a separate docket will promote administrative efficiency and enhance public accessibility to these filings.

**DATES:** Effective June 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ann Monahan, Federal Communications Commission, Financial Management Specialist, Office of the Managing Director, 445 12th Street SW., Room 1–A821, (202) 418–2535.

**SUPPLEMENTARY INFORMATION:** On March 27, 2013 the Chief Financial Officer, acting on delegated authority, denied requests for refund of application fees previously paid by winning bidders in media service auctions held between 2004 and 2011 and sought repayment of refunds previously made in error. Petitions for Reconsideration and Applications for Review that have already been filed are being assigned to new MD Docket No. 13–163, and will be available electronically on the Commission's Electronic Comment Filing System (ECFS). All future pleadings related to these matters should also be filed electronically in this docket.

The following Applications for Review have been assigned to MD Docket No. 13–163:

A & J Media LLC
Absolute Communications, LLC
Airen Broadcasting Company
Bott Communications, Inc.
California Radio Partners
Sheila Callahan & Friends, Inc.
Champlin Broadcasting, Inc.
Cochise Media Licensees, LLC
College Creek Broadcasting, Inc.
E-String Wireless, Ltd.
Edward Paul De La Hunt
Delta Media Corporation
William C. Doleman
Julie Epperson
Fox Radio Network, LLC
Georgia Eagle Broadcasting, Inc.
Grenax Broadcasting III, LLC
Hispanic Target Media et al.
Horizon Christian Fellowship
Independence Media Holdings, LLC
JAB Broadcasting, LLC
Keystone Broadcasting Corporation
Legacy Communications, LLC
Mattox Broadcasting, Inc.
Pampas Broadcasters, Inc.
Porter Hogan Charitable Trust #1
Programmers Broadcasting, Inc.
RadioJones, LLC
Richland Reserve, LLC
Skywest Media, LLC
Stroh Communications Corporation
Howard C. Toole
Tri State Radio, LLC
Virtues Communications Network, LLC
Western Pacific Broadcast LLC
Williston Community Broadcasting Corporation

The following Petitions for Reconsideration have also been assigned to MD Docket No. 13–163:

Catholic Radio Network, Inc. (KEXS–FM)
Catholic Radio Network, Inc. (KPIO–FM)
Richard Comras
Janet Jensen
Gary Katz

This assignment does not constitute a finding that the petitions were timely filed or otherwise comply with the Commission's rules. Pursuant to § 1.1200(a) of the rules, the Commission will treat each petition as a separate proceeding for purposes of the *ex parte* rules and the ''permit but disclose'' requirements set forth in § 1.1206 of the rules will apply.

Federal Communications Commission.

**Debra Weiner,**

*Deputy Associate General Counsel.*

[FR Doc. 2013–16012 Filed 7–2–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection Renewal; Comment Request Re: Certified Statement for Semiannual Deposit Insurance Assessment

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The 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 to comment on renewal of its *Certified Statement for Semiannual Deposit Insurance Assessment* information collection (OMB No. 3064–0057). At the end of the comment period, any comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval.

**DATES:** Comments must be submitted on or before September 3, 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* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NY–5050, 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:** Leneta Gregorie, at the FDIC address above.

**SUPPLEMENTARY INFORMATION:** Proposal to renew the following currently approved collections of information:

*Title:* Certified Statement for Semiannual Deposit Insurance Assessment.

*OMB Number:* 3064–0057.

*Frequency of Response:* Quarterly.

*Affected Public:* FDIC-insured depository institutions.

*Estimated Number of Respondents:* 6,965.

*Estimated Time per Response:* 20 minutes.

*Total Annual Burden:* 9,287 hours.

*General Description of Collection:* The FDIC collects assessments from insured institutions pursuant to pursuant to section 7 of the Federal Deposit Insurance Act (''FDI Act''), 12 U.S.C. 1817(c), to assure that the Deposit Insurance Fund is adequately capitalized. The Certified Statement provides insured institutions with an accounting of the FDIC's assessment.

**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 28th day of June, 2013.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2013–15974 Filed 7–2–13; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 012212.

*Title:* NYK/Inarme Cooperative Working Agreement.

*Parties:* NYK Group Europe Ltd and Industria Armamento Meridionale S.P.A. (Inarme)

*Filing Party:* Mark R. Weaver; NYK Line (NA) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.

*Synopsis:* The agreement authorizes NYK to charter space to Inarme in the trade from North Europe on the one hand to the U.S. West Coast on the other hand.

By Order of the Federal Maritime Commission.

Dated: June 28, 2013.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2013–16048 Filed 7–2–13; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Amerasia Shipping Logistics U.S. (NVO & OFF), 8441 Sandalwood Circle, Westminster, CA 92863, Officer: Phong T. Khuu, President (QI), Application Type: New NVO & OFF License

F.M. Air Inc. (NVO & OFF), 8140 NW 74th Avenue, Unit 6, Medley, FL 33166, Officers: Uilson Nascimento, Jr., Vice President (QI), Marco H. Munhoz, President, Application Type: Add NVO Service

Florida Export Shipping Corp (OFF), 5404 24th South, Tampa, FL 33619, Officers: Claudia E. Campbell, President (QI), Gennare Vitelli, Vice President, Application Type: New OFF License

The Right Guys Moving and Storage Inc. dba Move It (OFF), 4100 N. Powerline Road, Suite S–5, Pompano, FL 33073, Officer: Robert E. Boni, President (QI), Application Type: New OFF License

Transcon Shipping Co., Inc. (NVO), 6242 Westchester Parkway, Suite 160, Los Angeles, CA 90045, Officers: Martin G. Lynch, Director (QI), Terrance P. Lynch, President, Application Type: Add Trade Name Grand Global Logistics

By the Commission.

Dated: June 27, 2013.

**Karen V. Gregory.**

*Secretary.*

[FR Doc. 2013–16050 Filed 7–2–13; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL TRADE COMMISSION

**[Docket No. 9351]**

### McWane, Inc., et al. Oral Argument Before the Commission

**AGENCY:** Federal Trade Commission.

**ACTION:** Oral argument; open meeting.

**SUMMARY:** The Federal Trade Commission (''FTC'' or ''Commission'') will meet on Thursday, August 22, 2013 in Room 532 of the FTC Building for an Oral Argument in the matter of McWane, Inc., *et al.* The public is invited to attend and observe the open portion of the meeting, which is scheduled to begin at 2:00 p.m. The remainder of the meeting will be closed to the public.

**DATES:** Oral argument is scheduled for August 22, 2013 at 2:00 p.m.

**ADDRESSES:** Federal Trade Commission Building, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Donald S. Clark, Secretary, the Office of the Secretary, 600 Pennsylvania Ave. NW., Washington, DC 20580, 202–326–2515.

**SUPPLEMENTARY INFORMATION:**

**Open Meeting**

(1) Oral Argument in the Matter of McWane, Inc., et al., Docket No. 9351.

**Closed Meeting**

(2) Executive Session to follow Oral Argument in McWane. Inc., et al., Docket No. 9351.

Record of Commission's Vote:

On June 19, 2013, Commissioners Ramirez, Brill Ohlhausen, and Wright were recorded as voting in the affirmative to close Matter Number (2), and to withhold from this meeting notice such information as is exempt from disclosure un 5 U.S.C. 552b(c)(10), and that the public interest does not require the matter to be open.

General Counsel Certification:

The General counsel has certified that Matter Number (2) may properly be closed, citing the following relevant provision: 5 U.S.C. Section 552b(2)(10).

**Expected Attendees**

Expected to attend the closed meeting are the Commissioners themselves, an advisor to one of the Commissioners, and such other Commission staff as may be appropriate.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2013–15561 Filed 7–2–13; 8:45 am]

**BILLING CODE 6750–01–M**

## GENERAL SERVICES ADMINISTRATION

**[Notice-GTAC–2013–01; Docket No. 2013–0002; Sequence 17]**

### Governmentwide Travel Advisory Committee (GTAC); Upcoming Public Advisory Committee Meeting

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice.

**SUMMARY:** The Governmentwide Travel Advisory Committee (GTAC) (the Committee), is a Federal Advisory Committee established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C., App 2. This notice provides the schedule for the public meeting dates of the GTAC: July 30, 2013 and July 31, 2013. The meeting is open to the public via teleconference.

**DATES:** The meeting will be held on Tuesday, July 30, 2013 beginning at 1:00 p.m. Eastern Standard Time, ending no later than 4:00 p.m. and July 31, 2013 beginning at 9:00 a.m. Eastern Standard Time, ending no later than 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marcerto Barr, Designated Federal Officer (DFO), Governmentwide Travel Advisory Committee (GTAC), Office of Governmentwide Policy, General Services Administration, 1800 F Street NW., Washington, DC 20405, 202–208–7654 or by email to: *gtac@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The GTAC was established to review existing travel policies, processes, and procedures to ensure that they are accountable and transparent, beginning with the per diem methodology, to aid in meeting agency missions in an effective and efficient manner at the lowest logical travel cost.

*Authority:* The GSA Office of Asset and Transportation Management, Travel and Relocation Division, establishes policy that governs travel by Federal civilian employees and others authorized to travel at Government expense on temporary duty travel through the Federal Travel Regulation.

*Agenda:* The main purpose of the first GTAC meeting is to discuss the potential areas of work and focus for the duration of this committee, as well as to begin discussing the per diem rate setting methodology.

*Meeting Access:* The meeting is open to the public via teleconference. Members of the public wishing to listen in on the GTAC discussion are recommended to visit the GTAC Web site at: *www.gsa.gov/gtac* to obtain a toll-free number. Members of the public will not have the opportunity to ask questions or otherwise participate in the meeting or teleconference. However, members of the public wishing to comment on the discussion or topics outlined in the agenda should follow the steps detailed in Procedures for Providing Public Comments below.

*Availability of Materials for the Meeting:* Please see the GTAC Web site *www.gsa.gov/gtac* for any available materials and detailed meeting minutes after the meeting. Detailed meeting minutes will be posted within 90 days of the meeting.

*Procedures for Providing Public Comments:* In general, public comments will be posted to *www.gsa.gov/gtac.* Non-electronic documents will be made available for public inspection and copying in GTAC offices at GSA, 1800 F Street NW., Washington, DC 20405, on official business days between the hours of 10:00 a.m. Eastern Standard Time and 4:00 p.m. You can make an appointment to inspect comments by telephoning the DFO at 202–208–7654. All comments, including attachments and other supporting materials received, are part of the public record and subject to public disclosure. Any comments submitted in connection with the GTAC meeting will be made available to the public under the provisions of the Federal Advisory Committee Act.

The public is invited to submit written comments after the closing of this meeting until 4:00 p.m. Eastern Standard Time on Tuesday, August 6, 2013 by either of the following methods and cite Meeting Notice-GTAC–2013–01; Docket No. 2013–0002; Sequence 17:

*Electronic or Paper Comments:* (1) Submit electronic comments to *gtac@gsa.gov*; or (2) submit paper comments to the attention of Ms. Marcerto Barr at GTAC, GSA 1800 F Street NW., Washington, DC 20405.

Dated: June 27, 2013.

**Carolyn Austin-Diggs,**

*Acting Deputy Administrator, Office of Asset and Transportation Management, Office of Governmentwide Policy.*

[FR Doc. 2013–16017 Filed 7–2–13; 8:45 am]

**BILLING CODE 6820–14–P**

## OFFICE OF GOVERNMENT ETHICS

### Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for Modified Qualified Trust Model Certificates and Model Trust Documents

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Notice.

**SUMMARY:** The U.S. Office of Government Ethics (OGE) is publishing this second round notice and requesting comment on the twelve executive branch OGE model certificates and model documents for qualified trusts. OGE intends to submit these forms to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). OGE is proposing minor changes to update these forms.

**DATES:** Written comments by the public and the agencies on this proposed extension are invited and must be received on or before August 2, 2013.

**ADDRESSES:** You may submit comments on this paperwork notice to the Office of Management and Budget, Attn: Desk Officer for OGE, via fax at 202–395–6974 or email at *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Paul D. Ledvina, Agency Clearance Officer at the U.S. Office of Government Ethics; telephone: 202–482–9247; TTY: 800–877–8339; FAX: 202–482–9237; Email: *pledvina@oge.gov.* The model Certificate of Independence and model Certificate of Compliance for qualified trusts are codified in appendixes A and B to 5 CFR part 2634. Appendix C of 5 CFR part 2634 provides the Privacy Act Statement, Public Burden Statement and Paperwork Reduction Act Statement for the model certificates. Copies of the proposed modified model trust documents may be obtained, without charge, by contacting Mr. Ledvina.

**SUPPLEMENTARY INFORMATION:** The Office of Government Ethics intends to submit, shortly after this second round notice, all twelve qualified trust model certificates and model documents described below (all of which are

included under OMB paperwork control number 3209–0007) for a three-year extension of approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). The current paperwork approval for the model certificates and model trust documents, last granted by OMB in 2010, is scheduled to expire at the end of March 2013. OGE is proposing no changes to the two model qualified trust certificates and minor changes to the ten model trust documents at this time. The proposed non-substantive changes will update information in the forms to reflect OGE's recent amendments to the executive branch regulation regarding qualified trusts in subparts D, E, and Appendixes A and B of 5 CFR part 2634. See 77 FR 39123–39150 (July 2, 2012). Other changes will update agency telephone and FAX contact numbers, and provide an updated Privacy Act Statement on the model trust documents reflecting changes made to the OGE/GVT–1 System of Records, 2003–2012. See 68 FR 3097–3109 (January 22, 2003), as corrected at 68 FR 24744 (May 8, 2003), 76 FR 24489–24490 (May 2, 2011) and 77 FR 45353 (July 31, 2012). However, these Privacy Act updates to OGE/GVT–1 have not been incorporated into the current version of the Privacy Act Statement, codified at CFR part 2634 appendix C, covering the Certificate of Independence and Certificate of Compliance, 5 CFR part 2634 appendixes A and B. OGE will continue to inform users of the certificates of the updates to the Privacy Act Statement.

OGE is the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act of 1978 (EIGA). Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials may seek OGE approval for EIGA qualified blind or diversified trusts as one means to be used to avoid conflicts of interest.

OGE is the sponsoring agency for the model certificates and model trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics in Government Act, 5 U.S.C. app. § 102(f), and OGE's implementing financial disclosure regulations at subpart D of 5 CFR part 2634. The various model certificates and model trust documents are utilized by OGE and settlors, trustees and other fiduciaries in establishing and administering these qualified trusts.

There are two categories of information collection requirements that OGE plans to submit for renewed paperwork approval, each with its own related reporting model certificates or model trust documents which are subject to paperwork review and approval by OMB. The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified trust certifications—5 CFR 2634.404(f) and (g), 2634.405(c) and (d), 2634.407, 2634.408(d)(4), 2634.410, 2634.414 and appendixes A and B to part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes); and

ii. Qualified trust communications and model provisions and agreements—5 CFR 2634.404(f), 2634.407(a), 2634.408(a)–(c), 2634.407 and 2634.414 (the ten implementing forms are the: (A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications); (B) Model Qualified Blind Trust Provisions; (C) Model Qualified Diversified Trust Provisions; (D) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries); (E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (F) Model Qualified Diversified Trust Provisions (Hybrid Version); (G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries); (H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (I) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business); and (J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities)).

The communications formats and the confidentiality agreements (items ii.(A), (I) and (J) above), once completed, would not be available to the public because they contain sensitive, confidential information. All the other completed model trust certificates and model trust documents (except for any trust provisions that relate to the testamentary disposition of trust assets) are retained and made publicly available based upon a proper request under EIGA (by filling out an OGE Form 201 access form) until the periods for retention of all other reports (usually the OGE Form 278 Public Financial Disclosure Reports) of the individual establishing the trust have lapsed (generally six years after the filing of the last other report). See 5 CFR 2634.603(g)(2) of OGE's executive branch financial disclosure regulation.

The U.S. Office of Government Ethics administers the qualified trust program for the executive branch. At the present time, there are no active filers using the trust model certificates and documents. However, OGE intends to submit to OMB a request for extension of approval for two reasons. First, under OMB's implementing regulations for the Paperwork Reduction Act, at 5 CFR 1320.3(c)(4)(i), any recordkeeping, reporting or disclosure requirement contained in a sponsoring agency rule of general applicability is deemed to meet the minimum threshold of ten or more persons. Second, OGE does anticipate possible limited use of these forms during the forthcoming three-year period 2013–2016. Therefore, the estimated burden figures, representing branchwide implementation of the forms, will remain the same as previously reported by OGE in its prior first and second round paperwork renewal notice for the trust forms in 2009 (74 FR 47799–4780 (September 17, 2009) and 74 FR 62780–62782 (December 1, 2009)). The estimate is based on the amount of time imposed on a trust administrator or private representative.

i. Trust Certificates:

A. Certificate of Independence: total filers (executive branch): 5; private citizen filers (100%): 5; private citizen burden hours (20 minutes/certificate): 2.

B. Certificate of Compliance: total filers (executive branch): 10; private citizen filers (100%): 10; private citizen burden hours (20 minutes/certificate): 3; and

ii. Model Qualified Trust Documents:

A. Blind Trust Communications: total users (executive branch): 5; private citizen users (100%): 5; communications documents (private citizens): 25 (based on an average of five communications per user, per year); private citizen burden hours (20 minutes/communication): 8.

B. Model Qualified Blind Trust: total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

C. Model Qualified Diversified Trust: total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (100 hours/model): 100.

D.–H. Of the five remaining model qualified trust documents: total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

I.–J. Of the two model confidentiality agreements: total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (50 hours/agreement): 50.

However, the total annual reporting hour burden on filers themselves is zero and not the 563 hours estimated above because OGE's estimating methodology reflects the fact that all respondents hire private trust administrators or other private representatives to set up and maintain the qualified blind and diversified trusts. Respondents themselves, typically incoming private citizen Presidential nominees, therefore incur no hour burden. The estimated total annual cost burden to respondents resulting from the collection of information is $1,000,000. Those who use the model documents for guidance are private trust administrators or other private representatives hired to set up and maintain the qualified blind and diversified trusts of executive branch officials who seek to establish such qualified trusts. The cost burden figure is based primarily on OGE's knowledge of the typical trust administrator fee structure (an average of 1 percent of total assets) and OGE's experience with administration of the qualified trust program. The $1,000,000 annual cost figure is based on OGE's estimate of an average of five possible active trusts anticipated to be under administration for each of the next three years with combined total assets of $100,000,000. However, OGE notes that the $1,000,000 figure is a cost estimate for the overall administration of the trusts, only a portion of which relates to information collection and reporting. For want of a precise way to break out the costs directly associated with information collection, OGE is continuing to report to OMB the full $1,000,000 estimate for paperwork clearance purposes.

On December 27, 2012, OGE published a first round notice of its intent to request paperwork clearance for the proposed unmodified qualified trust certificates and modified model trust documents. See 77 FR 76293–76294. OGE did not receive any responses to that notice.

In this second notice, public comment is again invited on each aspect of the model qualified trust certificates and model trust documents, and underlying regulatory provisions, as set forth in this notice, including specific views on the need for and practical utility of this set of collections of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Approved: June 27, 2013.

**Walter M. Shaub, Jr.,**

*Director, Office of Government Ethics.*

[FR Doc. 2013–15888 Filed 7–2–13; 8:45 am]

**BILLING CODE 6345–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Meeting

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice of one AHRQ Subcommittee Meetings by Virtual Review.

**SUMMARY:** The subcommittee listed below is part of AHRQ's Health Services Research Initial Review Group Committee. Grant applications are to be reviewed and discussed at this meeting. This meeting will be closed to the public in accordance with 5 U.S.C. App. 2 section 10(d), 5 U.S.C. section 552b(c)(4), and 5 U.S.C. section 552b(c)(6).

*Name of Subcommittee:* Health Care Research Training Virtual Review.

*Date:* July 11, 2013 (Open from 9:00 a.m. to 9:30 a.m. on July 11 and closed for remainder of the meeting).

*Place:* Agency for Healthcare Research and Quality, John Eisenberg Building, 540 Gaither Road, OEREP Conference Room, Rockville, MD 20850.

**FOR FURTHER INFORMATION CONTACT:** (To obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting.)

Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

**SUPPLEMENTARY INFORMATION:** In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), AHRQ announces meetings of the scientific peer review groups listed above, which are subcommittees of AHRQ's Health Services Research Initial Review Group Committee. The subcommittee meetings will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). 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. Agenda items for these meeting are subject to change as priorities dictate.

Dated: June 20, 2013.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2013–15733 Filed 7–2–13; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Patient Safety Organizations: Voluntary Relinquishment From Northern Metropolitan Patient Safety Institute

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice of Delisting.

**SUMMARY:** The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Pubic Law 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR Part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found no longer to meet the requirements of the Patient Safety Act and Patient Safety Rule, or when a PSO chooses to voluntarily relinquish its status as a PSO for any reason. AHRQ has accepted a notification of voluntary relinquishment from the Northern Metropolitan Patient Safety Institute of its status as a PSO, and has delisted the PSO accordingly.

**DATES:** The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on May 29, 2013.

**ADDRESSES:** Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

**FOR FURTHER INFORMATION CONTACT:** Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697;

Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found no longer to meet the requirements of the Patient Safety Act and Patient Safety Rule, or when a PSO chooses to voluntarily relinquish its status as a PSO for any reason. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from the Northern Metropolitan Patient Safety Institute, PSO number P0021, which is a component entity of Northern Metropolitan Hospital Association, to voluntarily relinquish its status as a PSO. Accordingly, the Northern Metropolitan Patient Safety Institute was delisted effective at 12:00 Midnight ET (2400) on May 29, 2013. Northern Metropolitan Patient Safety Institute has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification of providers that have reported to the PSO. In addition, according to section 3.108(c)(2)(ii) of the Patient Safety Rule regarding disposition of PSWP, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: June 21, 2013.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2013–15732 Filed 7–2–13; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Scientific Information Request on Vitamin D and Calcium

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Request for Scientific Information Submissions.

**SUMMARY:** The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public on Vitamin D and Calcium. Scientific information is being solicited to inform the Vitamin D and Calcium: A Systematic Review of Health Outcomes project, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on vitamin D and calcium will improve the quality of this systematic review. AHRQ is conducting this systematic review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, and Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

**DATES:** Submission Deadline on or before August 2, 2013.

**ADDRESSES:**

*Online submissions: http://effectivehealthcare.AHRO.gov/index.cfm/submitscientific-information-packets/.* Please select the study for which you are submitting information from the list to upload your documents.

*Email submissions: SIPS@epc-src.org.*

*Print submissions:*

*Mailing Address:* Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, PO Box 69539, Portland, OR 97239.

*Shipping Address* (FedEx, UPS, etc.): Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, 3710 SW U.S. Veterans HospitaL Road, Mail Code: R&D 71, Portland, OR 97239.

**FOR FURTHER INFORMATION CONTACT:** Robin Paynter, Research Librarian, Telephone: 503–220–8262 ext. 58652 or Email: *SIPS@epc-src.org.*

**SUPPLEMENTARY INFORMATION:** The Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a review of the evidence for Vitamin D and Calcium: A Systematic Review of Health Outcomes.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (e.g., details of studies conducted). We are looking for studies that report on vitamin D and calcium, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://effectivehealthcare.AHRQ.gov/search-forquides-reviews-and-reports/?pageaction=displayproduct&productID=1529*

This notice is to notify the public that the EHC program would find the following information on Vitamin D and Calcium helpful:

- A list of completed studies your company has sponsored for this indication. In the list, indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.
- For completed studies that do not have results on ClinicalTrials.gov, a summary, including the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- A list of ongoing studies your company has sponsored for this indication. In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- A description of whether the above studies constitute ALL Phase II and above clinical trials sponsored by your company for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. The contents of all submissions will be made available to the public upon request. Materials submitted must be publicly available or can be made public. Materials that are considered confidential; marketing materials; pharmacoeconomic,

pharmacokinetic or pharmacodynamic studies; study types not included in the review; or information on indications not included in the review cannot be used by the Effective Health Care Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/.*

**Key Question 1**

What is the effect of vitamin D intake or combined vitamin D plus calcium intake (but not calcium intake alone) on clinical outcomes, including cardiovascular diseases, cancer, immune function, pregnancy or birth outcomes, mortality, fracture, renal outcomes, and soft tissue calcification (the current report excludes two outcomes included in the original 2009 report: growth and weight management).

**Population(s)**

- The primary population of interest is generally healthy people with no known disorders, with the following exceptions. Studies that include broad populations might include some individuals with diseases or who are at risk for diseases.
- Studies of individuals with previous cancer, previous fractures, or precancerous conditions will be included.
- With the exception of studies of older adults, studies in which more than 20 percent of the participants have been diagnosed with a disease will be excluded.
- For clinical outcomes of cardiovascular disease (CVD), only studies of adults will be included (≥18 years of age).

**Interventions**

- For observational studies (exposures):
- Serum concentration of 25-hydroxyvitamin D [25(OH)D] or 1,25- dihydroxyvitamin D [1,25(0i1)2D] and method used
- Dietary intake of calcium from food and supplements
- Calcium balance
- For interventional studies:
- Vitamin D supplements with known doses
- Calcium supplements if co-administered with vitamin D
- Food-based interventions in which the doses of vitamin D and calcium were quantified and in which the doses differ between comparison groups

**Comparators**

- For observational studies:
  - Lower serum concentrations of vitamin D
- For interventional studies:
  - Placebo, non-fortified/supplemented food

**Outcomes**

- CVD clinical outcomes
- Cardiac events or symptoms
- Cerebrovascular events
- Peripheral vascular events or symptoms
- Cardiovascular death
- Study-specific combinations of cardiovascular events
- Total cancer
- Prostate cancer
- Colorectal cancer
- Breast cancer
- Pancreatic cancer
- Cancer-specific mortality
- Immune function clinical outcomes
- Infectious disease
- Autoimmune diseases
- Infectious disease-specific mortality
- Pregnancy-related outcomes
- Preterm birth or low birth weight
- Infant mortality
- Mortality, all cause
- Bone health, clinical outcomes
- Rickets
- Fracture
- Falls or muscle strength
- Adverse effects of intervention(s)
- All-cause mortality
- Cancer incidence and cancer-specific mortality
- Renal outcomes
- Soft tissue calcification
- (Other) adverse events from vitamin D or vitamin D plus calcium supplements

**Timing**

- Timing of interventions or exposures will not be pre-specified, with the exception that cross-sectional and retrospective case-control studies will not be included (nested case controls within prospective cohort studies will be included).
- For studies with multiple follow-up periods, the longest follow-up times will be preferentially considered.

**Settings**

- Settings will not be pre-specified.

**Key Question 2**

What is the effect of vitamin D or combined vitamin D and calcium intake on-surrogate or intermediate outcomes such as hypertension, blood pressure, and bone mineral density?

**Populations**

- As described for KQ 1, with the exception that for blood pressure and other CVD intermediate outcomes, only studies of adults 18 years of age or older will be included.

**Interventions**

- As described for KQ 1, with the following exceptions:
- For CVD outcomes, only randomized controlled trials (RCTs) will be included
- For bone health outcomes, only RCTs of greater than 1 year in duration will be included

**Comparators**

- As described for KQ 1.

**Outcomes**

- As specified in the original 2009 report, unless otherwise noted:
- CVD intermediate outcomes
- Cancer intermediate outcomes (colorectal adenoma, aberrant crypt cells, and mammographic breast density)
- Bone health intermediate outcomes (only bone mineral density/content)
- Pregnancy-related intermediate outcomes
- Pre-eclampsia
- High blood pressure with or without proteinuria

**Timing**

- As described for KQ 1, except for intermediate bone health for which studies of less than 1 year in duration will be excluded.

**Settings**

- As described for KQ 1.

**Key Question 3**

What is the association between serum 25(OH)D concentrations and clinical outcomes?*

**Populations**

- As described for KQ 1.

**Interventions**

- Serum concentration of 25(OH)D or 1,25 (OH)2D and the method used.

**Comparators**

- The serum concentration of 25(OH)D or 1,25 (OH)2D and the method used for the placebo or other comparison group.

**Outcomes**

- As described for KQ 1.

**Timing**

- As described for KQ 1.

**Settings**

- As described for KQ 1.

**Key Question 4**

What is the effect of vitamin D or combined vitamin D and calcium intake on serum 25(OH)D concentrations?

**Populations**

- As described for KQ 1.

**Interventions**

- Randomized controlled trials (RCTs) identified to answer all other KQs.

**Comparators**

- Placebo or lower dose supplement.

**Outcomes**

- Dose-response relationship between intake levels and indices of exposure.

**Timing**

- As described for KQs 1 and 2.

**Settings**

- As described for KQs 1 and 2.

**Key Question 5**

What is the association between serum 25(OH)D concentration and surrogate or intermediate outcomes?

**Populations**

- As described for KQ 2.

**Interventions**

- As described for KQ 2.

**Comparators**

- As described for KQ 2.

**Outcomes**

- As described for KQ 2.

**Timing**

- As described for KQ 2.

**Settings**

- As described for KQ 2.

Dated: June 21, 2013.

**Carolyn M. Clancy,**

*Director, AHRQ.*

[FR Doc. 2013–15730 Filed 7–2–13; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Scientific Information Request on Chronic Urinary Retention (CUR) Treatment

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Request for scientific information submissions.

**SUMMARY:** The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public on medical devices to treat chronic urinary retention. Scientific information is being solicited to inform our review of chronic urinary retention (CUR) treatment, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on medical devices to treat chronic urinary retention will improve the quality of this review. AHRQ is conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, and Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

**DATES:** Submission Deadline on or before August 2, 2013.

**ADDRESSES:** Online submissions: *http://effectivehealthcare.AHRQ.gov/index.cfm/submit-scientific-information-packets/*. Please select the study for which you are submitting information from the list to upload your documents.

Email submissions: *SIPS@epc-src.org.*

*Print submissions:* Mailing Address: Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, PO Box 69539, Portland, OR 97239.

Shipping Address (FedEx, UPS, etc.): Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, 3710 SW U.S. Veterans Hospital Road, Mail Code: R&D 71, Portland, OR 97239.

**FOR FURTHER INFORMATION CONTACT:** Robin Paynter, Research Librarian, Telephone: 503–220–8262 ext. 58652 or Email: *SIPS@epc-src.org.*

**SUPPLEMENTARY INFORMATION:** The Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a review of the evidence for chronic urinary retention (CUR) treatment.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (e.g., details of studies conducted). We are looking for studies that report on chronic urinary retention treatment, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://www.effectivehealthcare.AHRQ.gov/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productID=1539*.

This notice is to notify the public that the EHC program would find the following information on medical devices to treat chronic urinary retention helpful:

- A list of completed studies your company has sponsored for this indication. In the list, indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.
- For completed studies that do not have results on ClinicalTrials.gov, a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- A list of ongoing studies your company has sponsored for this indication. In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute ALL Phase II and above clinical trials sponsored by your company for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. The contents of all will be made available to the public upon request. Materials submitted must be publicly available or can be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the Effective Health Care Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted,

please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/*.

**Key Questions**

KQ 1: What is the effectiveness and comparative effectiveness of treatments for CUR in adults:

- With male-specific etiologies?
- With female-specific etiologies?
- With non-sex-specific etiologies?

KQ 1a: What patient or condition characteristics (e.g., age, severity, etc.) modify the effectiveness of treatment?

KQ 2: What are the harms and comparative harms of treatments for CUR in adults:

- With male-specific etiologies?
- With female-specific etiologies?
- With non-sex-specific etiologies?

KQ 2a: What patient or condition characteristics (e.g., age, severity, etc.) modify the harms of treatment?

Dated: June 21, 2013.

**Carolyn M. Clancy,**

*AHRQ, Director.*

[FR Doc. 2013–15729 Filed 7–2–13; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30-Day 13–0106]**

### 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**

Preventive Health and Health Services Block Grant (OMB No. 0920–0106, exp. 7/31/2013)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Preventive Health and Health Services (PHHS) Block Grant program was established to provide awardees with a source of flexible funding for health promotion and disease prevention programs. Currently, 61 awardees (50 states, the District of Columbia, two American Indian Tribes, and eight U.S. territories) receive Block Grants to address locally-defined public health needs in innovative ways. Block Grants allow awardees to prioritize the use of funds and to fill funding gaps in programs that deal with the leading causes of death and disability. Block Grant funding also provides awardees with the ability to respond rapidly to emerging health issues, including outbreaks of diseases or pathogens. The PHHS Block Grant program is authorized by sections 1901–1907 of the Public Health Service Act.

CDC currently collects information from Block Grant awardees to monitor their objectives and activities (Preventive Health and Health Services Block Grant, OMB No. 0920–0106, exp. 7/31/2013). Each awardee is required to submit an annual application for funding (Work Plan) that describes its objectives and the populations to be addressed, and an Annual Report that describes activities, progress toward objectives, and Success Stories which highlight the improvements Block Grant programs have made and the value of program activities. Information is submitted electronically through the Web-based Block Grant Information Management System (BGMIS).

The Work Plan and Annual Report are designed to help Block Grant awardees attain their goals and to meet reporting requirements specified in the program's authorizing legislation. Block Grant activities adhere to the Healthy People (HP) framework established by the Department of Health and Human Services (HHS). The current version of the BGMIS associates each awardee-defined activity with a specific HP National Objective, and identifies the location where funds are applied. CDC is updating the BGMIS by replacing Healthy People 2010 objectives with Healthy People 2020 objectives.

CDC requests OMB approval to continue the Block Grant information collection for three years. CDC will continue to use the electronic BGMIS to monitor awardee progress, identify activities and personnel supported with Block Grant funding, conduct compliance reviews of Block Grant awardees, and promote the use of evidence-based guidelines and interventions. There are no changes to the number of respondents or the estimated annual burden per respondent. There are no changes to BGMIS data elements other than changes related to HP 2020 objectives and enhancements. The Work Plan and the Annual Report will be submitted annually. The estimated burden per response for the Work Plan is 20 hours and the estimated burden per response for the Annual Report is 15 hours.

Participation in this information collection is required for Block Grant awardees. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,135.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Block Grant Awardees | Work Plan | 61 | 1 | 20 |
| | Annual Report | 61 | 1 | 15 |

**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. 2013–15896 Filed 7–2–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30-Day 13–13DB]**

### 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**

Emerging Infections Program—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Emerging Infections Programs (EIPs) are population-based centers of excellence established through a network of state health departments collaborating with academic institutions; local health departments; public health and clinical laboratories; infection control professionals; and healthcare providers. EIPs assist in local, state, and national efforts to prevent, control, and monitor the public health impact of infectious diseases. Various parts of the EIP have received separate OMB clearance (OMB Control No. 0920–0802, ABCs, and OMB Control No. 0920–0852, All Age Influenza Hospitalization Surveillance); however this request seeks to have these core EIP activities under one clearance.

Activities of the EIPs fall into the following general categories: (1) Active surveillance; (2) applied public health epidemiologic and laboratory activities; (3) implementation and evaluation of pilot prevention/intervention projects; and (4) flexible response to public health emergencies. Activities of the EIPs are designed to: (1) Address issues that the EIP network is particularly suited to investigate; (2) maintain sufficient flexibility for emergency response and new problems as they arise; (3) develop and evaluate public health interventions to inform public health policy and treatment guidelines; (4) incorporate training as a key function; and (5) prioritize projects that lead directly to the prevention of disease.

The total estimated burden is 12,319 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| State Health Department | ABCs Case Report Form | 10 | 809 | 20/60 |
| | Invasive Methicillin-resistant Staphylococcus aureus ABCs Case Report Form. | 10 | 609 | 20/60 |
| | ABCs Invasive Pneumococcal Disease in Children Case Report Form. | 10 | 41 | 10/60 |
| | Neonatal Infection Expanded Tracking Form | 10 | 37 | 20/60 |
| | ABCs Legionellosis Case Report Form | 10 | 100 | 20/60 |
| | Campylobacter | 10 | 637 | 20/60 |
| | Cryptosporidium | 10 | 130 | 10/60 |
| | Cyclospora | 10 | 3 | 10/60 |
| | Listeria monocytogenes | 10 | 13 | 20/60 |
| | Salmonella | 10 | 827 | 20/60 |
| | Shiga toxin producing E. coli | 10 | 90 | 20/60 |
| | Shigella | 10 | 178 | 10/60 |
| | Vibrio | 10 | 20 | 10/60 |
| | Yersinia | 10 | 16 | 10/60 |
| | Hemolytic Uremic Syndrome | 10 | 10 | 60/60 |
| | Influenza Hospitalization Surveillance Project Case Report Form. | 10 | 400 | 15/60 |
| | Influenza Hospitalization Surveillance Project Vaccination Telephone Survey. | 10 | 100 | 5/60 |
| | Influenza Hospitalization Surveillance Project Vaccination Telephone Survey Consent Form. | 10 | 100 | 5/60 |

**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. 2013–15895 Filed 7–2–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### World Trade Center Health Program Scientific/Technical Advisory Committee; Nominations of Candidates

This notice supersedes the following documents published in the **Federal Register**: June 11, 2013 Volume 78, Number 112, Pages 35036–35037; June 21, 2013 Volume 78, Number 120, Page 37542; June 28, 2013 Volume 78, Number 125, Page 38983.

Request for Nominations of Candidates to Serve on the World Trade Center Health Program Scientific/Technical Advisory Committee (the STAC or the Committee), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

The CDC is soliciting nominations for membership on the World Trade Center (WTC) Health Program Scientific/Technical Advisory Committee (STAC). Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347) was enacted on January 2, 2011, amending the Public Health Service Act (PHS Act) by adding Title XXXIII establishing the WTC Health Program within HHS (Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm–61). Section 3302(a) of the PHS Act established the WTC Health Program Scientific/Technical Advisory Committee (STAC). The STAC is governed by the provisions of the Federal Advisory Committee Act, as amended (Pub. L. 92–463, 5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees in the Executive Branch. PHS Act Section 3302(a)(1) establishes that the STAC will: review scientific and medical evidence and to make recommendations to the [WTC Program] Administrator on additional WTC Program eligibility criteria and on additional WTC-related health conditions.

The committee may be consulted for other matters as related to and outlined in the Act at the discretion of the WTC Program Administrator. Agency or Official to Whom the Committee Reports Section 3302(a)(1) instructs the committee to provide advice to the WTC Program Administrator. In accordance with Section 3302(a)(2) of the PHS Act, the WTC Program Administrator will appoint the members of the committee, which must include at least:

- 4 occupational physicians, at least two of whom have experience treating WTC rescue and recovery workers;
- 1 physician with expertise in pulmonary medicine;
- 2 environmental medicine or environmental health specialists;
- 2 representatives of WTC responders;
- 2 representatives of certified-eligible WTC survivors;
- 1 industrial hygienist;
- 1 toxicologist;
- 1 epidemiologist; and
- 1 mental health professional.

At this time the Administrator is seeking nominations for members fulfilling the following categories:

- occupational physician;
- physician with expertise in pulmonary medicine;
- environmental medicine or environmental health specialist;
- representative of WTC responders;
- representative of certified-eligible WTC survivors;

Other members may be appointed at the discretion of the WTC Program Administrator.

A STAC member's term appointment may last 3 years. If a vacancy occurs, the WTC Program Administrator may appoint a new member who represents the same interest as the predecessor. STAC members may be appointed to successive terms. The frequency of committee meetings shall be determined by the WTC Program Administrator based on program needs. Meetings may occur up to four times a year. Members are paid the Special Government Employee rate of $250 per day, and travel costs and per diem are included and based on the Federal Travel Regulations.

Any interested person or organization may self-nominate or nominate one or more qualified persons for membership.

Nominations must include the following information:

- The nominee's contact information and current occupation or position;
- The nominee's resume or curriculum vitae, including prior or current membership on other National Institute for Occupational Safety and Health (NIOSH), CDC, or HHS advisory committees or other relevant organizations, associations, and committees;
- The category of membership (occupational, pulmonary or environmental medicine physician, environmental health specialist, representative of responder or survivor beneficiaries) that the candidate is qualified to represent;
- A summary of the background, experience, and qualifications that demonstrates the nominee's suitability for the nominated membership category;
- Articles or other documents the nominee has authored that indicate the nominee's knowledge and experience in relevant subject categories; and
- A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in STAC meetings, and has no known conflicts of interest that would preclude membership on the Committee.

STAC members will be selected upon the basis of their relevant experience and competence in their respective categorical fields. The information received through this nomination process, in addition to other relevant sources of information, will assist the WTC Program Administrator in appointing members to serve on the STAC. In selecting members, the WTC Program Administrator will consider individuals nominated in response to this **Federal Register** notice as well as other qualified individuals.

The CDC is committed to bringing greater diversity of thought, perspective and experience to its advisory committees. Nominees from all races, genders, ages, and persons living with disabilities are encouraged to apply. Nominees must be U.S. citizens.

Candidates invited to serve will be asked to submit the ''Confidential Financial Disclosure Report,'' OGE Form 450. This form is used by CDC to determine whether there is a financial conflict between that person's private interests and activities and their public responsibilities as a Special Government Employee as well as any appearance of a loss of impartiality, as defined by Federal regulation. The form may be viewed and downloaded at *http://www.oge.gov/Forms-Library/OGE-Form-450-Confidential-Financial-Disclosure-Report/*. This form should not be submitted as part of a nomination.

**DATES:** Nominations must be submitted (postmarked or electronically received) by August 9, 2013.

Submissions must be electronic or by mail. Submissions should reference docket #229–A. Electronic submissions: You may electronically submit nominations, including attachments, to *nioshdocket@cdc.gov*. Attachments in Microsoft Word are preferred. Regular, Express, or Overnight Mail: Written nominations may be submitted (one

original and two copies) to the following address only: NIOSH Docket 229–A c/o Zaida Burgos, Committee Management Specialist, National Institute for Occupational Safety and Health, Center for Disease Control and Prevention, 1600 Clifton Road NE., M/S E–20, Atlanta, Georgia 30333. Telephone and facsimile submissions cannot be accepted. For further information contact: Paul Middendorf, Senior Health Scientist, 1600 Clifton Rd. NE., MS: E–20, Atlanta, GA 30239; telephone (404)498–2500 (this is not a toll-free number); email *pmiddendorf@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elizabeth Millington,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2013–16015 Filed 7–2–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0593]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Eye Tracking Experimental Studies To Explore Consumer Use of Food Labeling Information and Consumer Response to Online Surveys

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by August 2, 2013.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title ''Eye Tracking Experimental Studies to Explore Consumer Use of Food Labeling Information and Consumer Response to Online Surveys.'' Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, *domini.bean@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Eye Tracking Experimental Studies To Explore Consumer Use of Food Labeling Information and Consumer Response to Online Surveys—(OMB Control Number 0910–NEW)

#### I. Background

Eye tracking is a consumer research technique often used to determine where a person is looking while interacting with a visual display, such as a product package and elements of information on the package. The technique collects eye movement data, i.e., fixations and saccades (jumps of the eye), which may be superimposed on the display image to reveal: (1) Which parts of the display captured the viewer's attention, (2) the order and path in which visual elements were seen, and (3) the length of time they were viewed. These data provide detailed information on what individuals pay attention to on product packages, how long they spend looking at different package elements, and how visual attention may be related to their reaction to the images (Refs. 1 to 4, 7). Data from eye tracking studies can also help improve questionnaire design. Different respondents may pay differing degrees of attention to the elements of a survey question or response options. Eye tracking data can help to identify the need and strategies for improving the design (Refs. 5 and 6). Finally, eye tracking data can provide information on the decision strategies that individuals use under different levels of time pressure, which can help reveal the influence of time on busy individuals' food choices (Refs. 4 and 7).

As a public health agency, FDA helps consumers make informed dietary decisions by regulating nutrition information on food labels, among other activities. An understanding of how visual elements (e.g., labeling statements such as claims, disclosure statements, logos, and Nutrition Facts label) influence consumers' perceptions and choices of products can assist us in developing labeling information to help consumers make informed dietary decisions. In addition, we use self-administered questionnaires in online experimental studies to assess consumer reactions to nutrition information on food packages. An understanding of how respondents react to survey materials that are presented visually will enhance our ability in collecting better consumer data to help us fulfill our missions.

The proposed data collection will use eye tracking research to examine consumers' eye movements to achieve three goals: (1) To better understand consumer reaction to specific food labeling information, (2) to better understand survey respondent reaction to specific survey questions related to nutrition and health, and (3) to better understand how time pressure influences the priority and quality of decision making and survey response. In order to observe consumers' eye movement in different types of settings, we propose to conduct two separate studies, one in each of two different settings. Study 1 is a laboratory study that will ask participants to view on a computer screen mockups of food labels and perform tasks as well as answer other survey questions. Study 2 is an in-store study that will record eye movement data from grocery shoppers while they shop for preselected product categories. The studies will use two different survey instruments. Study participants will come from two separate convenience samples.

*A. Study 1 (Laboratory Study)*

Study 1 is a controlled randomized experiment. It has two objectives. The first objective is to collect data on how consumers view and process label information. The data will be used to test the hypothesis that one or more label and information characteristics will cause variations in viewing and processing. In this proposed study, we will focus specifically on the following characteristics: (1) Presence and type of nutrition symbols, together with presence of claims, on the Principal Display Panel (PDP) of a conventional food; (2) presence of a disclosure statement (21 CFR 101.13(h)(1)–(3)) on the PDP of a conventional food that makes a nutrient content claim; (3) format of the Nutrition Facts label on a conventional food product; (4) presence of a Dietary Supplement Health and Education Act disclaimer on the PDP of

a dietary supplement product that makes a structure/function claim; (5) presence and length of a qualified health claim on the PDP of a dietary supplement product; and (6) type of product.

Label images will be created to allow the study to focus on consumer reaction to specific components of information on a food label. All images will be mockups resembling food labels that may be found in the marketplace but without any real or fictitious brand name.

The second objective of Study 1 is to examine how time pressure affects information processing. We will use the data to test the hypothesis that time pressure will cause variations in participant reactions (notice, attention, use, perception, and intention) to information. To test this hypothesis, the study will, at certain selected questions, expose participants to two randomly assigned time conditions, such as no time limit and 10 seconds per question.

The study will also include certain questions selected from previous online research we have sponsored in order to examine which part(s) of a question or which response options participants notice and pay attention to when they are asked to answer the question.

In the study, we plan to collect data from 200 participants using a 15-minute computer-assisted self-administered questionnaire and a 5-minute debriefing questionnaire. Forty interviews are planned for each of 5 locations across the contiguous 48 States. Participants will be recruited from residents at each location, and the study will aim to have a reasonable degree of diversity in participant gender, age, and education. On a computer screen, participants will first view a series of label images. Then participants will answer a set of questions related to their reactions to the label images they see on the computer screen. Each participant will be randomly assigned to an experimental condition that differs primarily in label components and time limit. To help understand the data, the study will also collect information on each participant's background, such as health status, label reading behavior, and dietary preferences.

*B. Study 2 (In-Store Study)*

In Study 2, we plan to collect observations of what information grocery shoppers notice and pay attention to while they do their shopping in the store. The study will gather eye movement data to provide an indepth understanding of subconscious and conscious factors that influence food purchases. Specifically, the study will explore the role that the Principal Display Panel and other label information and components play in purchase decisions. We will use the data to test the hypotheses that product familiarity or personal needs will cause variations in information seeking and that design elements (e.g., prominence, text vs. graphics) will cause variations in information seeking. To keep the study within a manageable scope, only shoppers who plan to shop for one or more of preselected product categories will be eligible to participate. Other than product categories, however, participants will not be restricted to which products they examine, what label information they view, or how much time they spend in completing any part of the study. To help understand the data, the study will also collect information on each participant's background, such as health status and shopping practices. In Study 2 we plan to collect data from 60 participants who will each spend an average of 45 minutes in the study, including a practice session, the shopping trip, and a debriefing. The study will be conducted in two different locations. Participants will be recruited at storefronts.

Both the laboratory study (Study 1) and the in-store study (Study 2) are part of our continuing effort to enable consumers to make informed dietary choices. We will use the studies to assess consumer attention to and use of various pieces of information on food packages and the information's influence on product perceptions and choices. The assessment will provide us with background information to help identify and develop more effective labeling information and education in the future. In addition, we will use data from Study 1 to assess consumer behaviors when they are asked to respond to a sample of questions used in the Agency's consumer research. The assessment will help enhance our ability to conduct research that provides useful information. Wherever possible, we will also attempt to compare findings from the two studies to assess the degree to which results observed in the laboratory reflect actual behaviors in the market. For example, do laboratory and in-store participants pay attention to different labeling elements when they make a shopping choice? Results of the study will not be used to develop population estimates.

In the **Federal Register** of June 15, 2012 (77 FR 35983), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received three comments. One comment addressed matters that were outside the scope of the information collection provisions and will not be discussed here. We respond to the remaining comments in this document. For ease of reading, we preface each comment with a numbered ''Comment;'' and each response by a corresponding ''Response.'' We have numbered each comment to help distinguish between different topics. The number assigned to each comment is for organizational purposes only and does not signify the comment's value, or importance, or the order in which it was received.

(Comment 1) One comment recommended that we examine the accuracy of the eye tracking methodology in identifying label reading patterns before considering applying the methodology more broadly.

(Response) FDA agrees that it is important to assess the degree of accuracy the methodology can provide and we have taken this into consideration.

(Comment 2) One comment questioned whether the use of eye tracking methodology is essential to the regulation of food labeling.

(Response) Part of our mission is to help the public get accurate and science-based information needed to use foods to maintain and improve health (Ref. 8). To help accomplish this mission, we state in our 2011–2015 Strategic Plan that we will strengthen social and behavioral sciences to help consumers make informed decisions about regulated products (Ref. 9). As part of the strategy, the plan identifies needs in knowing the audience, ensuring audience understanding of information, and evaluating effectiveness of communication about regulated products (Ref. 9). We will use the proposed studies to assess consumer attention to and use of various pieces of information on food packages and the information's influence on product perceptions and choices. These findings can extend and compliment findings from other consumer research FDA conducts and help us identify and develop more effective food labeling information and education in the future. Therefore, the use of eye tracking methodology is valuable to our mission in providing the public accurate and science-based information.

(Comment 3) One comment questioned the practical utility of the information to be collected in the proposed studies. The comment stated that Study 1 would not yield nationally representative results because it uses a convenience sample and suggests this limitation be noted in the supporting

statement accompanying the **Federal Register** 30-day notice. The comment also questioned whether the sample size of Study 2 (60 participants) would be sufficient to yield detailed conclusions.

(Response) The 60-day notice stated that the studies would not be used to develop national estimates. We repeat this statement in the supporting statement. Though the sample size of Study 2 is constrained by the available resource, the study will provide preliminary yet useful insights into consumer viewing experiences with food shopping.

(Comment 4) A comment asserted that wearing eye tracking eyeglasses and a headset for biometric measurement in Study 2 would cause study subjects to behave differently from how they shop typically, thus weakening the reliability of the data. Instead, the comment suggests using a virtual store methodology in a computer-assisted central location test.

(Response) The comment did not provide evidence to support its concern or to illustrate the advantages of a virtual store methodology over an eye tracking methodology. Therefore, because we do not have a sufficient basis to conclude that the comment's suggested methodology would be better suited for our purposes than the eye tracking methodology described in the 60-day notice, we decline to change the methodology for Study 2.

(Comment 5) A comment questioned the use of the word ''healthy'' in certain questions because the word has a regulatory meaning and consumers may not understand the regulatory criteria for the claim ''healthy.'' The comment suggested replacing ''healthy'' with ''nutritious.'' The comment also expressed concern about questions that ask participants their inferences about the relationships between a product and the risk of diabetes and obesity or overweight. The comment reasoned that these health conditions should not be asked about because there are no current authorized health claims permitted for these conditions.

(Response) We disagree with the comment. The studies are not to examine whether or how consumers understand labeling regulations. Rather, part of the purpose of the studies is to better understand how consumers infer from labeling the characteristics of food products. As stated in the comment, consumers may not understand regulatory criteria for claims, including ''healthy,'' and there are no authorized health claims that link a food to diabetes or obesity. Yet consumers make product inferences and decisions based on their own experiences and knowledge, with or without any understanding about labeling regulations. Hence, for consumer research purposes, it is valid and meaningful to include these terms and product-risk relationships as a measure of consumer product inferences.

(Comment 6) A comment questioned the relevance of a series of Study 1 questions related to participants' inferences of what health conditions to which a product may be related. The comment explained that these questions are not consistent with established policy regarding health claims.

(Response) We understand and acknowledge this concern. Upon further consideration of the purposes of the study and the time length of the interview, we have revised the content of the study and removed the questions the comment discussed.

(Comment 7) A comment made several editorial suggestions and clarifications to the proposed questionnaires. For example, the comment suggested that ''lesser amount of fat'' in one Study 1 question be corrected grammatically, that ''if you are allowed to eat xx g of carbohydrate as a snack'' in another Study 1 question be revised to say ''if you wish to eat a food with xx g of carbohydrate as a snack.'' The comment also asked that Study 2 clarify that the participants can select multiple items in a product category and revise the wording in one question to reflect this. The comment further asked that Study 2 clarify that the interviewer will escort the participants to the store aisle for the target product category.

(Response) We have considered and incorporated the suggestions, when appropriate, in the revised questionnaires. For example, in Study 1 we did not make the suggested correction on ''less amount of fat'' or the suggested revision on carbohydrate. Instead, being mindful of the length of the study instrument, these questions were removed and replaced with other questions. At the same time, we have made the two clarifications in Study 2.

(Comment 8) A comment suggested that we make the label and package designs available for public review.

(Response) We have included the label and package designs in the supporting statement.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Laboratory pretest invitation | 30 | 1 | 30 | 0.033 (2 minutes) | 1 |
| Laboratory pretest | 15 | 1 | 15 | 1 | 15 |
| Laboratory study invitation | 500 | 1 | 500 | 0.033 (2 minutes) | 17 |
| Laboratory study | 200 | 1 | 200 | 0.333 (20 minutes) | 67 |
| In-store study invitation | 300 | 1 | 300 | 0.083 (5 minutes) | 25 |
| In-store study | 60 | 1 | 60 | 0.75 (45 minutes) | 45 |
| Total | | | | | 170 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

## II. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified all the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Jones, G. and M. Richardson, ''An Objective Examination of Consumer Perception of Nutrition Information Based on Healthiness Ratings and Eye Movements,'' *Public Health Nutrition,* vol. 10, pp. 238–244, 2007.

2. Bialkova, S. and H. C. M. van Trijp, ''What Determines Consumer Attention to Nutrition Labels?'' *Food Quality and Preference,* vol. 21, pp. 1042–1051, 2010.

3. van Herpen, E. and H. C. M. van Trijp, ''Front-of-Pack Nutrition Labels, Their Effect on Attention and Choices When Consumers Have Varying Goals and Time Constraints,'' *Appetite,* vol. 57, pp. 148–160, 2011.

4. Fox, R. J., D. M. Krugman, J. E. Fletcher, and P. M. Fischer, ''Adolescents' Attention to Beer and Cigarette Print Ads and Associated Product Warnings,'' *Journal of Advertising,* vol. 27, pp. 57–68, 1998.

5. Galesic, M., R. Tourangeau, M. P. Couper, and F. G. Conrad, ''Eye-Tracking Data: New Insights on Response Order Effects and Other Cognitive Shortcuts in Survey Responding,'' *Public Opinion Quarterly,* vol. 72, pp. 892–913, 2008.

6. Graesser, A. C., Z. Cai, M. M. Louwerse, and F. Daniel, ''Question Understanding Aid (QUAID): A Web Facility That Tests Question Comprehensibility,'' *Public Opinion Quarterly,* vol. 70, pp. 3–22, 2006.

7. Reutskaja, E., R. Nagel, C. F. Camerer, and A. Rangel, ''Search Dynamics in Consumer Choice Under Time Pressure: An Eye-Tracking Study,'' *American Economic Review,* vol. 101, pp. 900–926, 2011.

8. FDA, ''What We Do.'' Available at *http://www.fda.gov/AboutFDA/WhatWeDo/default.htm.*

9. FDA, ''Strengthen Social and Behavioral Science to Help Consumers and Professionals Make Informed Decisions About Regulated Products,'' Section 8 in Strategic Plan for Regulatory Science. Available at *http://www.fda.gov/ScienceResearch/SpecialTopics/RegulatoryScience/ucm268150.htm.*

Dated: June 25, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–16001 Filed 7–2–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0778]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Copy Testing of the Food and Drug Administration's General Market Youth Tobacco Prevention Campaigns

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on Copy Testing of FDA's General Market Youth Tobacco Prevention Campaigns.

**DATES:** Submit either electronic or written comments on the collection of information by September 3, 2013.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Copy Testing of FDA's General Market Youth Tobacco Prevention Campaigns (OMB Control Number—0910—New)**

The 2009 Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Public Law 111–31) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to grant FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health and to reduce tobacco use by minors. Section 1003(d)(2)(D) of the FD&C Act (21 U.S.C. 393(d)(2)(D)) supports the development and implementation of FDA public education campaigns related to tobacco use. Accordingly, FDA is currently developing and implementing youth-targeted public education campaigns to help prevent tobacco use among youth and thereby reduce the public health burden of tobacco. The campaigns will feature televised advertisements along with complementary ads on radio, on the Internet, in print, and through other forms of media.

FDA requests OMB approval to collect information needed to assess the potential effectiveness of draft (or ''rough-cut'') youth tobacco prevention campaign advertisements prior to launch. This information will be collected through copy testing as part of the message development phase. Copy testing involves showing rough-cut versions of campaign advertisements to a small sample of the campaign target audience to ensure understanding of messages and assess any potential unintended consequences. Copy testing of FDA's rough-cut general market youth tobacco prevention campaign advertisements is needed to ensure development and execution of meaningful and effective public education tactics.

FDA plans to conduct three voluntary cross-sectional studies involving youth ages 12 to 17 to copy test the Agency's general market youth tobacco prevention campaign advertisements:

1. *Youth Experimenter Copy Testing:* The study will be designed to obtain insights into potential effectiveness and unintended consequences of advertisements designed to target general market youth ages 12–17 who are currently experimenting with tobacco products (i.e., have smoked between 1 and 100 cigarettes).

2. *Youth Non-Trier Copy Testing:* The study will be designed to obtain insights into potential effectiveness and unintended consequences of advertisements designed to target general market youth ages 12–17 who

have not tried tobacco but are most at risk of initiation.

3. *Youth Rural Smokeless Copy Testing:* The study will be designed to obtain insights into potential effectiveness and unintended consequences of advertisements designed to target general market youth ages 12–15 who reside in rural areas, with a focus on males at risk of smokeless tobacco initiation.

In each study, each study participant will view a maximum of two rough cut tobacco prevention advertisements. After reviewing the advertisements, each participant will respond to questions traditionally used in formative testing of advertisements to assess his or her receptivity to the advertisements. Study data will be used to refine rough-cut television advertisements prior to campaign launch. The study data will be collected from participants of an Internet panel.

FDA's burden estimate is based on prior experience with Internet panel studies similar to the Agency's plan presented in this document. To obtain the target number of completed surveys (''completes'') for the Youth Experimenter Copy Testing, 3,600 youth respondents and their parent or legal guardian will be contacted through a screening and consent process. The estimated burden per response for the screening and consent is 5 minutes (0.083 hours) per respondent, for a total of 300 hours. An estimated 1,200 youth respondents will then complete the copy test survey. The estimated burden per response is 10 minutes (0.17 hours) for the Youth Experimenter Copy Testing survey, for a total of 200 hours.

To obtain the target number of completes for the Youth Non-Trier Copy Testing, 1,800 youth respondents and their parent or legal guardian will be contacted through a screening and consent process. The estimated burden per response for screening and consent is 5 minutes (0.083 hours) per respondent, for a total of 150 hours. An estimated 600 youth respondents will then complete the copy test survey. The estimated burden per response is 10 minutes (0.17 hours) for the Youth Experimenter Copy Testing survey, for a total of 100 hours.

To obtain the target number of completes for the Youth Rural Smokeless Copy Testing, 1,800 youth respondents and their parent or legal guardian will be contacted through a screening and consent process. The estimated burden per response for screening and consent is 5 minutes (0.083 hours) per respondent, for a total of 150 hours. An estimated 600 youth respondents will then complete the copy test survey. The estimated burden per response is 10 minutes (0.17 hours) for the Youth Rural Smokeless Copy Testing survey, for a total of 100 hours.

The target number of completed copy testing surveys for all respondents is 2,400. The total estimated burden is 1,000 hours.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Youth Experimenter Screener and Consent | 3,600 | 1 | 3,600 | 0.083 (5 min.) | 300 |
| Youth Experimenter Copy Testing | 1,200 | 1 | 1,200 | 0.17 (10 min.) | 200 |
| Youth Non-Trier Screener and Consent | 1,800 | 1 | 1,800 | 0.083 (5 min.) | 150 |
| Youth Non-Trier Copy Testing | 600 | 1 | 600 | 0.17 (10 min.) | 100 |
| Youth Rural Smokeless Screener and Consent | 1,800 | 1 | 1,800 | 0.083 (5 min.) | 150 |
| Youth Rural Smokeless Copy Testing | 600 | 1 | 600 | 0.17 (10 min.) | 100 |
| Total | 9,600 | | | | 1,000 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 28, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–16000 Filed 7–2–13; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2013–0012; OMB No. 1660–NEW]**

### 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 August 2, 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 *oira.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.*

**SUPPLEMENTARY INFORMATION:**

### Collection of Information

*Title:* Community Drill Day Registration.

*OMB Control Number:* 1660–NEW.

*Type of information collection:* New information collection.

*Form Titles and Numbers:* FEMA Form 008–0–8, Community Drill Day.

*Abstract:* FEMA's Individual and Community Preparedness Division is requesting comments on a new information collection for its registration of individuals and organizations for the Community Drill Day. The registration process allows for

individuals and organizations to submit information on their participation in Community Drill Day. The registration process will provide FEMA with valuable information about the public's participation in Community Drill Day that will inform future outreach strategies related to participation in Community Drill Day.

*Affected Public:* Individuals or households; Farms; Business or other for-profit; Federal Government; Not-for-profit institutions; State, local or Tribal Government.

*Estimated Number of Respondents:* 50,000.

*Estimated Total Annual Burden Hours:* 15,000 hours.

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is $326,100.00. 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 $49,210.00.

Dated: June 20, 2013.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2013–15960 Filed 7–2–13; 8:45 am]

**BILLING CODE 9111–27–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0044]**

### Agency Information Collection Activities: Application for Action on an Approved Application or Petition, Form I–824; Revision of a Currently Approved Collection

**ACTION:** 30-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on March 22, 2013, at 78 FR 17702, allowing for a 60-day public comment period. USCIS received a comment in connection with the 60-day notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 2, 2013. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0012 or via email at *uscisfrcomment@uscis.dhs.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0044.

**SUPPLEMENTARY INFORMATION:**

#### Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–824; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–824 is used to request a duplicate approval notice, or to notify the U.S. Consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 11,707 responses at .417 hours (25 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,881.82.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140; Telephone 202–272–8377.

Dated June 24, 2013.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2013–15910 Filed 7–2–13; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5667–N–03]**

### Supportive Housing for the Elderly Senior Preservation Rental Assistance Contracts: 60-Day Notice of Information Collection

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of request for public comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, HUD is issuing for public comment four documents for use in the Senior Preservation Rental Assistance Contract (SPRAC) program. HUD is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB.

**DATES:** *Comment Due Date:* September 3, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and downloading at *www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Margaret Salazar, Acting Director, Office of Affordable Housing Preservation, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6230, Washington, DC 20410; telephone number 202–708–0001 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Section 202 Supportive Housing for the Elderly Act of 2010 (Pub. L. 111–372, 124 Stat. 4077, approved January 4, 2011) (2010 Act) authorizes HUD to provide SPRACs with 20-year terms to owner-applicants (Owner-Applicants) and existing Section 202 properties that meet SPRAC eligibility criteria as established by HUD. The purpose of the SPRAC Program is to prevent the displacement of current tenants of certain projects assisted under HUD's Section 202 Supportive Housing for the Elderly program (Section 202 program) in the case of refinancing or recapitalization and to further preserve and maintain affordability of Section 202 Direct Loan projects. General authority for the prepayment of a Section 202 Direct Loan is provided by Section 811 of the American Homeownership and Economic Opportunity (AHEO) Act of 2000, as amended by the 2010 Act (12 U.S.C. 1701q note). Pursuant to this authority, SPRACs may be awarded by HUD to Section 202 properties with original interest rates of 6 percent or less (financed prior to 1974), as part of a recaptialization to address the physical needs of the property. In FY 2012, $16 million was made available for SPRAC funding.

On January 8, 2013, at 78 FR 1224, HUD published a proposed notice in the **Federal Register** that presented for public comment the proposed process by which HUD would award SPRACs, including the proposed application process, as well as the proposed eligibility and selection criteria. HUD solicited public comment for a period of 60 days. HUD reviewed and considered the public comments received in response to the January 8, 2013, notice, and HUD is developing the final notice that will announce the process by which HUD will award SPRACs.

## II. This 60-Day Notice

*Documents for Review and Comment*

Consistent with the Paperwork Reduction Act of 1995, this notice seeks comment, for a period of 60 days of four documents that HUD will use for the award of SPRACs.

1. Agreement To Enter Into a Senior Preservation Rental Assistance Contract—Part I (ASPRAC I)

The ASPRAC I, including exhibits, which may be attached or incorporated by reference, comprises the entire agreement between the Owner and HUD with respect to the matters contained addressed in the ASPRAC I. The exhibits that are part of the ASPRAC I include: the Senior Preservation Rental Assistance Contract (SPRAC) to be executed upon prepayment of the Section 202 Direct Loan (Exhibit A); the schedule of completion in stages if applicable (the exhibit should identify the units in each stage) (Exhibit B); and the schedule of Davis-Bacon wages, if applicable (Exhibit C). The ASPRAC I provides for the inclusion of additional exhibits that may be necessary or appropriate.

The ASPRAC I provides that neither party is bound by any representations or agreements of any kind except as contained in the ASPRAC I, any applicable regulations, and agreements entered into in writing by the parties which are consistent with this Agreement. The ASPRAC I further provides that nothing contained in the ASPRAC I shall create of affect any relationship between HUD and any contractors or subcontractors employed by the Owner in the completion of the project.

The ASPRAC I requires the Owner to certify that the site of the project for which HUD is committing funds is either (1) without occupants eligible for relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended; or (2) with occupants eligible for assistance the URA and Owner agrees to provide such assistance in accordance with URA and HUD requirements.

2. Agreement To Enter Into a Senior Preservation Rental Assistance Contract—Part II (ASPRAC II)

The ASPRAC II contains the following areas that specify the Owner's agreement to undertake certain action, which include information and reporting requirements:

- Schedule of Completion, which addresses the timely commencement of work, the time for completion, and the possibility of delays, and the reporting requirements associated with commencement and completion of work.

• Marketing, which addresses the commencement and continuation of marketing of the project and notification requirements associated with the marketing.

• Execution of the SPRAC, which addresses the time of execution of the SPRAC, the completion of the various stages associated with work on the project; unleased units at the time of execution of the SPRAC, and HUD's examination of such units; leased units at the time of execution and HUD's examination of such units; and the amount of contract rents.

• Cooperation in Equal Opportunity Reviews, which addresses agreement by the Owner to cooperate with HUD in conducting monitoring and compliance reviews and complaint investigations;

• Compliance with standard federal laws related to federally-funded housing, which includes compliance with such laws the National Environmental Policy Act, Flood Disaster Protection Act, Clean Air Act and Water Pollution Control Act, Displacement and Relocation Assistance, Lead-Based Paint Poisoning Prevention Act, anti-lobbying requirements; and the Davis Bacon Act.

• Defaults by Owner, which addresses what constitutes a default by the Owner under the SPRAC, HUD's determination of default and corrective action that may be taken, including termination of the SPRA.

• Disputes, which provides that the Secretary of HUD or designee will resolve a dispute that may arise between the Owner and a HUD Field Office, which the latter two are unable to resolve.

• Assignment, Sale or Foreclosure, which addresses the Owner's agreement that it has not made or will not make any sale, assignment, or conveyance or transfer of the project without seeking and receiving the prior written consent of HUD.

• Prevention of Conflicts of Interest, which addresses the prohibition of the officers, directors, stockholders and unauthorized representatives of the Owner having a financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings or equipment, construction of the project, procurement of the site or other matters related to the development or operation of the project.

3. Senior Preservation Rental Assistance Contract—Part I (SPRAC I)

The SPRAC I establishes the effective date, initial term, funding for the initial term of the SPRAC and renewal. The SPRAC requires the Owner to describe the project, to provide a statement of services maintenance and utilities to be provided by the Owner. The SPRAC also requires for the Owner to provide the following as exhibits to the SPRAC: (1) A schedule of SPRAC Units and SPRAC rents; (2) daily debt service; (3) an affirmative fair housing marketing plan; (4) the recorded Section 202 Use Agreement; and (5) the Agreement to Enter into a SPRAC.

4. Senior Preservation Rental Assistance Contract—Part II (SPRAC II)

The SPRAC II establishes the agreed-upon responsibilities and obligations of the Owner, the Contact Administration and HUD. The SPRAC II identifies the HUD regulations with which all owners of HUD assisted housing must comply, and that includes the owner of a project assisted under SPRAC. The SPRAC II includes definitions that are applicable to SPRAC II but also SPRAC I. The SPRAC II reiterates the agreements contained in ASPRAC II, such as those pertaining to nondiscrimination, compliance reviews, the applicable property insurance such as property and liability insurance, flood insurance, assignment, sale, or foreclosure of the property, Davis-Bacon wage requirements, disputes, and conflicts of interest.

The SPRAC II also specifies certain information collection and reporting requirements, which are directed solely to the SPRAC projects and these include the owner's agreement to: Maintain a written, chronological waiting list showing the name, race, gender, ethnicity and date of each person applying to reside in a SPRAC Unit at the subject project; establish a standard numeric threshold for the purpose of determining when it may be necessary to close the waiting list and temporarily cease accepting applications for SPRAC Units; furnishing a copy of its waiting list policies and procedures to HUD; furnishing to HUD, upon HUD's request, applications of admissions (including denial of admission); confirming all information provided on the application by the family applicants; preparing the HUD Lease between the families and the Owner in the form prescribed by HUD; submitting to the Contract Administrator, upon the Contract Administrator's request, a rent comparability study; submitting monthly requests to the Owner's Contract Administrator for SPRAC payments, and each month request must contain a certification by the Owner as to the accuracy and veracity of certain formation to the best of the Owner's knowledge; and submitting to the Contract Administrator within 90 days after the end of each fiscal year of the project, financial statements for the project that have been audited by an Independent Public Accountant in the form required by HUD.

All four documents are available for review in their entirety at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/presrv/presmfh/sprac_contracts*.

*Paperwork Reduction Act—Estimated Burden and Cost*

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (PRA), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval.

To comply with this requirement, HUD is publishing this notice of the proposed information and recordkeeping and reporting, as set forth in the four SPRAC documents.

1. Descriptive Information

The *Title of the Proposed Information Collection* is Senior Preservation Rental Assistance Contracts.

The *Need for the Proposed Information Collection and Use* is to ensure proper use of federal funds, compliance with applicable HUD and federal requirements, and to allow for HUD to monitor compliance with HUD and federal requirements.

*Agency Form Numbers* N/A.

*Eligible Applicants* are owners of Section 202 properties with original interest rates of 6 per cent or less (financed prior to 1974) when the property refinanced is to make capital repairs and the owner does not anticipate debt service savings from the refinance.

*Status of Proposed Information Collection* is new.

2. Specific Issues for Comment

With respect to the collection of information and reporting requirements in the four SPRAC documents, HUD invites comments on these topics:

(1) Whether the proposed collection of information is necessary for the

proper performance of responsibilities under the SPRAC program, including whether the information will have practical utility;

(2) The accuracy of HUD's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

The public reporting burden for information collection and reporting requirements in the four SPRAC documents are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table:

3. Estimated Burden

The estimated burden for the four SPRAC documents is as follows:

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hours per response | Annual burden hours |
|---|---|---|---|---|---|
| ASPRAC I | 20 | 1 | 20 | 1 | 20 |
| ASPRAC II | 20 | 1 | 20 | 1 | 20 |
| SPRAC I | 20 | 1 | 20 | 2 | 40 |
| SPRAC II | 20 | 1 | 20 | 2 | 40 |
| Totals | 20 | 4 | 80 | 6 | 120 |

Dated: June 27, 2013.

**Laura M. Marin,**

*Acting General Deputy Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.*

[FR Doc. 2013–16074 Filed 7–2–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5600–FA–40]**

## Announcement of Funding Awards for Fiscal Year 2012 Sustainable Construction in Indian Country Small Grant Program

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Announcement of funding award.

**SUMMARY:** In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year (FY) 2012 Sustainable Construction in Indian Country Small Grant (SCinIC) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the award to be used to help develop, deploy, and disseminate innovative approaches of Sustainable Construction methods or practices that are suitable for Indian Country.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Blanford, Affordable Housing Research and Technology, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Room 8134, 451 Seventh Street SW., Washington, DC 20410, Telephone at (202) 402–5728. Persons with speech or hearing impairments may call the Federal Relay Service TTY at 800–877–8339. Except for the ''800'' number, these telephone numbers are not toll-free. Individuals may also reach Mr. Blanford via email at *Michael.D.Blanford@hud.gov.*

**SUPPLEMENTARY INFORMATION:** HUD invited applicants to submit proposals for funding that encouraged the use of sustainable construction practices in Native American housing. Proposals were to take into account the multiple geographic, economic and cultural aspects of Native American residential design and construction. HUD sought applications in four broad areas: demonstration; technical assistance; curriculum development/training; and information dissemination related to sustainable construction in the Native Community. Activities performed under the Sustainable Construction in Indian Country Small Grant Program should document the impact of one or more innovative approaches to sustainable construction in Indian Country, identify a set of lessons learned, and then develop, deploy or distribute a tool highlighting those lessons. Grants could range from $50,000 to $100,000. Grants are awarded for up to a two-year period.

The Catalog of Federal Domestic Assistance number for this program is 14.525.

On February 5, 2013, HUD posted a Notice of Funds Availability (NOFA) for the Fiscal Year 2012 Transformation Initiative: Sustainable Construction in Indian Country Small Grant Program on *Grants.gov.* The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545).

Dated: June 7, 2013.

**Jean Lin Pao,**

*General Deputy Assistant Secretary for Policy Development and Research.*

### Attachment

### List of Awardees for Grant Assistance Under the Fiscal Year (FY) 2012 Sustainable Construction in Indian Country Small Grant Program Funding Competition, by Institution, Address, and Grant Amount

1. Enterprise Community Partners, 10227 Wincopin Circle, Columbia, MD, 21044–3400. Grant: $100,000.
2. Sault Tribe Housing Authority, 154 Parkside, Kincheloe, Michigan 49788–0000. Grant: $100,000.
3. The Regents of the University of Colorado, 3100 Marine Street, Room 479, Boulder, Colorado 80303–1058. Grant: $100,000.
4. Aleutian Housing Authority, 520 E. 32nd Avenue, Anchorage, Alaska 99503–4104. Grant: $100,000.

[FR Doc. 2013–15992 Filed 7–2–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No: FR–5667–N–02]**

## Announcement of Issuance by HUD of Notice of Senior Preservation Rental Assistance Contracts Award Process and Solicitation of Applications

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability on HUD's Web site of the ''Notice of Senior Preservation Rental Assistance Contracts Award Process'' (Notice), which specifies the process by which HUD will award Senior Preservation Assistance Contracts (SPRACs). The Notice also starts the application process, and solicits applications for a period of 60 days. The Notice can be found at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/presrv/presmfh/sprac_contracts*.

**DATES:** SPRAC applications must be submitted to HUD in accordance with the posted Notice by September 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Margaret Salazar, Acting Director, Office of Affordable Housing Preservation, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6230, Washington, DC 20410; telephone number 202–708–0001 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Section 202 Supportive Housing for the Elderly Act of 2010, signed into law on January 2011, authorizes HUD to award SPRACs with 20-year terms to Owner-Applicants and existing Section 202 properties that meet the SPRAC eligibility criteria of this final Notice. The purpose of the SPRAC Program is to prevent the displacement of existing tenants of certain projects assisted under HUD's Section 202 Supportive Housing for the Elderly program in the case of refinancing or recapitalization and to further preserve and maintain the affordability of Section 202 Direct Loan projects. In Fiscal Year (FY) 2012, $16 million was made available for SPRAC funding.

The Notice, posted on HUD's Web site, establishes the process by which HUD will award SPRACs, and commences the solicitation of applications. The Notice follows a January 8, 2013, advance notice in which HUD presented and solicited public comment on the proposed eligibility and award criteria. This Notice takes into consideration the public comments received in response to the January 8, 2013, solicitation.

Dated: June 27, 2013.

**Carol J. Galante,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 2013–16073 Filed 7–2–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–ES–2013–N120; FXES11130400000C2–134–FF04E00000]**

## Endangered and Threatened Wildlife and Plants; Notice of Availability of a Technical/Agency Draft Recovery Plan for Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and request for public comment.

**SUMMARY:** We, the Fish and Wildlife Service, announce the availability of the technical/agency draft recovery plan for the endangered Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail. The draft recovery plan includes specific recovery objectives and criteria the interrupted rocksnail and rough hornsnail would have to meet in order for us to downlist them to threatened under the Endangered Species Act of 1973, as amended (Act). Recovery criteria for the Georgia pigtoe will be developed after we complete critical recovery actions and gain a greater understanding of the species. We request review and comment on this draft recovery plan from local, State, and Federal agencies, and the public.

**DATES:** In order to be considered, comments on the draft recovery plan must be received on or before September 3, 2013.

**ADDRESSES:** If you wish to review this technical/agency draft recovery plan, you may obtain a copy by contacting Jeff Powell, U.S. Fish and Wildlife Service, Alabama Field Office, 1208–B Main Street, Daphne, AL 36526; tel. (251) 441–5858; or by visiting the Service's Alabama Field Office Web site at *http://www.fws.gov/daphne*. If you wish to comment, you may submit your comments by one of the following methods:

1. You may submit written comments and materials to Jeff Powell, at the above address.

2. You may hand-deliver written comments to our Alabama Field Office, at the above address, or fax them to (251) 441–6222.

3. You may send comments by email to *alabama@fws.gov*. Please include ''Three-Snail Recovery Plan Comments'' on the subject line.

For additional information about submitting comments, see the ''Request for Public Comments'' section below.

**FOR FURTHER INFORMATION CONTACT:** Jeff Powell (see **ADDRESSES** above).

**SUPPLEMENTARY INFORMATION:**

### Background

The Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*) were listed as endangered species under the Act (16 U.S.C. 1531 et seq.) on November 2, 2010 (75 FR 67512). All three species are endemic to the Coosa River drainage of the Mobile River Basin in Alabama and Georgia; the Georgia pigtoe also occurs in a Coosa River tributary in Tennessee. All three species have disappeared from 90 percent or more of their historical ranges, primarily due to impoundment of riverine habitats. A single population of interrupted rocksnail is known to survive in the Oostanaula River, Georgia. Only two localized populations of rough hornsnail, one each in Yellowleaf Creek, Alabama, and the lower Coosa River, Alabama, are currently known. Surviving populations of Georgia pigtoe occur in the Conasauga River, Georgia, and possibly in the Coosa River (Weiss Bypass), Alabama. The rough hornsnail is State listed as a Priority 1 (P1) species in Alabama; the interrupted rocksnail is State listed as P1 species in Alabama, while the Georgia pigtoe is State listed as endangered in Georgia.

Approximately 258 km (160 mi) of stream channels in the Coosa River drainage have been designated as critical habitat for the interrupted rocksnail (101 km (63 mi)), rough hornsnail (27.4 km (17 mi)), and Georgia pigtoe mussel (153 km (95 mi)). Critical habitat is located in Cherokee, Clay, Coosa, Elmore and Shelby Counties, Alabama; Gordon, Floyd, Murray, and Whitfield Counties, Georgia; and Bradley and Polk Counties, Tennessee.

The Georgia pigtoe mussel has a federal recovery priority number of 5, which indicates the species faces a high degree of threat but also has a low recovery potential. The interrupted rocksnail and rough hornsnail each have a recovery priority number of 2, which indicates both species are facing a high degree of threat but have a high recovery potential.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of our endangered species program. To help guide the recovery effort, we prepare recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and

estimate time and cost for implementing recovery measures.

The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide public notice and an opportunity for public review and comment during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

**Recovery Plan Components**

The Service's recovery objectives are to work to reduce threats so that the interrupted rocksnail and rough hornsnail may be downlisted to threatened status, and to prevent further decline of the Georgia pigtoe's Conasauga River population and prevent extinction of the species as a whole. Defining reasonable downlisting or delisting criteria for the Georgia pigtoe is not possible at this time, given the current low number of populations and individuals, lack of information about the species' biology, and magnitude of threats. Therefore, this recovery plan only establishes downlisting criteria for the two snails. Instead of establishing downlisting or delisting criteria at this time for Georgia pigtoe, we are identifying preliminary actions to help us prevent its extinction until we can obtain further information on this species and determine recovery criteria.

Downlisting of the interrupted rocksnail and rough hornsnail will be considered when we:

1. Protect and manage at least three geographically distinct populations for each species. The populations can include the existing populations (Oostanaula for the interrupted rocksnail, Yellowleaf Creek and Lower Coosa River for the rough hornsnail), or can be reintroduced;

2. Achieve demonstrated and sustainable natural reproduction and recruitment in each population for each species as evident by multiple age classes of individuals, including naturally recruited juveniles, and recruitment rates exceeding mortality rates for a period of 5 years; and

3. Develop and implement habitat and population monitoring programs for each population.

The following actions are identified as necessary to help prevent the extinction of the Georgia pigtoe:

1. Maintain and where possible conduct efforts to improve the Conasauga River population;

2. Develop and implement a monitoring plan to help ensure that the Conasauga River population does not decline further;

3. Develop a captive propagation program and establish an ark population (a secure, maintained captive population) to help support the Conasauga River population;

4. Conduct research, such as identification of an appropriate fish host, that is important to gain better understanding of this mussel's life history; and

5. Identify, monitor, and where possible improve potential reintroduction sites in the species' historic range.

**Request for Public Comments**

We request written comments on the draft recovery plan. We will consider all comments we receive by the date specified in **DATES** prior to final approval of the plan.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: June 26, 2013.

**Mike Oetker,**

*Acting Regional Director, Southeast Region.*

[FR Doc. 2013–16032 Filed 7–2–13; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## DEPARTMENT OF ENERGY

## Western Area Power Administration

[LLWY920000.L51010000.ER0000–LVRWK09K1160; WYW177893; COC72929; UTU87238; N86732]

## Notice of Availability of the Draft Environmental Impact Statement for the TransWest Express 600-kV Direct Current Transmission Project in Wyoming, Colorado, Utah, and Nevada, and Prospective Draft Land Use Plan Amendments

**AGENCIES:** Bureau of Land Management, Department of the Interior; and Western Area Power Administration, Department of Energy.

**ACTION:** Notice of Availability.

**SUMMARY:** The Bureau of Land Management (BLM) and Western Area Power Administration (Western) announce the availability of the TransWest Express Transmission Project Draft Environmental Impact Statement (DEIS) and draft Land Use Plan Amendments. The DEIS analyzes the consequences of granting a right-of-way (ROW) to TransWest Express, LLC (TransWest) to construct and operate an extra-high voltage (EHV) direct current (DC) transmission system (proposed Project). The Project would provide the transmission infrastructure and capacity to deliver approximately 3,000 megawatts of electric power from existing and future renewable and other energy sources in south-central Wyoming to a substation hub in southern Nevada. The Project would consist of an approximately 725-mile-long 600-kilovolt (kV), DC transmission line and two terminals, each containing an alternating current (AC)/DC converter station. The northern AC/DC converter station would be located near Sinclair, Wyoming, and the southern AC/DC converter station would be located near a group of substations in the Eldorado Valley called Marketplace Hub, approximately 25 miles south of Las Vegas, Nevada. A ground electrode system (required for transmission line emergency shutdown) would be installed within 100 miles of each terminal. The Project would retain an option for future interconnection with the Intermountain Power Project (IPP) transmission system in Millard County, Utah.

The BLM, through consultation with other Federal, State, and local cooperating agencies, has included an

Agency Preferred Alternative (APA) transmission route in the DEIS. The rationale for selecting the location of this alternative is described in the Supplementary Information section of this Notice of Availability (NOA). The following discussions of Project segment lengths across various land ownerships and jurisdictions are specific to the 760-mile-long APA.

The requested ROW width would generally be 250 feet. As a general planning goal, the APA has been located parallel to existing transmission lines and other utilities, within the West-wide energy corridors designated pursuant to Section 368 of the Energy Policy Act of 2005 and other federally designated utility corridors, unless precluded by resource or routing constraints or technical infeasibility. Approximately 230 miles (30 percent) of the APA is located within or adjacent to designated federal utility corridors.

The APA is located in proximity and parallel to other utilities (transmission lines, pipelines, roads) over a distance of 447 miles (57 percent) of the total length. The lengths of the APA segments by Federal jurisdiction are:

- Wyoming—BLM Rawlins Field Office (78 miles).
- Colorado—BLM Little Snake, White River Field Offices (71 miles).
- Utah—BLM Vernal, Price, Fillmore, Richfield, Cedar City Field Offices (212 miles); Bureau of Indian Affairs/Tribal (3 miles); and U.S. Forest Service (USFS) Uinta, Manti-La-Sal, Fishlake, and Ashley National Forests (18 miles).
- Nevada—BLM Caliente, Las Vegas Field Offices (129 miles) and Bureau of Reclamation (BOR) (6 miles).
- The APA transmission route would cross 58 miles of State land, and 127 miles of private land.

In Wyoming, the APA crosses 78 miles of Federal, 1 mile of State and 30 miles of private land. In Colorado, the APA crosses 71 miles of Federal, 7 miles of State and 12 miles of private land. In Utah the APA crosses 230 miles of Federal, 50 miles of State, 3 miles of Tribal and 123 miles of private land. In Nevada, the APA crosses 135 miles of Federal, 14 miles of Tribal and 7 miles of private land.

Transmission line alternatives were developed as part of this EIS analysis. Additional Federal land jurisdictions crossed by Project alternatives include: Colorado—BLM Grand Junction Field Office; Utah—BLM Moab, Richfield, and St. George Field Offices and Fishlake, Ashley and Dixie National Forests; Nevada—National Park Service (NPS) and the Department of Energy (DOE). These alternatives cross State and private lands in addition to the Federal lands.

The DEIS includes draft amendments of USFS Land and Resource Management Plans (Forest Plans) and BLM land use plans (Management Framework Plans and Resource Management Plans) that would be needed for the Project under each of the alternatives. The BLM and USFS draft amendments are described in the Supplementary Information section of this NOA. Additionally, based on information learned through the EIS process, the USFS may determine that more plan amendments are required to fulfill the intent of standards and guidelines in the areas affected. Depending on the alternative selected in the Record of Decision (ROD), the NPS may consider applications for segments of the Project within Lake Mead National Recreation Area and across the Deer Lodge Road that provides access to Dinosaur National Monument.

By this notice, and the Notice of Intent to Prepare an EIS, published January 4, 2011 (see below), the BLM is providing notice to the public of potential amendments to land use plans and Forest Plans, as required by 43 Code of Federal Regulations (CFR) 1610.2(c) and 36 CFR 219.8. The impacts of these potential amendments are analyzed in the DEIS together with the impacts of the various Project alternatives. Your input is important and will be considered in the environmental analysis process. All comment submissions must include the commenter's name and street address. Comments including the names and addresses of the commenter will be available for public inspection at the locations listed below during normal business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays. While you may ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

**DATES:** The DEIS is now available for public review. The BLM and Western request that comments be structured so that they are substantive and contain sufficient detail to allow the agencies to address them in the Final EIS. To be considered in the Final EIS, written comments on the Draft EIS must be received within 90 days after Environmental Protection Agency's (EPA) publication in the **Federal Register** of a Notice of Availability of this Draft EIS. The BLM and Western will consider timely filed comments and respond to them in the Final EIS.

All public meetings or other opportunities for public involvement related to the TransWest Express Transmission Project will be announced to the public by the BLM at least 15 days in advance through public notices, media news releases, Web site announcements, or mailings.

**ADDRESSES:** Copies of the DEIS have been sent to affected Federal, State, and local governments, public libraries in the Project area, and to interested parties that previously requested a copy. The DEIS and supporting documents will be available electronically on the following BLM Web site: *http://www.blm.gov/wy/st/en/info/NEPA/hdd/transwest.html.* A list of the locations where copies of the DEIS is available for public inspection can be found in the **SUPPLEMENTARY INFORMATION** section below. A limited number of paper and cd copies of the document will be available as supplies last. To request a copy, contact Sharon Knowlton, Project Manager, BLM Wyoming State Office, P.O. Box 20678, Cheyenne, Wyoming 82003.

Written comments may be submitted by the following methods:

- *Email: TransWest_WYMail@blm.gov.*
- *Mail:* Bureau of Land Management, TransWest Express Project, P.O. Box 20678, Cheyenne, Wyoming 82003.
- *Courier or Hand Delivery:* Bureau of Land Management, TransWest Express Project, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

**FOR FURTHER INFORMATION CONTACT:** Sharon Knowlton, Project Manager, Bureau of Land Management, Wyoming State Office, P.O. Box 20678, Cheyenne, Wyoming 82003, or by telephone at (307) 775–6124, or by FAX at (307) 775–6203. Any persons wishing to be added to a mailing list of interested parties may write or call the Project Manager, at this address or phone number. Persons who use telecommunications devices for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Ms. Knowlton 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.

For information about Western's involvement, contact Steve Blazek, Western National Environmental Policy Act (NEPA) Document Manager: telephone 702–962–7265; email: *sblazek@wapa.gov;* address: Western Area Power Administration, P.O. Box 281213, Lakewood, Colorado 80228–8213.

For general information on the DOE's NEPA review procedures or on the status of a NEPA review, contact Carol M. Borgstrom, Director of NEPA policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone 202–586–4600 or toll free at 1–800–472–2756.

**SUPPLEMENTARY INFORMATION:** In November 2007, National Grid filed a ROW application with the BLM to construct and operate an EHV transmission line between Wyoming and delivery points in the Southwestern U.S. Subsequently, TransWest Express LLC (TransWest), a subsidiary of the Anschutz Corporation, acquired the Project from National Grid and filed an amended application to the BLM in September 2008. TransWest submitted amended applications to the BLM in 2008 and 2010 to reflect changes and refinements in the proposed Project.

In April 2010, BLM and Western entered into a Memorandum of Understanding (MOU) in which BLM and Western agreed to act as joint lead agencies for the EIS. The BLM's status as a joint lead agency is based on a potential Federal action to grant a utility ROW across BLM lands. Western's status as a joint lead agency is based on a potential Federal action to provide Federal funds for the Project.

In September 2011, Western and TransWest executed a Development Agreement in which Western and TransWest agreed to jointly fund the development phase of the Project, each responsible for 50 percent of the development costs, if Western decides to participate in the Project.

Cooperating agencies currently include Federal, State, Tribal and local agencies along all the alternative routes. The lead agencies recognize over 50 cooperating agencies supporting the Project EIS. Two regions of the NPS are now cooperators to the Project. On January 11, 2011, the BLM and Western published in the **Federal Register** (76 FR 379) their Notice of Intent to Prepare an EIS in compliance with NEPA and in accordance with the Federal Land Policy and Management Act of 1976, 43 CFR Subpart 1610, and BLM's ROW regulations at 43 CFR Part 2800.

To allow the public an opportunity to review the proposal and Project information, the BLM held public meetings from January through March 2011 in: Rawlins, Rock Springs, and Baggs, Wyoming; Craig, Rangely, and Grand Junction, Colorado; Castledale, Duchesne, Nephi, Delta, Richfield, Milford, Moab, Cedar City, St. George, Pine Valley, Central, and Enterprise, Utah; and Caliente, Overton, Henderson, and Las Vegas, Nevada. Issues and potential impacts to specific resources were identified during scoping and preparation of the DEIS.

The following issues were identified in the scoping process:

- Selection of corridor alternatives;
- Potential private and public land use conflicts;
- Impacts and mitigation to fish, wildlife, vegetation, special status species and habitat;
- Public health and safety;
- Impacts to areas with Special Management designations;
- Cumulative impacts;
- Socioeconomic impacts; and
- Noxious weed control and reclamation.

In response to scoping comments, TransWest made short segment adjustments in its Proposed Action in southern Wyoming and central Utah. Through the DEIS impact analysis process, and discussions with cooperating agencies, approximately 805 miles were removed from further consideration. Approximately 500 miles of new alternative transmission route segments were added in southern Wyoming and northwestern Colorado to address visual resource, wildlife, and historic trail concerns; in central Utah to address special management area concerns, wildlife concerns, effects on private lands, and visual resources; in southwestern Utah to address special management area concerns; and in southern Nevada to utilize an existing utility corridor. Some alternative corridors that were presented in scoping were removed from further analysis due to increased length of the line and because they had as much or greater environmental impact as alternatives already being considered.

In addition to the proposed action, the DEIS considers a No Action alternative. For this EIS, the No Action alternative means that the ROW application for the TransWest Project would be denied by the BLM and Western would not participate in the Project. The DEIS includes a discussion of two system design options. The first design option would be to construct and operate a DC transmission line from Wyoming to IPP in Millard County, Utah, and then construct an AC transmission line from IPP to the Marketplace Hub, south of Las Vegas, Nevada. The transmission line ROW requirements would be similar to the APA, except that an AC/DC converter station and ground electrode system would not be required at the southern terminus and a new AC converter station would be added. The second design option is a phased construction alternative. The first phase would consist of constructing the 600 kV DC transmission line from Wyoming to IPP, and then utilizing the existing transmission system from IPP to southern California. The second phase would consist of converting the AC transmission line to DC service between Wyoming and IPP, constructing the DC transmission line between IPP and the Marketplace Hub, constructing the northern and southern AC/DC converter stations, and installing the ground electrode stations. The AC substations would be decommissioned.

The BLM, in coordination with the USFS, other Federal, State, and local governments and agencies, developed the APA through a comparative evaluation of routing opportunities and constraints and the relative potential impacts among the various alternative segments. The alternative segments were subdivided into four geographic regions (Southern Wyoming and Northwestern Colorado; Northwestern Colorado, Eastern and Central Utah; Central and Southwestern Utah, Southern Nevada; Southern Nevada-Las Vegas metropolitan area).

The various alternative segments within regions were compared with each other in accordance with standard criteria. The primary criteria used to select the APA: (1) Maximize the use of designated utility corridors; (2) minimize requirements to amend resource plans; (3) avoid and minimize resource impacts regulated by law (for example, the Endangered Species Act); (4) avoid and minimize proximity to private residences and residential areas; (5) avoid and minimize resource impacts to reduce the magnitude and duration of adverse (residual) impacts; (6) minimize the use of private lands; and (7) minimize transmission system construction, operation and maintenance expense. The process for identifying the DEIS APA began at the local level, through draft document reviews by Federal and State resource specialists, and other cooperating agency staff. The BLM State Directors and the USFS Regional Forester contributed to the process. The APA represents an effort to balance land ownership, land management objectives, and resource effects among the large number of jurisdictions to be crossed by the Project. The APA is a recommendation derived from currently available information, and is not a decision. The BLM and Western are inviting DEIS reviewers to offer comments on the APA, as well as the other route and facility alternatives presented in the document.

The DEIS analyzes the potential environmental consequences of granting a ROW to TransWest to construct a transmission line from Sinclair, Wyoming, to its terminus at the Marketplace Hub south of Las Vegas, Nevada. The approximately 760-mile APA is discussed below, by region.

*Region I (Southern Wyoming, Northwestern Colorado).* The APA transmission line route would extend approximately 170 miles from the vicinity of Sinclair, Carbon County, Wyoming, to the vicinity of U.S. Highway 40 southwest of Maybell in western Moffat County, Colorado. The major environmental and social considerations for recommending this route include: limiting impacts to the Cherokee Trail in southern Wyoming, reducing visual impacts to motorists on Wyoming Highway 789, Colorado Highway 13, and backcountry recreation areas; avoiding agricultural and residential lands near Baggs and the Little Snake River Valley; avoiding or minimizing impacts to Dinosaur National Monument; and responding to local government concerns. Three additional route alternatives were evaluated in this region.

*Region II (Northwestern Colorado, Eastern Utah, Central Utah).* The APA transmission line route would extend approximately 270 miles from the vicinity of the eastern Utah border near Vernal to the vicinity of the IPP near Delta, Millard County, Utah. The major environmental and social considerations for recommending this route include: avoiding agricultural lands and residential areas in the vicinity of Vernal, Roosevelt, and Duchesne; avoiding or minimizing impacts to Inventoried Roadless Areas on National Forest Lands; Areas of Critical Environmental Concern on BLM lands; high density cultural resource areas; the Old Spanish Trail; Dinosaur National Monument, and sage-grouse habitat. Five additional route alternatives were evaluated in this region.

*Region III (Central Utah, Southwest Utah, Southern Nevada).* The APA transmission line route would extend approximately 285 miles from the vicinity of the IPP, Millard County, Utah, to the vicinity of Apex on Interstate 15, northeast of Las Vegas, Nevada. The major environmental and social considerations for recommending this route include: locating transmission facilities in existing utility corridors; avoiding or minimizing impacts to: military training and operations areas, Inventoried Roadless Areas (Dixie National Forest); designated historic sites (Mountain Meadows Massacre Site in Utah); the Old Spanish Trail; Areas of Critical Environmental Concern; and desert tortoise and sage-grouse habitat. Three additional route alternatives were evaluated in this region.

*Region IV (Southern Nevada—Apex to the Marketplace Hub.* The APA transmission line route would extend approximately 40 miles from Apex on Interstate 15 to the Marketplace Hub in the Eldorado Valley, southeast of Las Vegas. The major environmental and social considerations for recommending this route include: locating Project transmission line facilities within existing transmission line corridors in Las Vegas Valley densely populated areas; minimizing impacts to, or avoiding Lake Mead Recreation Area; residential areas in and near Boulder City. Two additional route alternatives were evaluated in this region.

The BLM, Western and cooperating agencies worked together to develop routes that would conform to existing Federal land use plans. However, this objective was not reached for a number of the alternative routes analyzed in the DEIS. Plan amendments that would be necessary to implement each of the evaluated alternatives were identified by affected agencies and analyzed in Chapter 4 of the DEIS. The specific land use plan amendments that are actually needed will depend upon which route is selected in the agencies' ROD if the BLM makes a decision to approve the ROW application. In the Final EIS, the BLM and Western will identify the APA, and BLM will identify the requisite proposed plan amendments necessary to implement that alternative. Each of the proposed BLM plan amendments would: (1) Expand an existing utility corridor; (2) create a new utility corridor while allowing for exceptions to other resource stipulations if avoidance measures or impact minimization are not feasible within the designated corridor; or (3) create a one-time exception through a ROW exclusion area. Depending on the route alternative, potential plan amendments include the following:

- Region I. One or two plan amendments would be required. The BLM Rawlins and Little Snake Field Office plans may be affected.
- Region II. One or up to four plan amendments would be required. The BLM White River, Vernal, Price, and Salt Lake Field Offices, and the Fishlake National Forest plans may be affected.
- Region III. None or one plan amendment would be required. The BLM Caliente Field Office plan may be affected.
- Region IV. None or one plan amendment would be required. The BLM Las Vegas Field Office plan may be affected.

The APA identified in the DEIS would involve five plan amendments across the four regions: the BLM Rawlins, Little Snake, Vernal, Salt Lake, and Las Vegas Field Offices; no amendments for Forest Plans are identified for the APA. Other BLM or USFS management plans could be amended depending upon the specifics of the route that is selected in the ROD if the BLM makes a decision to approve the ROW application. Proposed amendments to plans that are potentially affected by the various alternatives are identified and analyzed in the DEIS.

Copies of the DEIS are available for public inspection during normal business hours at the following locations:

- BLM, Wyoming State Office, Public Room, 5353 Yellowstone Road, Cheyenne, Wyoming 82009;
- BLM, Rawlins Field Office, 1300 North Third Street, Rawlins, Wyoming 82301;
- BLM, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901;
- BLM, Colorado State Office, Public Reading Room, 2850 Youngfield Street, Lakewood, Colorado 80215–7093;
- BLM, Little Snake Field Office, 455 Emerson Street, Craig, Colorado 81625;
- BLM, White River Field Office, 220 East Market Street, Meeker, Colorado 81641;
- BLM, Grand Junction Office, 2815 H Road, Grand Junction, Colorado 81506;
- BLM, Utah State Office, Public Reading Room, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101–1345;
- BLM, Cedar City Field Office, 176 East DL Sargent Drive, Cedar City, Utah 84721;
- BLM, Fillmore Field Office, 95 East 500 North, Fillmore, Utah 84631;
- BLM, Moab Field Office, 92 East Dogwood, Moab, Utah 84532;
- BLM, Price Field Office, 125 South 600 West, Price, Utah 84501;
- BLM, Richfield Field Office, 150 East 900 North, Richfield, Utah 84701;
- BLM, St. George Field Office, 345 East Riverside Drive, St. George, Utah 84790;
- BLM, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078;
- BLM, Nevada State Office, Public Reading Room, 1340 Financial Blvd., Reno Nevada 89502;
- BLM, Egan Field Office, 702 North Industrial Way, Ely, Nevada 89301;
- BLM, Caliente Field Office, U.S. Highway 93, Building #1, Caliente, Nevada 89008;

• BLM, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130; and

• USFS (Lead Forest Office) Dixie National Forest, 1789 North Wedgewood Lane, Cedar City, Utah 84721.

The BLM will utilize and coordinate the NEPA comment process to satisfy 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). Ongoing consultations with Native American Tribes will continue in accordance with policy, and Tribal concerns, including impacts on Indian trust assets, will be given due consideration. 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.

Dated: May 31, 2013.

**Mark A. Gabriel,**

*Administrator, Western Area Power Administration.*

Dated: June 3, 2013.

**Donald A. Simpson,**

*BLM Wyoming State Director.*

[FR Doc. 2013–16009 Filed 7–2–13; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCON06000–L16100000–DQ0000]**

### Notice of Change of Locations for Resource Advisory Council Meetings for the Dominguez-Escalante National Conservation Area Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Public Meeting Change of Locations.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, notice is hereby given that the U.S. Department of the Interior, Bureau of Land Management (BLM) Dominguez-Escalante National Conservation Area (NCA) Advisory Council (Council) meeting scheduled for July 17, 2013, has been changed from the Two Rivers Convention Center, 159 Main Street, Grand Junction, CO to the John McConnell Math & Science Center, 2660 Unaweep Avenue, Grand Junction, CO. In addition, the meeting on August 19 at the Mesa County Courthouse Annex, 544 Rood, Grand Junction, CO has been changed from Training Room A to the Multi-Purpose Room.

**DATES:** The meetings will be held on July 17, 2013 and August 19, 2013. The meetings begin at 3 p.m. and will normally adjourn at 6 p.m. Any adjustments to the meetings will be advertised on the Dominguez-Escalante NCA Resource Management Plan (RMP) Web site, *http://www.blm.gov/co/st/en/nca/denca/denca_rmp.html.*

**ADDRESSES:** The meeting on July 17 will be held at the John McConnell Math & Science Center, 2660 Unaweep Avenue, Grand Junction, CO. The meeting on August 19 will be held at the Mesa County Courthouse Annex, Multi-Purpose Room, 544 Rood, Grand Junction, CO 81501.

**FOR FURTHER INFORMATION CONTACT:** Collin Ewing, Advisory Council Designated Federal Official, 2815 H Road, Grand Junction, CO 81506. Phone: (970) 244–3049. Email: *cewing@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, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The 10-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the RMP process for the Dominguez-Escalante NCA and Dominguez Canyon Wilderness.

Topics of discussion during the meetings may include informational presentations from various resource specialists working on the RMP, as well as Council reports on the following topics: recreation, fire management, land-use planning process, invasive species management, travel management, wilderness, land exchange criteria, cultural resource management and other resource management topics of interest to the Council raised during the planning process.

These meetings are anticipated to occur monthly, and may occur as frequently as every two weeks during intensive phases of the planning process. Dates, times and agendas for additional meetings may be determined at future Council meetings, and will be published in the **Federal Register**, announced through local media and on the BLM's Web site for the Dominguez-Escalante planning effort, *www.blm.gov/co/st/en/nca/denca/denca_rmp.html.* These meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will have time allocated at the middle and end of each meeting to hear public comments. Depending on the number of persons wishing to comment and time available, the time for individual, oral comments may be limited at the discretion of the chair.

Dated: June 28, 2013.

**Leigh D. Espy,**

*BLM Colorado Deputy State Director of Resources and Fire.*

[FR Doc. 2013–16109 Filed 7–2–13; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVS00560.L58530000.ES0000.241A; N–90819; 13–08807; MO# 4500050340; TAS: 14X5232]**

### Notice of Realty Action: Classification for Lease and Subsequent Conveyance for Recreation and Public Purposes of Public Land for a Fire Station (N–90819) in Clark County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** In accordance with Section 7 of the Taylor Grazing Act and Executive Order Number 6910, the Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 2.5 acres of public land in the City of Las Vegas, Clark County, Nevada. The City of Las Vegas proposes to use the land for a fire station.

**DATES:** Interested parties may submit written comments regarding the proposed classification of the land for lease and subsequent conveyance of the land, and the environmental assessment, until August 19, 2013.

**ADDRESSES:** Send written comments to the BLM Las Vegas Field Manager, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, or email: *rrury@blm.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rebecca L. Rury, 702–515–5087, or *rrury@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 City of Las Vegas has filed an application to

develop the following described land as a fire station with related facilities in northwest Las Vegas near Kyle Canyon Road and Puli Drive:

**Mount Diablo Meridian**

T. 19 S., R. 59 E.,
Sec. 2, SE¼SE¼SE¼SW¼.

The area described contains 2.5 acres, more or less, in Clark County.

The fire station would consist of a three-bay fire engine garage, living quarters and kitchen facilities. Related facilities include a parking lot, landscaping, lighting, utilities and off-site improvements such as curb, gutter, sidewalk and street lighting. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–90819, which is located in the BLM Las Vegas Field Office at the address in the **ADDRESSES** section. The BLM's environmental assessment of this proposed action can be viewed here, as well, and on the web at *http://www.blm.gov/nv/st/en/fo/lvfo/blm_information/nepa.html.*

The land is not required for any Federal purpose. The lease and subsequent conveyance are consistent with the BLM Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. The City of Las Vegas, a qualified applicant under the R&PP Act, has not applied for more than the 640-acre limitation for public purpose uses in a year, and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b).

The lease and subsequent conveyance of the public land shall be subject to valid existing rights. Subject to limitations prescribed by law and regulations, prior to patent issuance, a holder of any right-of-way within the lease area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable.

The lease and subsequent conveyance, if issued, would be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following terms, conditions, and reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;

3. Valid existing rights;

4. Right-of-Way CC–018234 for Charleston Park Road from the eastern boundary of Dixie National Forest to U.S. 95, granted to Nevada Department of Transportation, its successors and assigns, pursuant to the Act of November 9, 1921, (42 STAT 0216);

5. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or occupations on the leased/patented lands.

Upon publication of this notice in the **Federal Register**, the land described above is segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and subsequent conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit written comments on the suitability of the land for a fire station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested parties may also submit written comments regarding the specific use proposed in the application and plan of development, and whether the BLM followed proper administrative procedures in reaching the decision to lease and convey under the R&PP Act.

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.

Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the decision will become effective on September 3, 2013. The lands will not be available for lease and subsequent conveyance until after the decision becomes effective.

**Authority:** 43 CFR 2741.5(h)

**Vanessa L. Hice,**

*Assistant Field Manager, Las Vegas Field Office.*

[FR Doc. 2013–16007 Filed 7–2–13; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVS00560.L58530000.ES0000.241A; N–90820; 13–08807; MO# 4500049881; TAS: 14X5232]**

### Notice of Realty Action: Classification for Lease and Subsequent Conveyance for Recreation and Public Purposes of Public Land for a Public Park (N–90820) in Clark County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** In accordance with Section 7 of the Taylor Grazing Act and Executive Order Number 6910, the Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 12.5 acres of public land in the City of Las Vegas, Clark County, Nevada. The City of Las Vegas proposes to use the land for a public park.

**DATES:** Interested parties may submit written comments regarding the proposed classification of the land for lease and/or subsequent conveyance of the land, and the environmental assessment, until August 19, 2013.

**ADDRESSES:** Send written comments to the BLM Las Vegas Field Manager, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, or email: *rrury@blm.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rebecca L. Rury, 702–515–5087, or rrury@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 City of Las Vegas has filed an application to develop the following described land as a public park with related facilities in northwest Las Vegas near Kyle Canyon Road and Puli Drive:

**Mount Diablo Meridian**

T. 19 S., R. 59 E.,
Sec. 2, NE¼SE¼SW¼,
NE¼SE¼SE¼SW¼.

The area described contains 12.5 acres, more or less, in Clark County.

The park would consist of group and single picnic shelters, dog park, child splash pad play area, shaded child play area, and meandering walking paths and

trails. Related facilities include a parking area and off-site improvements such as curb, gutter, sidewalk and street lighting. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–90820, which is located in the BLM Las Vegas Field Office at the above address. The BLM's environmental assessment of this proposed action can be viewed here, as well, and on the web at *http://www.blm.gov/nv/st/en/fo/lvfo/blm_information/nepa.html.*

The land is not required for any Federal purpose. The lease and subsequent conveyance are consistent with the BLM Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. The City of Las Vegas, a qualified applicant under the R&PP Act, has not applied for more than the 640-acre limitation for public purpose uses in a year, and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b).

The lease and subsequent conveyance of the public land shall be subject to valid existing rights. Subject to limitations prescribed by law and regulations, prior to patent issuance, a holder of any right-of-way within the lease area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable.

The lease and subsequent conveyance, if issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following terms, conditions, and reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;
3. Valid existing rights;
4. Right-of-Way CC–018234 for Charleston Park Road from the eastern boundary of Dixie National Forest to U.S. 95, granted to Nevada Department of Transportation, its successors and assigns, pursuant to the Act of November 9, 1921, (42 STAT 0216);
5. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or occupations on the leased/patented lands.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and/or subsequent conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit written comments on the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested parties may also submit written comments regarding the specific use proposed in the application and plan of development, and whether the BLM followed proper administrative procedures in reaching the decision to lease and/or convey under the R&PP Act.

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.

Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the decision will become effective on September 3, 2013. The lands will not be available for lease and subsequent conveyance until after the decision becomes effective.

**Authority:** 43 CFR 2741.5(h).

**Vanessa L. Hice,**

*Assistant Field Manager, Las Vegas Field Office.*

[FR Doc. 2013–16004 Filed 7–2–13; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVS00560.L58530000.ES0000,241A; N–83501; 13–08807; MO# 4500050498; TAS: 14X5232]**

## Notice of Realty Action: Classification for Lease and Subsequent Conveyance for Recreation and Public Purposes of Public Lands (N–83501) for a High School in Sandy Valley, Clark County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 30 acres of public land in Sandy Valley, Clark County, Nevada. The Clark County School District proposes to use the land for a high school in the Sandy Valley area.

**DATES:** Interested parties may submit written comments regarding the proposed classification of the land, or lease and/or subsequent conveyance of the land, until August 19, 2013.

**ADDRESSES:** Send written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

**FOR FURTHER INFORMATION CONTACT:** Jill Pickren, 702–515–5194, or *jpickren@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 parcel of public land is located at E. Placer Drive and N. Hopi Street and is legally described as:

**Mount Diablo Meridian**

T. 24 S., R. 57 E.,
Sec. 32, S½NW¼SW¼ and SW¼NE¼SW¼.

The area described contains 30 acres, more or less, in Clark County.

In accordance with the R&PP Act, the Clark County School District has filed an application to develop the above described land for a high school in the Sandy Valley area. The proposed high school will be located next to an existing elementary school and middle

school. Related facilities include classrooms, gymnasium, football field, baseball field, tennis courts, parking lot, and related appurtenances. At present, high school students are bused approximately 40 miles to Liberty High School in Henderson, Nevada. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–83501, which is located in the BLM Las Vegas Field Office at the above address. Environmental documents associated with this proposed action are available for review at the BLM Las Vegas Field Office, and on the web at: *www.blm.gov/nv/st/en/fo/lvfo/blm_information/nepa.html.*

The Clark County School District is a political subdivision of the State of Nevada and is a qualified applicant under the R&PP Act.

The lease and subsequent conveyance of the public land shall be subject to valid existing rights. Subject to limitations prescribed by law and regulations, prior to patent issuance, a holder of any right-of-way within the lease area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable.

The land is not required for any Federal purpose. The lease and subsequent conveyance is consistent with the BLM Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. The Clark County School District has not applied for more than the 640-acre limitation for public purpose uses in a year and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b).

The lease and subsequent conveyance, if and when issued, will be subject to valid entry rights and the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following terms, conditions, and reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Reservation in Patents Right-of-Way for Ditches or Canals Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;

3. Right-of-way N–10714 for communication line purposes granted to Nevada Bell, its successors or assigns, pursuant to the Act of March 4, 1911, (43 U.S.C. 961);

5. Right-of-way N–06278 for transmission line purposes granted to Valley Electric, its successors or assigns, pursuant to the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1761); and

6. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or operations on the leased/patented lands. It will also contain any other terms and conditions deemed necessary and appropriate by the Authorized Officer.

Upon publication of this notice in the **Federal Register,** the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and/or subsequent conveyance under the R&PP Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

Interested parties may submit written comments on the suitability of the land for a high school in the Sandy Valley area. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs. Interested parties may also submit written comments regarding the specific use proposed in the application and plan of development, and whether the BLM followed proper administrative procedures in reaching the decision to lease and/or convey under the R&PP Act.

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. Only written comments submitted to the Field Manager, BLM Las Vegas Field Office, will be considered properly filed. Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the decision will become effective on September 3, 2013. The lands will not be available for lease and subsequent conveyance until after the decision becomes effective.

**Authority:** 43 CFR 2741.5.

**Vanessa L. Hice,**

*Assistant Field Manager, Division of Lands.*

[FR Doc. 2013–16002 Filed 7–2–13; 8:45 am]

**BILLING CODE 4310–HC–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–498 and 731–TA–1213–1214 (Preliminary)]**

## Certain Steel Threaded Rod From India and Thailand; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–498 and 731–TA–1213–1214 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India and Thailand of certain steel threaded rod, provided for primarily in subheading 7318.15.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of India.[1] Unless the Department of Commerce (Commerce) extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by August 12, 2013. The Commission's views are due to be transmitted to Commerce within five business days thereafter, or by August 19, 2013.

For further information concerning the conduct of these investigations 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 and B (19 CFR Part 207).

**DATES:** *Effective Date:* June 27, 2013.

[1] Certain steel threaded rod may also be imported under statistical reporting number 7318.15.2095.

**FOR FURTHER INFORMATION CONTACT:** Nathanael Comly (202–205–3174), 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 investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** *Background.*—These investigations are being instituted in response to a petition filed on June 27, 2013, by All America Threaded Products Inc., Denver, CO, Bay Standard Manufacturing Inc., Brentwood, CA, and Vulcan Threaded Products Inc., Pelham, AL.

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 18, 2013, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be filed with *William.Bishop@usitc.gov* and *Sharon.Bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before July 16, 2013. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 23, 2013, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, 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*.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 28, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–15968 Filed 7–2–13; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Docket No. 2964]**

### Certain Wireless Devices, Including Mobile Phones and Tablets; Notice Of Receipt of Complaint; Solicitation of Comments; Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Wireless Devices, Including Mobile Phones and Tablets,* DN 2964; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS [1], and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC [2]. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS [3]. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Pragmatus Mobile, LLC on June 27, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless devices, including mobile phones and tablets. The complaint names as respondents Pantech Co., Ltd. of South Korea and Pantech Wireless, Inc. of GA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing products during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2964'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures* [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS [5].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: June 27, 2013.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–15898 Filed 7–2–13; 8:45 am]

**BILLING CODE 7020–02–P**

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1114 (Review)]**

## Steel Nails 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 steel nails from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is 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:**

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 13–5–291, 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.

*Background.* On August 1, 2008, the Department of Commerce issued an antidumping duty order on imports of steel nails from China (73 FR 44961). The Commission is conducting a 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:

(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, the Commission defined a single *Domestic Like Product* consisting of certain steel nails, 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 determination, the Commission defined the *Domestic Industry* as producers of the domestic like product, and it found appropriate circumstances to exclude three firms from the domestic industry as related parties (Stenco, Specialty Fastening, and Stanley).

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is August 1, 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 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 ''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 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 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 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 thousands of 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* 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:** 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.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2013–16103 Filed 7–2–13; 8:45 am]

BILLING CODE P

## DEPARTMENT OF JUSTICE

**[OMB Number 1103–NEW]**

## Agency Information Collection Activities; Proposed New Collection; Comments Requested: Police-Led Diversion Programs: National Prevalence and Scope

**ACTION:** 60-Day Notice.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The purpose of this notice is to allow for 60 days for public comment until September 3, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Danielle Ouellette, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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:* Proposed new collection; comments requested

(2) *Title of the Form/Collection:* Police-Led Diversion Programs: National Prevalence and Scope

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Law enforcement agencies through a nationally representative sample may be asked to provide information to determine the national prevalence of police-led diversion programs and provide a portrait of their goals, target populations, and policies. Through a cooperative agreement with the COPS Office, the Center for Court Innovation (CCI, Inc.) will create a representative sample of law enforcement agencies based on data available through the FBI Uniform Crime Reporting. CCI will subcontract with a professional survey research firm to administer the survey.

(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 3,600 respondents annually will complete the form in approximately 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,600 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

June 27, 2013.

**Jerri Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2013–15904 Filed 7–2–13; 8:45 am]

BILLING CODE 4410–AT–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–372]**

## Exempt Chemical Preparations Under the Controlled Substances Act

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Order with opportunity for comment.

**SUMMARY:** The applications for exempt chemical preparations received by DEA between July 1, 2012, and March 31, 2013, as listed below, were accepted for filing and have been approved or denied as indicated.

**DATES:** Electronic comments must be submitted and written comments must be postmarked on or before September 3, 2013. The electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** To ensure proper handling of comments, please reference ''Docket No. DEA–372'' on all electronic and written correspondence. DEA encourages that all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at *http://www.regulations.gov* for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *www.regulations.gov* will be posted for public review and are part of the official docket record. Written comments submitted via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, Virginia 22152.

**FOR FURTHER INFORMATION CONTACT:** John W. Partridge, Executive Assistant, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 307–7165.

**SUPPLEMENTARY INFORMATION:**

## Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

## Legal Authority

DEA implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act and the Controlled Substances Import and Export Act (codified at Title 21, Chapter 13 of the U.S.C.), as amended (CSA). DEA drafts and publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for a sufficient supply of controlled substances and listed chemicals for legitimate medical, scientific, research, and industrial purposes. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Section 201 of the CSA (21 U.S.C. 811) authorizes the Attorney General, by regulation, to exempt from certain provisions of the CSA certain compounds, mixtures, or preparations containing a controlled substance, if he finds that such compounds, mixtures, or preparations meet the requirements detailed in 21 U.S.C. 811(g)(3)(B).[1] DEA regulations at 21 CFR 1308.23 and 1308.24 further detail the criteria by which the DEA Deputy Assistant Administrator may exempt a chemical preparation or mixture from the application of certain provisions of the CSA. The Deputy Assistant Administrator may, pursuant to 21 CFR 1308.23(f), modify or revoke the criteria by which exemptions are granted and modify the scope of exemptions at any time.

## Exempt Chemical Preparation Applications Submitted Between July 1, 2012, and March 31, 2013

The Deputy Assistant Administrator received applications between July 1, 2012, and March 31, 2013, requesting exempt chemical preparation status pursuant to 21 CFR 1308.23. Pursuant to the criteria stated in 21 U.S.C. 811(g)(3)(B) and in 21 CFR 1308.23, the Deputy Assistant Administrator has found that each of the compounds, mixtures, and preparations described in Chart I below is intended for laboratory, industrial, educational, or special research purposes and not for general administration to a human being or other animal and either: (1) Contains no narcotic controlled substance and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse; or (2) contains either a narcotic or non-narcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration that the preparation or mixture does not present any potential for abuse; if the preparation or mixture contains a narcotic controlled substance, it must be formulated in such a manner that it incorporates methods of denaturing or other means so that the preparation or mixture is not liable to be abused or have ill effects if abused, and so that the narcotic substance cannot in practice be removed.

Accordingly, pursuant to 21 U.S.C. 811(g)(3)(B), 21 CFR 1308.23, and 21 CFR 1308.24, the Deputy Assistant Administrator has determined that each of the chemical preparations or mixtures generally described in Chart I below and specifically described in the application materials received by DEA, are exempt, to the extent described in 21 CFR 1308.24, from application of sections 302, 303, 305, 306, 307, 308, 309, 1002, 1003, and 1004 (21 U.S.C. 822–823, 825–829, and 952–954) of the CSA, and 21 CFR 1301.74, as of the date listed below that was provided in the approval letters to the individual requesters.

CHART I

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| AccuStandard, Inc | APP–9–086, a,a-Dimethylphenethylamine | Amber ampule: 1 mL | 1/28/2013 |
| AccuStandard, Inc | APP–9–086–20X, a,a-Dimethylphenethylamine | Amber ampule: 1 mL | 1/28/2013 |
| AccuStandard, Inc | AS–E1179, Chloral hydrate | Amber ampule: 1 mL | 1/28/2013 |
| AccuStandard, Inc | CLP–HC–X1, Composite Mix #3A | Amber ampule: 1 mL | 1/28/2013 |
| AccuStandard, Inc | M–551.1B, Disinfectant by-products | Amber ampule: 1 mL | 1/28/2013 |

[1] This authority has been delegated from the Attorney General to the Administrator of the DEA by 28 CFR 0.100 and subsequently redelegated to the Deputy Assistant Administrator pursuant to the Appendix to Subpart R of 28 CFR 0.104.

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| AccuStandard, Inc | M–551B, Disinfectant by-products | Amber ampule: 1 mL | 1/28/2013 |
| AccuStandard, Inc | M–551B–2, Chloral hydrate | Amber ampule: 1 mL | 1/28/2013 |
| AccuStandard, Inc | M–8015B/5031–21, Paraldehyde | Amber ampule: 1 mL | 1/28/2013 |
| AccuStandard, Inc | M–8206B–05, Additional VOC's by Method 8206B | Amber ampule: 1 mL | 1/28/2013 |
| AccuStandard, Inc | M–8270–02, Semi-Volatile by Capillary Column GC/MS Mix 2 | Amber ampule: 1 mL | 1/28/2013 |
| AccuStandard, Inc | M–8270–04–ASL, Method 8270B—Base/Neutrals Mix | Amber ampule: 1 mL | 1/28/2013 |
| AccuStandard, Inc | M–8270–23–R1, Method 8270 Semi-Volatile Additions | Amber ampule: 1 mL | 1/28/2013 |
| AccuStandard, Inc | M–E–1179–M, Chloral hydrate | Amber ampule: 1 mL | 1/28/2013 |
| Agilent Technologies | Veterinary Drugs Checkout Mix | Amber ampule: 1 mL | 8/3/2012 |
| Agilent Technologies | Veterinary Drugs Comprehensive Mix—Submix 6 | Amber ampule: 1 mL | 8/3/2012 |
| Agilent Technologies | Forensic Toxicology Comprehensive Mix—Submix 3 | Amber ampule: 1 mL | 8/3/2012 |
| Agilent Technologies | Forensic Toxicology Comprehensive Mix—Submix 5 | Amber ampule: 1 mL | 8/3/2012 |
| Agilent Technologies | Forensic Toxicology Comprehensive Mix—Submix 2 | Amber ampule: 1 mL | 8/3/2012 |
| Agilent Technologies | Forensic Toxicology Checkout Mix | Amber ampule: 1 mL | 8/3/2012 |
| Agilent Technologies | Forensic Toxicology Comprehensive Mix—Submix 1 | Amber ampule: 1 mL | 12/6/2012 |
| Alltech Associates, Inc | 2C–T–2 Quik Check, 1.0 mg/mL | Glass ampule: 1 mL | 9/26/2012 |
| Alltech Associates, Inc | 5-MeO–DMT Quick Check, 1.0 mg/mL | Glass ampule: 1 mL | 9/26/2012 |
| Alltech Associates, Inc | Carisoprodol Quik Check, 1.0 mg/mL | Glass ampule: 1 mL | 9/26/2012 |
| American Proficiency Institute | American Proficiency Institute SHBG/Testosterone | Amber bottle: 7 mL | 12/5/2012 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Oral Fluid, OF23 | Glass vials: 1 ml–200 mL | 8/14/2012 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, SD17 | Glass vials: 1 ml–200 mL | 8/14/2012 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC176 | Glass vials: 1 ml–200 mL | 9/27/2012 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC179 | Glass vials: 1 ml–200 mL | 10/23/2012 |
| Biochemical Diagnostics, Inc | Salivabuse Custom Liquid Control Oral Fluid, OF25 | Glass vials: 1 ml–200 mL | 10/23/2012 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC177 | Glass vials: 1 ml–200 mL | 11/5/2012 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC178 | Glass vials: 1 ml–200 mL | 1/24/2013 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Oral Fluid, OF24 | Glass vials: 1 ml–200 mL | 1/24/2013 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC181 | Glass vials: 1 ml–200 mL | 1/29/2013 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC183 | Glass vials: 1 ml–200 mL | 3/12/2013 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC184 | Glass vials: 1 ml–200 mL | 3/12/2013 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC180 | Glass vials: 1 ml–200 mL | 3/14/2013 |
| Bio-Rad Laboratories | Liquichek Immunoassay Plus Control Trilevel MiniPak | Box: 3 vials, 2.5 mL each | 11/14/2012 |
| Bio-Rad Laboratories | Liquichek Immunoassay Plus Control Level 1,2 and 3, Trilevel. | Box: 12 vials, 5 mL each | 11/21/2012 |
| Bio-Rad Laboratories | Liquid Assayed Multiqual Premium, Levels 1–3 | Box: 6 vials, 5 mL each | 11/21/2012 |
| Bio-Rad Laboratories | Liquid Assayed Multiqual Premium, Trilevel Minipak | Box: 3 vials, 5 mL each | 11/21/2012 |
| Bio-Rad Laboratories | Lyphocheck Urine Toxicology Control MiniPak, Cat. No. 470X. | Glass vial: 25 mL | 1/11/2013 |
| Bio-Rad Laboratories | Liquichek Immunoassay Plus Control Level 1 | Glass vial: 2.5 mL, Box 12 vials. | 2/20/2013 |
| Bio-Rad Laboratories | Liquichek Immunoassay Plus Control Level 2 | Glass vial: 2.5 mL, Box 12 vials. | 2/20/2013 |
| Bio-Rad Laboratories | Liquichek Immunoassay Plus Control Level 3 | Glass vial: 2.5 mL, Box 12 vials. | 2/20/2013 |
| Cerilliant Corporation | Benzodiazepine Mix (1 mg/mL) | Glass Ampule: 1 mL | 7/2/2012 |
| Cerilliant Corporation | Class C Mix Urinalysis Internal Standard Fortified Morphine | Glass Ampule: 1 mL | 7/9/2012 |
| Cerilliant Corporation | Spice Cannabinoid Mix 2 (0.1 mg/mL) | Amber ampule: 1 mL | 9/26/2012 |
| Cerilliant Corporation | Spice Cannabinoid Mix 3 (0.1 mg/mL) | Amber ampule: 1 mL | 9/26/2012 |
| Cerilliant Corporation | Retigabine (1 mg/mL) | Glass Ampule: 1 mL | 11/7/2012 |
| Cerilliant Corporation | ±-Norpseudoephedrine-D3 HCl (0.1 mg/mL) | Glass Ampule: 1 mL | 1/7/2013 |
| Cerilliant Corporation | Amobarbital-D5 (0.1 mg/mL) | Glass Ampule: 1 mL | 1/7/2013 |
| Cerilliant Corporation | 2,5-Dimethoxy-4-(n)-propylthiophenethylamine HCl (2C–T–7 HCl) (1 mg/mL). | Glass Ampule: 1 mL | 1/7/2013 |
| Cerilliant Corporation | Class B Mix Urinalysis Internal Standard-8 (0.002–0.2 mg/mL), Pregabalin-D6 (1.0 mg/mL), Codeine-6-beta-glucoronide (1.0 mg/mL), Desomorphine (1.0 mg/mL), Levorphanol-D3 (0.1 mg/mL). | Glass ampule: 1 ml | 1/22/2013 |
| Cerilliant Corporation | Zaleplon-D4 (0.1 mg/mL) | Glass Ampule: 1 mL | 1/31/2013 |
| Cerilliant Corporation | Retigabine-D4 (0.1 mg/mL) | Glass ampule: 1ml | 3/22/2013 |
| Cerilliant Corporation | Tilidine-D6 HCl (0.1 mg/mL) | Glass ampule: 1ml | 3/22/2013 |
| Cliniqa Corporation | TDM Control, Levels 1–3 | Dropper bottle: 5 mL | 12/4/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Controls, THC (0.5–50 ng/mL) | Glass vial: 5 ml–4 L | 10/22/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Controls, Methamphetamine (2–200 ng/mL) | Glass vial: 5 ml–4 L | 10/22/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Controls, Amphetamine, Benzoylecgonine, Morphine, Phencyclidine (2–200 ng/mL). | Glass vial: 5 ml–4 L | 10/22/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Controls, Multidrug (THC, Benzoylecgonine, Amphetamine, Methamphetamine, Morphine, Codeine, 6-Acetylmorphine, & PCP) at 0.5–50 ng/mL. | Glass vial: 5 ml–4 L | 10/22/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Calibrators, THC (0.5–50 ng/mL) | Glass vial: 5 ml–4 L | 10/22/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Calibrators, Methamphetamine (2–200 ng/mL) | Glass vial: 5 ml–4 L | 10/22/2012 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| ElSohly Laboratories, Inc | ELI Oral Fluid Calibrators, Amphetamine, Benzoylecgonine, Morphine, Phencyclidine (2–200 ng/mL). | Glass vial: 5 ml–4 L | 10/22/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Calibrators, Multidrug (THC, Benzoylecgonine, Amphetamine, Methamphetamine, Morphine, Codeine, 6-Acetylmorphine, & PCP) at 0.5–200 ng/mL. | Glass vial: 5 ml–4 L | 10/22/2012 |
| Environmental Resource Associates (ERA). | USGS–BQS LS 4434 Mix 1 | Glass Ampule: 2 mL | 8/9/2012 |
| Environmental Resource Associates (ERA). | USGS–BQS LS 4434 Mix 2 | Glass Ampule: 2 mL | 8/9/2012 |
| Immunalysis Corporation | Tapentadol Calibrator Level 1 (100 ng/mL) | Glass vial: 10 mL | 12/11/2012 |
| Immunalysis Corporation | Tapentadol Calibrator Level 2 (200 ng/mL) | Glass vial: 10 mL | 12/11/2012 |
| Immunalysis Corporation | Tapentadol Calibrator Level 3 (500 ng/mL) | Glass vial: 10 mL | 12/11/2012 |
| Immunalysis Corporation | Tapentadol Calibrator Level 4 (1,000 ng/mL) | Glass vial: 10 mL | 12/11/2012 |
| Immunalysis Corporation | Tapentadol Low Control (150 ng/mL) | Glass vial: 10 mL | 12/11/2012 |
| Immunalysis Corporation | Tapentadol High Control (250 ng/mL) | Glass vial: 10 mL | 12/11/2012 |
| LGC Limited | (S)-(+)-Amphetamine (Dextroamphetamine) 1.0 mg/mL in Methanol. | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-Amphetamine 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-Amphetamine 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-Amphetamine-D11 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-Amphetamine-D11 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-Amphetamine-D5 (D-label on ring) 0.1 mg/mL in Methanol. | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Methamphetamine ((S)-(+)-Methamphetamine) 1.0 mg/mL in Methanol. | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-Methamphetamine 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-Methamphetamine 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-Methamphetamine-D5 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-Methamphetamine-D5 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Methcathinone Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Methylphenidate Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Amobarbital 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Pentobarbital 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Pentobarbital-D5 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Pentobarbital-D5 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Secobarbital 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-MDA–D5 (rac-3,4-Methylenedioxyamphetamine-D5) 0.1 mg/mL Methanol. | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-MDA–D5 (rac-3,4-Methylenedioxyamphetamine-D5) 1.0 mg/mL Methanol. | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-MBDB HCl (rac-N-Methyl-1-(3,4-Methylenedioxyphenyl)-2-butanamine Hydrochloride) 1.0 mg/mL Methanol (as free base). | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-MBDB–D5 (rac-N-Methyl-1-(3,4-Methylenedioxyphenyl)-2-butanamine-D5) 0.1 mg/mL Methanol. | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-MDEA–D5 (rac-3,4-Methylenedioxy-N-ethylamphetamine-D5) 0.1 mg/mL Methanol. | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-MDEA–D5 (rac-3,4-Methylenedioxy-N-ethylamphetamine-D5) 1.0 mg/mL Methanol. | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-MDEA–D6 (rac-3,4-Methylenedioxy-N-ethylamphetamine-D6) 0.1 mg/mL Methanol. | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-MDMA–D5 (rac-3,4-Methylenedioxymethamphetamine-D5) 0.1 mg/mL Methanol. | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-MDMA–D5 (rac-3,4-Methylenedioxymethamphetamine-D5) 1.0 mg/mL Methanol. | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Phencyclidine (PCP) 1.0 mg/mL Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Phencyclidine-D5 (PCP-D5) 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Phencyclidine-D5 (PCP-D5) 1.0 mg/mL Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Codeine 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Codeine 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Codeine-D3 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Codeine-D3 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Codeine-D6 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Codeine-D6 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Isocodeine 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Norcodeine 0.01 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Norcodeine 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Codeine N-Oxide 0.01 mg/mL Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Oxycodone-D3 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| LGC Limited | Oxycodone-D6 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Oxycodone-D6 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Hydromorphone 1.0 mg/mL Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Norhydromorphone Hydrochloride 1.0 mg/mL Methanol (as free base). | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Pethidine (Meperidine) 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Pethidine-D4 (Meperidine-D4) 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Pethidine-D4 (Meperidine-D4) 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Morphine 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Morphine 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Morphine 3-beta-D-Glucuronide 0.1 mg/mL in Methanol/Water (1/1). | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Morphine 3-beta-D-Glucuronide 1.0 mg/mL in Methanol with 0.05 percent Sodium Hydroxide (w/v). | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Morphine 6-beta-D-Glucuronide 0.1 mg/mL in Methanol/Water (1/1). | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Morphine 6-beta-D-Glucuronide 1.0 mg/mL Water/Methanol (80/20). | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Morphine-D3 0.1 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Morphine-D3 1.0 mg/mL in Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Morphine N-Oxide 0.01 mg/mL Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | Normorphine 1.0 mg/mL Methanol | Glass vial: 1 mL | 9/24/2012 |
| LGC Limited | rac-Amphetamine-D10 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Amphetamine-D5 (D-label on ring) 0.1 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Amphetamine-D5 (D-label on side chain) 0.1 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Amphetamine-D5 (D-label on side chain) 1.0 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Amphetamine-D6 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Amphetamine-D6 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Amphetamine-D8 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Amphetamine-D8 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methamphetamine-D11 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methamphetamine-D11 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methamphetamine-D14 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methamphetamine-D14 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methamphetamine-D8 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methamphetamine-D8 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methamphetamine-D9 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methamphetamine-D9 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | (+)-Norpseudoephedrine Hydrochloride (Cathine Hydrochloride) 0.1 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | (R)-(+)-Cathinone Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | (S)-(-)-Cathinone Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | (S)-(-)-Methcathinone Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Phentermine 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Fenfluramine Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Methylphenidate-D9 Hydrochloride 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Pipradrol Hydrochloride 0.1 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Pipradrol Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | GHB Sodium Salt (Sodium Gammahydroxybutyrate) 1.0 mg/mL in Methanol (as free acid). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | GHB–D6 Sodium Salt (Sodium Gammahydroxybutyrate-D6) 0.1 mg/mL in Methanol (as free acid). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | GHB–D6 Sodium Salt (Sodium Gammahydroxybutyrate-D6) 1.0 mg/mL in Methanol (as free acid). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Hexobarbital 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Methohexital 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Methohexital-D5 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Phenobarbital 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Phenobarbital-D5 (D-label on ring) 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Phenobarbital-D5 (D-label on ring) 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Phenobarbital-D5 (D-label on side chain) 0.1 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| LGC Limited | Phenobarbital-D5 (D-label on side chain) 1.0 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Methaqualone 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Methaqualone-D7 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Clonazepam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Clonazepam-D4 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Chlordiazepoxide 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Chlordiazepoxide-D5 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Bromazepam 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Bromazepam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Clobazam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Delorazepam 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Estazolam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Estazolam-D5 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Flunitrazepam 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Flunitrazepam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Flunitrazepam-D7 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Prazepam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Prazepam-D5 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Diazepam 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Diazepam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Diazepam-D5 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Diazepam-D5 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Flurazepam 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Flurazepam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Lormetazepam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Zaleplon 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Pregabalin 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Pregabalin-D6 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Zolpidem Tartrate 1.0 mg/mL in Methanol (as free base) | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Zolpidem-D6 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Zopiclone 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Zopiclone Oxide 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Zopiclone-D4 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Meprobamate 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Nitrazepam 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Nitrazepam 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Nitrazepam-D5 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Oxazepam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Oxazepam-D5 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Oxazepam-D5 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Nordazepam (Nordiazepam) 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Nordazepam (Nordiazepam) 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Nordazepam-D5 (Nordiazepam-D5) 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Nordazepam-D5 (Nordiazepam-D5) 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Alprazolam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Alprazolam-D5 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Alprazolam-D5 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Methyltestosterone (17alpha-Methyltestosterone) 1.0 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Midazolam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Midazolam-D4 Maleate 0.1 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Lorazepam 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Lorazepam 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Lorazepam Acetate ((3RS)-7-Chloro-5-(2-chlorophenyl)-2-oxo-2,3-dihydro-1H-1,4-benzodiazepin-3-yl Acetate) 0.1 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Lorazepam-D4 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Lorazepam-D4 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Tetrazepam 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Triazolam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Triazolam-D4 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Temazepam 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Temazepam 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Temazepam-D5 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Temazepam-D5 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Androstanolone (5alpha-Dihydrotestosterone, Stanolone) 1.0 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Androstenedione (Androst-4-ene-3, 17-dione) 1.0 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| LGC Limited | Boldenone 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Fluoxymesterone 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Mesterolone 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Methandienone 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Nandrolone 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Norandrostenedione (19-Norandrost-4-ene-3,17-dione) 1.0 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Norethandrolone 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Stanozolol 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Stanozolol-D3 0.1 mg/mL in 1,2-Dimethoxyethane | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Testosterone 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Testosterone Benzoate 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Testosterone Isocaproate 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Testosterone Propionate 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Trenbolone 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | RCS–4 (DD–001, (4-Methoxyphenyl)(1-pentylindol-3-yl)methanone) 1.0 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | JWH–081 ((4-Methoxynaphthalen-1-yl)(1-pentylindol-3-yl)methanone) 1.0 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | JWH–122 ((4-Methylnaphthalen-1-yl)(1-pentylindol-3-yl)methanone) 1.0 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | JWH–203 (2-(2-Chlorophenyl)-1-(1-pentylindol-3-yl)ethanone) 1.0 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Ketamine Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Ketamine-D4 Hydrochloride 0.1 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Iso-LSD (Lysergic Acid Diethylamide) 0.1 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | LAMPA (Lysergic Acid N-Methyl-N-propylamide) 0.025 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | LSD (Lysergic Acid Diethylamide) 0.025 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | LSD–D3 (Lysergic Acid Diethylamide-D3) 0.025 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | PMA HCl (p-Methoxyamphetamine) 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-MDA (rac-3,4-Methylenedioxyamphetamine) 1.0 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-MDEA (rac-3,4-Methylenedioxy-N-ethylamphetamine) 1.0 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | 1-Methylamino-1-(3,4-methylenedioxyphenyl)propane Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-BDB HCl (rac-3,4-Methylenedioxyphenyl-2-butanamine Hydrochloride) 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-MDMA (rac-3,4-Methylenedioxymethamphetamine) 1.0 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Bufotenine 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Methylone Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Methylone-D3 Hydrochloride 0.1 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | AM–694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole) 1.0 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Cocaine 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Cocaine-D3 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Cocaine-D3 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Norcocaine Hydrochloride 1.0 mg/mL in Acetonitrile (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Norcocaine-D3 Hydrochloride 0.1 mg/mL in Acetonitrile (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | O-Methylcodeine 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Buprenorphine 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Buprenorphine 3-beta-D-Glucuronide 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Buprenorphine-D4 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Dihydrocodeine Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Dihydrocodeine-D6 Hydrochloride 0.1 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Noroxycodone Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| LGC Limited | Noroxycodone-D3 Hydrochloride 0.1 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Oxycodone 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Oxycodone-D3 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Dihydromorphine 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Hydromorphone-D3 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Anhydroecgonine Hydrochloride 1.0 mg/mL in Acetonitrile (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Anhydroecgonine Methyl Ester 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Benzoylecgonine 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Benzoylecgonine-D3 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Benzoylecgonine-D3 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Benzoylecgonine-D8 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Benzoylecgonine-D8 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Cocaethylene (Benzoylethylecgonine) 1.0 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Cocaethylene-D3 (Benzoylethylecgonine-D3) 0.1 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Cocaethylene-D8 (Benzoylethylecgonine-D8) 0.1 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Ecgonine 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Ecgonine Ethyl Ester 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Ecgonine Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Ecgonine Methyl Ester 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Ecgonine Methyl Ester 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Ecgonine-D3 Hydrochloride 0.1 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Ecgonine-D3 Methyl Ester 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Ethylmorphine 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Hydrocodone 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Hydrocodone-D3 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Hydrocodone-D6 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Norhydrocodone Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Heroin (Diacetylmorphine) 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Heroin-D9 (Diacetylmorphine-D9) 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Heroin-D9 (Diacetylmorphine-D9) 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methadone 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methadone 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methadone-D3 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methadone-D3 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methadone-D9 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Methadone-D9 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Dextropropoxyphene 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Dextropropoxyphene 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Propoxyphene-D11 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Propoxyphene-D11 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Propoxyphene-D5 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | rac-Propoxyphene-D5 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | 6-Acetylmorphine 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | 6-Acetylmorphine 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | 6-Acetylmorphine-D3 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | 6-Acetylmorphine-D3 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | 6-Acetylmorphine-D6 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | 6-Acetylmorphine-D6 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Acetylcodeine 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Acetylcodeine 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Nordihydromorphine Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Oxymorphone 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Oxymorphone-D3 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Oxymorphone-D3 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Noroxymorphone Hydrochloride 0.1 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Noroxymorphone Hydrochloride 1.0 mg/mL in Methanol (as free base). | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Butorphanol Tartrate 1.0 mg/mL in Methanol (as free base) | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Sufentanil Citrate 0.1 mg/mL in Methanol (as free base) | Glass vial: 1 mL | 11/30/2012 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| LGC Limited | cis-Tilidine (Ethyl (1R,2RS)-2-(Dimethylamino)-1-phenylcyclohex-3-enecarboxylate) 0.1 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Tilidine 0.1 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| Microgenics Corporation | Abbott TDM Multiconstituent Calibrator (CAL 1–6) Catalog Number: 5P04–01. | Box: 7 vials; 5 mL each | 7/2/2012 |
| Microgenics Corporation | Thermo Scientific DRI Opiate Assay Catalog Number: 100014602. | Vial: 18 mL, Box: 3 vials | 1/30/2013 |
| Microgenics Corporation | Thermo Scientific DRI Cannabinoid Assay Catalog Number: 10014665. | Vial: 18 mL, Box: 3 vials | 1/30/2013 |
| Microgenics Corporation | Thermo Scientific Phencyclidine Assay Catalog Number: 10014673. | Vial: 18 mL, Box: 3 vials | 1/30/2013 |
| Microgenics Corporation | Thermo Scientific Ecstacy Assay Catalog Number: 10014681 | Vial: 18 mL, Box: 3 vials | 1/30/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA Methamphetamine OFT Calibrator 1: Catalog Number 10016362. | Vial: 5 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA Methamphetamine OFT Calibrator 2: Catalog Number 10063. | Vial: 5 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA Methamphetamine OFT Calibrator 3: Catalog Number 10016364. | Vial: 5 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA Methamphetamine OFT Control 1: Catalog Number 10017686. | Vial: 10 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA Methamphetamine OFT Control 2: Catalog Number 10017687. | Vial: 10 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA Methamphetamine OFT Control 3: Catalog Number 1007688. | Vial: 10 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA Multi-Drug OFT Calibrator 1: Catalog Number 10016882. | Vial: 10 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA Multi-Drug OFT Calibrator 2: Catalog Number 10016883. | Vial: 10 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA Multi-Drug OFT Calibrator 3: Catalog Number 10016884. | Vial: 10 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA Multi-Drug OFT Control 1: Catalog Number 10017711. | Vial: 15 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA Multi-Drug OFT Control 2: Catalog Number 10017712. | Vial: 15 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA Multi-Drug OFT Control 3: Catalog Number 10017713. | Vial: 15 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA THC OFT Calibrator 1: Catalog Number 10016700. | Vial: 5 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA THC OFT Calibrator 2: Catalog Number 10016701. | Vial: 5 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA THC OFT Calibrator 3: Catalog Number 10016702. | Vial: 5 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA THC OFT Control 1: Catalog Number 10017702. | Vial: 10 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA THC OFT Control 2: Catalog Number 10017703. | Vial: 10 mL; Box: 1 vial | 2/11/2013 |
| Microgenics Corporation | Thermo Scientific CEDIA THC OFT Control 3: Catalog Number 10017704. | Vial: 10 mL; Box: 1 vial | 2/11/2013 |
| Ortho Clinical Diagnostics, Inc | VITROS Immunodiagnostics Products Testosterone Reagent Pack. | Plastic chamber: 8.4 mL | 9/28/2012 |
| Ortho Clinical Diagnostics, Inc | VITROS Immunodiagnostics Products Estradiol Reagent Pack. | Plastic chamber: 13.3 mL | 9/28/2012 |
| Ortho Clinical Diagnostics, Inc | VITROS Immunodiagnostics Products Testosterone Calibrators (1–3). | Box: 3 vials; 2 mL each | 10/19/2012 |
| Ortho Clinical Diagnostics, Inc | VITROS Immunodiagnostics Products Testosterone Controls (1–3). | Box: 9 vials; 1 mL each | 10/19/2012 |
| Ortho Clinical Diagnostics, Inc | VITROS Immunodiagnostics Products Testosterone Range Verifiers (Low and High). | Box: 4 vials; 1–1.5 mL each | 10/19/2012 |
| Restek | Custom Revised Appendix IX Mix #1 | Glass vial: 1.3 mL | 2/14/2013 |
| Restek Corporation | Product and Reactor Samples Standard | Ampule: 2 mL | 10/12/2012 |
| Restek Corporation | 8270 Supplemental Standard #1 | Ampule: 2 mL | 12/13/2012 |
| Siemens Healthcare Diagnostics Inc. | TTST Stock X (Bulk) | Stock container: 50 mL–1 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | VS TTST Cal Bulk Soln Level 1 | Bulk container: 4 mL–100 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | VS TTST Cal Bulk Soln Level 2 | Bulk container: 4 mL–100 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | VS TTST Cal Bulk Soln Level 3 | Bulk container: 4 mL–100 L | 7/26/2012 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| Siemens Healthcare Diagnostics Inc. | VS TTST Cal Bulk Soln Level 4 | Bulk container: 4 mL–100 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | VS TTST Cal Bulk Soln Level 5 | Bulk container: 4 mL–100 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | VS TTST Cal Bulk Soln Level 6 | Bulk container: 4 mL–100 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | Dimension Vista TTST CAL A | Vial: 1 mL | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | Dimension Vista TTST CAL B | Vial: 1 mL | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | Dimension Vista TTST CAL C | Vial: 1 mL | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | Dimension Vista TTST CAL D | Vial: 1 mL | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | Dimension Vista TTST CAL E | Vial: 1 mL | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | Dimension Vista TTST CAL F | Vial: 1 mL | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | Dimension Vista System TTST CAL | Box: 12 vials; 1 ml each | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | MP TTST Lvl 1 Bulk | Bulk container: 4 mL–20 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | MP TTST Lvl 2 Bulk | Bulk container: 4 mL–20 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | MP TTST Lvl 3 Bulk | Bulk container: 4 mL–20 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | MP TTST Lvl 4 Bulk | Bulk container: 4 mL–20 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | MP TTST Lvl 5 Bulk | Bulk container: 4 mL–20 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | MP TTST Lvl 6 Bulk | Bulk container: 4 mL–20 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | MP TTST CAL Lvl 1 FC | Vial: 1–5 mL | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | MP TTST CAL Lvl 2 FC | Vial: 1–5 mL | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | MP TTST CAL Lvl 3 FC | Vial: 1–5 mL | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | MP TTST CAL Lvl 4 FC | Vial: 1–5 mL | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | MP TTST CAL Lvl 5 FC | Vial: 1–5 mL | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | MP TTST CAL Lvl 6 FC | Vial: 1–5 mL | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | TTST Stock S (Bulk) | Stock container: 50 mL–1 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | TTST Stock T (Bulk) | Stock container: 50 mL–1 L | 7/26/2012 |
| Siemens Healthcare Diagnostics Inc. | Estradiol Diluent | Plastic container: 0.5L–1.0L | 11/14/2012 |
| Siemens Healthcare Diagnostics Inc. | Dimension Vista Drug 1 CAL Pilot, Level B | Plastic test tube: 15 mL | 12/3/2012 |
| Supelco, Inc | Titan C18 Batch Test 1 Mix | Glass ampule: 1 mL | 2/28/2013 |

The Deputy Assistant Administrator has found that each of the compounds, mixtures, and preparations described in Chart II below is not consistent with the criteria stated in 21 U.S.C. 811(g)(3)(B) and in 21 CFR 1308.23. Accordingly, the Deputy Assistant Administrator has determined that the chemical preparations or mixtures generally described in Chart II below and specifically described in the application materials received by DEA, are not exempt from application of any part of the CSA or from application of any part of the CFR, with regard to the requested exemption pursuant to 21 CFR 1308.23, as of the date listed below that was provided in the determination letters to the individual requesters.

CHART II

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| Agilent Technologies | Forensic Toxicology Comprehensive Mix–Submix 9A | Ampule: 1 mL | 12/6/2012 |

CHART II—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC177 | Glass vials: 1 ml–200 mL | 10/11/2012 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC178 | Glass vials: 1 ml–200 mL | 10/23/2012 |
| Biochemical Diagnostics, Inc | Salivabuse Custom Liquid Control Oral Fluid, OF24 | Glass vials: 1 ml–200 mL | 10/23/2012 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC180 | Glass vials: 1 ml–200 mL | 12/14/2012 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC181 | Glass vials: 1 ml–200 mL | 12/14/2012 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC182 | Glass vials: 1 ml–2 L | 1/22/2013 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC180 | Glass vials: 1 ml–200 mL | 1/29/2013 |
| Biochemical Diagnostics, Inc | Detectabuse Custom Liquid Control Urine, MC182 | Glass vials: 1 ml–2 L | 2/14/2013 |
| Cerilliant Corporation | (-)-11-nor-9-Carboxy-delta9-THC (1 mg/mL) | Glass ampule: 5 mL | 7/6/2012 |
| Cerilliant Corporation | Cocaine HCl (10 mg/mL) | Glass Ampule: 1 mL | 7/6/2012 |
| Cerilliant Corporation | Lacosamide (10 mg/mL) | Glass Ampule: 1 mL | 9/12/2012 |
| Cliniqa Corporation | TDM Control, Levels 1–3 Bulk | Plastic Container: 500 L | 12/4/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Controls, THC (0.5–50 ng/mL) | Glass vial: 5 ml–4 L | 8/9/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Controls, Methamphetamine (2–200 ng/mL) | Glass vial: 5 ml–4 L | 8/9/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Controls, Amphetamine, Benzoylecgonine, Morphine, Phencyclidine (2–200 ng/mL). | Glass vial: 5 ml–4 L | 8/9/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Controls, Multidrug (selected from THC, Cocaine/Benzoylecgonine, Amphetamines, Opiates, & PCP at 0.5–50 ng/mL). | Glass vial: 5 ml–4 L | 8/9/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Calibrators, THC (0.5–50 ng/mL) | Glass vial: 5 ml–4 L | 8/9/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Calibrators, Methamphetamine (2–200 ng/mL) | Glass vial: 5 ml–4 L | 8/9/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Calibrators, Amphetamine, Benzoylecgonine, Morphine, Phencyclidine (2–200 ng/mL). | Glass vial: 5 ml–4 L | 8/9/2012 |
| ElSohly Laboratories, Inc | ELI Oral Fluid Calibrators, Multidrug (selected from THC, Cocaine/Benzoylecgonine, Amphetamines, Opiates, & PCP at 0.5–200 ng/mL). | Glass vial: 5 ml–4 L | 8/9/2012 |
| LGC Limited | LAMPA (Lysergic Acid N-Methyl-N-propylamide) 1.0 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | LSD (Lysergic Acid Diethylamide) 1.0 mg/mL in Acetonitrile | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | LSD–D3 (Lysergic Acid Diethylamide-D3) 0.1 mg/mL in Acetonitrile. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | (-)-Cannabidiol 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Cannabinol 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | (-)-delta9-THC (Dronabinol) 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | (-)-delta9-THC-D3 (Dronabinol-D3) 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | trans-11-Hydroxy-delta9-THC ((6aRS,10aRS)-11-Hydroxy-delta9-tetrahydrocannabinol) 0.1 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | trans-11-Hydroxy-delta9-THC ((6aRS,10aRS)-11-Hydroxy-delta9-tetrahydrocannabinol) 1.0 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | trans-11-Hydroxy-delta9-THC-D3 (trans-11-Hydroxy-delta9-tetrahydrocannabinol-D3) 0.1 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | trans-11-Nor-9-carboxy-delta9-THC 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | trans-11-Nor-9-carboxy-delta9-THC-D3 0.1 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | trans-11-Nor-9-carboxy-delta9-THC-D3 1.0 mg/mL in Methanol. | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Fentanyl 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Fentanyl 1.0 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| LGC Limited | Fentanyl-D5 0.1 mg/mL in Methanol | Glass vial: 1 mL | 11/30/2012 |
| Siemens Healthcare Diagnostics Inc. | Dimension Vista Drug 1 CAL Bulk, Level B | Plastic container: 4–100 L | 12/3/2012 |

**Scope of Approval**

The exemptions are applicable only to the precise preparation or mixture described in the application submitted to DEA in the form(s) listed in this order and only for those sections of the CSA and the CFR that are specifically identified. Pursuant to 21 CFR 1308.24(h), any change in the quantitative or qualitative composition of the preparation or mixture or change in the trade name or other designation of the preparation or mixture after the date of application requires a new application. Pursuant to 21 CFR 1308.24(g), DEA may prescribe requirements other than those set forth in 1308.24(b)–(e) on a case-by-case basis for materials exempted in bulk quantities. Accordingly, in order to limit opportunity for diversion from the larger bulk quantities, DEA has determined that each of the exempted bulk products listed in this order may only be used by the manufacturer and may not be distributed by the manufacturer for any purpose or transported to other facilities.

Additional exempt chemical preparation requests received between July 1, 2012, and March 31, 2013, and not otherwise referenced in this order may remain under consideration until DEA receives additional information required, pursuant to 21 CFR 1308.23(d), as detailed in separate correspondence to individual requesters. DEA's order on such requests will be communicated to the public in a future **Federal Register** publication.

DEA also notes that these exemptions are limited to exemption from only those sections of the CSA and the CFR that are specifically identified in 21 CFR

1308.24(a). All other requirements of the CSA and the CFR apply, including, but not limited to, registration as an importer as required by 21 U.S.C. 957.

**Chemical Preparations Containing Newly Controlled Substances**

The statutory authority for exempt chemical preparations is based on the control status of substances contained within a preparation, the intended administration of a preparation, and the packaged form of a preparation. DEA conducts a case-by-case analysis of each application for exemption to determine whether exemption of a preparation from certain provisions of the CSA is appropriate pursuant to the specified statutory and regulatory requirements.

Most exempt chemical preparations have remained effective until the holder of a specific exempt chemical preparation specifically requested that the exemption be terminated. The CSA allows for modifications to the controlled substances schedules to add, remove, or change the schedule of substances thus resulting in periodic modifications to the control status of various substances. 21 U.S.C. 811(a). Since the CSA was enacted in 1970, DEA has on several occasions added to, removed from, or modified the schedules of controlled substances in accordance with the CSA. Such changes may result in the non-compliance of exempt chemical preparations with current statutes or regulations if chemical preparations that have already obtained exempt status contain newly controlled substances. For example, although an exempt chemical preparation may continue to be packaged in the same manner as when it was approved, non-controlled substances in the preparation may become controlled, thus prompting the need for a new application for exemption of the chemical preparation to ensure continued compliance. Other preparations that previously contained no controlled substances may contain newly controlled substances and thus would require an application for exemption.

DEA reviews applications for chemical preparation exemptions based on the statutes and regulations that are in place at the time of the application, including the control status of substances included in the preparation. DEA must remain vigilant to ensure that exempt chemical preparations remain consistent with the standards set forth in the CSA and its implementing regulations. As such, DEA reminds the public that any chemical preparation, regardless of whether it was previously exempt, that contains a newly controlled substance will require a new application for exemption pursuant to 21 U.S.C. 811(g)(3)(B) and 21 CFR 1308.23–1308.24.

**Review of Exemptions Pursuant to 21 U.S.C. 811(g)(3)**

Based on inquiries received from industry, DEA is conducting a comprehensive review of the exempt chemical preparation regulations. DEA's regulations at 21 CFR 1308.24(a) state that approved chemical preparations are exempt from certain provisions of both Subchapter I and Subchapter II of the CSA: ''The chemical preparations and mixtures approved pursuant to 1308.23 are exempt from application of sections 302, 303, 305, 306, 307, 308, 309, 1002, 1003 and 1004 of the Act (21 U.S.C. 822–823, 825–829, 952–954) and 1301.74 of this chapter, to the extent described in paragraphs (b) to (h) of this section.'' Pursuant to its regulations, DEA has provided exemptions from the application of section 302, 303, 305, 306, 307, 308, 309, 1002, 1003, and 1004 of the Act (21 U.S.C. 822–823, 825–829, 952–954) and 21 CFR 1301.74 since the implementation of the regulations in the early 1970s. Until DEA's analysis of the exemption regulations is complete, DEA will continue to review and provide exemptions to chemical preparations consistent with the implementing regulations, when warranted. DEA will publish a future notice regarding the outcome of DEA's review of its regulations with respect to the exemption of chemical preparations.

**Opportunity for Comment**

Pursuant to 21 CFR 1308.23, any interested person may submit written comments on or objections to any chemical preparation in this order that has been approved or denied as exempt. If any comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which this order is based, the Deputy Assistant Administrator will immediately suspend the effectiveness of any applicable part of this order until he may reconsider the application in light of the comments and objections filed.

**Approved Exempt Chemical Preparations Are Posted on DEA's Web Site**

A list of all current exemptions, including those listed in this order, is available on DEA's Web site at *http://www.DEAdiversion.usdoj.gov/schedules/exempt/exempt_chemlist.pdf.* The dates of applications of all current exemptions are posted for easy reference.

Dated: June 17, 2013.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator.*

[FR Doc. 2013–16010 Filed 7–2–13; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–378]**

### Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Proposed Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2014

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Notice with request for comments.

**SUMMARY:** This notice proposes initial year 2014 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA) and assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

**DATES:** Electronic comments must be submitted and written comments must be postmarked on or before August 2, 2013. The electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** To ensure proper handling of comments, please reference ''Docket No. DEA–378'' on all electronic and written correspondence. DEA encourages that all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at *http://www.regulations.gov* for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *www.regulations.gov* will be posted for public review and are part of the official docket record. Written comments submitted via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152.

**FOR FURTHER INFORMATION CONTACT:** John W. Partridge, Executive Assistant, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive,

Springfield, VA 22152, Telephone: (202) 307–7165.

**SUPPLEMENTARY INFORMATION:**

## Posting of Public Comments

All comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. The Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

## Background

Section 306 of the CSA (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

The proposed year 2014 aggregate production quotas and assessment of annual needs represent those quantities of Schedule I and II controlled substances, and the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, to be manufactured in the United States in 2014 to provide for the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks. These quotas include imports of ephedrine, pseudoephedrine, and phenylpropanolamine but do not include imports of controlled substances for use in industrial processes.

In determining the proposed 2014 aggregate production quotas and assessment of annual needs, DEA has taken into account the criteria that DEA is required to consider in accordance with 21 U.S.C. 826(a), 21 CFR 1303.11 (aggregate production quotas for controlled substances), and 21 CFR 1315.11 (assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine). DEA proposes the aggregate production quotas and assessment of annual needs for 2014 by considering (1) total net disposal of the class or chemical by all manufacturers and chemical importers during the current and two preceding years; (2) trends in the national rate of net disposal of the class or chemical; (3) total actual (or estimated) inventories of the class or chemical and of all substances manufactured from the class or chemical, and trends in inventory accumulation; (4) projected demand for such class or chemical as indicated by procurement and chemical import quotas requested pursuant to 21 CFR 1303.12, 1315.32, and 1315.34; and (5) other factors affecting the medical, scientific, research, and industrial needs in the United States, lawful export requirements, and reserve stocks, as the Deputy Administrator finds relevant. Other factors DEA considered in calculating the aggregate production quotas, but not the assessment of annual needs, include product development requirements of both bulk and finished dosage form manufacturers, and other pertinent information. In determining the proposed 2014 assessment of annual needs, DEA used the calculation methodology previously described in the 2010 and 2011 assessment of annual needs (74 FR 60294 and 75 FR 79407, respectively).

DEA also specifically considered that inventory allowances granted to individual manufacturers may not always result in the availability of sufficient quantities to maintain an adequate reserve stock pursuant to 21 U.S.C. 826(a), as intended. See 21 CFR 1303.24. This would be concerning if a natural disaster or other unforeseen event resulted in substantial disruption to the amount of controlled substances available to provide for legitimate public need. As such, DEA proposes to include in all Schedule II aggregate production quotas, and certain Schedule I aggregate production quotas (gamma-hydroxybutyric acid and tetrahydrocannabinols), an additional 25% of the estimated medical, scientific, and research needs as part of the amount necessary to ensure the establishment and maintenance of reserve stocks. The resulting established aggregate production quotas will reflect these included amounts. This action will not affect the ability of manufacturers to maintain inventory allowances as specified by regulation. DEA expects that maintaining this reserve in certain established aggregate production quotas will mitigate adverse public effects if an unforeseen event resulted in substantial disruption to the amount of controlled substances available to provide for legitimate public need, as determined by DEA. DEA does not anticipate utilizing the reserve in the absence of these circumstances.

The Deputy Administrator, therefore, proposes that the year 2014 aggregate production quotas and assessment of annual needs for the following Schedule I and II controlled substances and for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, be established as follows:

| Basic class—schedule I | Proposed 2014 quotas |
|---|---|
| (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR–144) | 15 g |
| [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (XLR11) | 15 g |
| 1-(1-Phenylcyclohexyl)pyrrolidine | 10 g |
| 1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201) | 45 g |
| 1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694) | 45 g |
| 1-[1-(2-Thienyl)cyclohexyl]piperidine | 5 g |

| Basic class—schedule I | Proposed 2014 quotas |
|---|---|
| 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200) | 45 g |
| 1-Butyl-3-(1-naphthoyl)indole (JWH–073) | 45 g |
| 1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR–18 and RCS–8) | 45 g |
| 1-Hexyl-3-(1-naphthoyl)indole (JWH–019) | 45 g |
| 1-Methyl-4-phenyl-4-propionoxypiperidine | 2 g |
| 1-Pentyl-3-(1-naphthoyl)indole (JWH–018 and AM678) | 45 g |
| 1-Pentyl-3-(2-chlorophenylacetyl)indole (JWH–203) | 45 g |
| 1-Pentyl-3-(2-methoxyphenylacetyl)indole (JWH–250) | 45 g |
| 1-Pentyl-3-(4-chloro-1-naphthoyl)indole (JWH–398) | 45 g |
| 1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH–122) | 45 g |
| 1-Pentyl-3-[(4-methoxy)-benzoyl]indole (SR–19, RCS–4) | 45 g |
| 1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH–081) | 45 g |
| 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C–P) | 30 g |
| 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E) | 30 g |
| 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D) | 30 g |
| 2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine (2C–N) | 30 g |
| 2-(2,5-Dimethoxyphenyl)ethanamine (2C–H) | 30 g |
| 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C) | 30 g |
| 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I) | 30 g |
| 2,5-Dimethoxy-4-ethylamphetamine (DOET) | 25 g |
| 2,5-Dimethoxy-4-n-propylthiophenethylamine | 25 g |
| 2,5-Dimethoxyamphetamine | 25 g |
| 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2) | 30 g |
| 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4) | 30 g |
| 3,4,5-Trimethoxyamphetamine | 25 g |
| 3,4-Methylenedioxyamphetamine (MDA) | 55 g |
| 3,4-Methylenedioxymethamphetamine (MDMA) | 50 g |
| 3,4-Methylenedioxy-N-ethylamphetamine (MDEA) | 40 g |
| 3,4-Methylenedioxy-N-methylcathinone (methylone) | 50 g |
| 3,4-Methylenedioxypyrovalerone (MDPV) | 35 g |
| 3-Methylfentanyl | 2 g |
| 3-Methylthiofentanyl | 2 g |
| 4-Bromo-2,5-dimethoxyamphetamine (DOB) | 25 g |
| 4-Bromo-2,5-dimethoxyphenethylamine (2–CB) | 25 g |
| 4-Methoxyamphetamine | 100 g |
| 4-Methyl-2,5-dimethoxyamphetamine (DOM) | 25 g |
| 4-Methylaminorex | 25 g |
| 4-Methyl-N-methylcathinone (mephedrone) | 45 g |
| 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol | 68 g |
| 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP–47, 497 C8-homolog) | 53 g |
| 5-Methoxy-3,4-methylenedioxyamphetamine | 25 g |
| 5-Methoxy-N,N-diisopropyltryptamine | 25 g |
| 5-Methoxy-N,N-dimethyltryptamine | 25 g |
| Acetyl-alpha-methylfentanyl | 2 g |
| Acetyldihydrocodeine | 2 g |
| Acetylmethadol | 2 g |
| Allylprodine | 2 g |
| Alphacetylmethadol | 2 g |
| Alpha-ethyltryptamine | 25 g |
| Alphameprodine | 2 g |
| Alphamethadol | 2 g |
| Alpha-methylfentanyl | 2 g |
| Alpha-methylthiofentanyl | 2 g |
| Alpha-methyltryptamine (AMT) | 25 g |
| Aminorex | 25 g |
| Benzylmorphine | 2 g |
| Betacetylmethadol | 2 g |
| Beta-hydroxy-3-methylfentanyl | 2 g |
| Beta-hydroxyfentanyl | 2 g |
| Betameprodine | 2 g |
| Betaprodine | 2 g |
| Bufotenine | 3 g |
| Cathinone | 26 g |
| Codeine Methylbromide | 5 g |
| Codeine-N-oxide | 200 g |
| Desomorphine | 5 g |
| Diethyltryptamine | 25 g |
| Difenoxin | 50 g |
| Dihydromorphine | 3,300,000 g |
| Dimethyltryptamine | 25 g |
| Dipipanone | 5g |
| Fenethylline | 5 g |
| Gamma-hydroxybutyric acid | 70,250,000 g |
| Heroin | 25 g |
| Hydromorphinol | 2 g |
| Hydroxypethidine | 2 g |
| Ibogaine | 5 g |
| Lysergic acid diethylamide (LSD) | 30 g |
| Marihuana | 21,000 g |
| Mescaline | 25 g |
| Methaqualone | 10 g |
| Methcathinone | 25 g |
| Methyldihydromorphine | 2 g |
| Morphine Methylbromide | 5 g |
| Morphine Methylsulfonate | 5 g |
| Morphine-N-oxide | 175 g |
| N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (AKB48) | 15 g |
| N-Benzylpiperazine | 25 g |
| N,N-Dimethylamphetamine | 25 g |
| N-Ethyl-1-phenylcyclohexylamine | 5 g |
| N-Ethylamphetamine | 24 g |
| N-Hydroxy-3,4-methylenedioxyamphetamine | 24 g |
| Noracymethadol | 2 g |
| Norlevorphanol | 52 g |
| Normethadone | 2 g |
| Normorphine | 18 g |
| Para-fluorofentanyl | 2 g |
| Parahexyl | 5 g |
| Phenomorphan | 2 g |
| Pholcodine | 2 g |
| Properidine | 2 g |
| Psilocybin | 30 g |
| Psilocyn | 30 g |
| Tetrahydrocannabinols | 491,000 g |
| Thiofentanyl | 2 g |
| Tilidine | 10 g |
| Trimeperidine | 2 g |

| Basic class—schedule II | Proposed 2014 quotas |
|---|---|
| 1-Phenylcyclohexylamine | 3 g |
| 1-Piperdinocyclohexanecarbonitrile (PCC) | 3 g |
| 4-Anilino-N-phenethyl-4-piperidine (ANPP) | 2,687,500 g |
| Alfentanil | 17,625 g |
| Alphaprodine | 3 g |
| Amobarbital | 9 g |
| Amphetamine (for conversion) | 18,375,000 g |
| Amphetamine (for sale) | 49,000,000 g |
| Carfentanil | 6 g |
| Cocaine | 240,000 g |
| Codeine (for conversion) | 68,750,000 g |
| Codeine (for sale) | 46,125,000 g |
| Dextropropoxyphene | 19 g |
| Dihydrocodeine | 100,750 g |
| Diphenoxylate | 750,000 g |
| Ecgonine | 127,500 g |
| Ethylmorphine | 3 g |
| Fentanyl | 2,108,750 g |
| Glutethimide | 3 g |
| Hydrocodone (for sale) | 99,625,000 g |
| Hydromorphone | 5,968,750 g |
| Isomethadone | 5 g |
| Levo-alphacetylmethadol (LAAM) | 4 g |
| Levomethorphan | 6 g |
| Levorphanol | 2,000 g |
| Lisdexamfetamine | 23,750,000 g |
| Meperidine | 6,250,000 g |
| Meperidine Intermediate-A | 6 g |

| Basic class—schedule II | Proposed 2014 quotas |
|---|---|
| Meperidine Intermediate-B | 11 g |
| Meperidine Intermediate-C | 6 g |
| Metazocine | 6 g |
| Methadone (for sale) | 31,875,000 g |
| Methadone Intermediate | 38,875,000 g |
| Methamphetamine | 3,911,375 g |
| [1,250,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,600,000 grams for methamphetamine mostly for conversion to a schedule III product; and 61,375 grams for methamphetamine (for sale)]. | |
| Methylphenidate | 96,750,000 g |
| Morphine (for conversion) | 91,250,000 g |
| Morphine (for sale) | 62,500,000 g |
| Nabilone | 30,375 g |
| Noroxymorphone (for conversion) | 12,250,000 g |
| Noroxymorphone (for sale) | 1,262,500 g |
| Opium (powder) | 112,500 g |
| Opium (tincture) | 625,000 g |
| Oripavine | 22,750,000 g |
| Oxycodone (for conversion) | 9,250,000 g |
| Oxycodone (for sale) | 149,375,000 g |
| Oxymorphone (for conversion) | 17,250,000 g |
| Oxymorphone (for sale) | 7,750,000 g |
| Pentobarbital | 35,000,000 g |
| Phenazocine | 6 g |
| Phencyclidine | 6 g |
| Phenmetrazine | 3 g |
| Phenylacetone | 29,980,050 g |
| Racemethorphan | 3 g |
| Remifentanil | 3,750 g |
| Secobarbital | 215,003 g |
| Sufentanil | 6,255 g |
| Tapentadol | 17,500,000 g |
| Thebaine | 145,000,000 g |

| Basic class—list I chemicals | Proposed 2014 quotas |
|---|---|
| Ephedrine (for conversion) | 15,100,000 g |
| Ephedrine (for sale) | 2,900,000 g |
| Phenylpropanolamine (for conversion) | 25,700,000 g |
| Phenylpropanolamine (for sale) | 5,300,000 g |
| Pseudoephedrine (for conversion) | 5,000 g |
| Pseudoephedrine (for sale) | 156,000,000 g |

The Deputy Administrator further proposes that aggregate production quotas for all other Schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 be established at zero. Pursuant to 21 CFR 1303.13 and 21 CFR 1315.13, upon consideration of the relevant factors, the Deputy Administrator may adjust the 2014 aggregate production quotas and assessment of annual needs as needed.

**Comments**

Pursuant to 21 CFR 1303.11 and 21 CFR 1315.11, any interested person may submit written comments on or objections to these proposed determinations. Based on comments received in response to this Notice, the Deputy Administrator may hold a public hearing on one or more issues raised. In the event the Deputy Administrator decides in his sole discretion to hold such a hearing, the Deputy Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments and after a hearing, if one is held, the Deputy Administrator will publish in the **Federal Register** a Final Order establishing the 2014 aggregate production quota for each basic class of controlled substance and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

Dated: June 27, 2013.

**Thomas M. Harrigan,**

*Deputy Administrator.*

[FR Doc. 2013–16052 Filed 7–2–13; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Office of Juvenile Justice and Delinquency Prevention

**[OMB Number 1121–0219]**

### Agency Information Collection Activities; Proposed Collection; Comments Requested: Juvenile Residential Facility Census (Extension, Without Change, of a Currently Approved Collection)

**ACTION:** 60 Day Notice.

The Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 3, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Brecht Donoghue, (202) 305–1270, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection Back to Top**

(1) *Type of information collection:* Extension, without change, of a currently approved collection.

(2) *The title of the form/collection:* Juvenile Residential Facility Census.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–15, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government, State, Local or Tribal. Other: Not-for-profit institutions; Business or other for-profit.

(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 2,545 respondents will complete a 2-hour questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 5,090 hours.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3W–1407B, Washington, DC 20530.

June 27, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2013–15903 Filed 7–2–13; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Solicitation for a Cooperative Agreement—Sexual Safety in Women's Institutions

**AGENCY:** National Institute of Corrections, U.S. Department of Justice.

**ACTION:** Solicitation for a Cooperative Agreement.

**SUMMARY:** The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement for an 18-month period to begin no later than September 15, 2013. Work under this cooperative agreement will involve the development and piloting of a blended-learning curriculum, which could include the use of virtual instructor-led training (VILT), to address the safety of women inmates within correctional institutions. The audience for this curriculum represents correctional staff, volunteers, contractors, community stakeholders who work within women's correctional institutions, and community residential facilities. This project will be a collaborative venture with the NIC Community Services Division.

*NIC Opportunity Number:* 13CS10. This number should appear in the reference line in your cover letter, on Standard Form 424 in section 11 with the title of your proposal, and in the right justified header of your proposal.

*Number of Awards and Funds Available:* Under this solicitation, 1 (one) award will be made. The total amount of funds available under this solicitation is $80,000.00. Funds awarded under this solicitation may only be used for activities directly related to the project as described herein unless otherwise amended in writing by NIC.

*Applications:* All applicants must be submitted electronically via *http://www.grants.gov.* Hand delivered, mailed, faxed, or emailed applications will not be accepted.

**DATES:** Application must be submitted before midnight on Tuesday, July 16, 2013.

**Authority:** Public Law 93–415.

*Eligibility of Applicants:* An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

**SUPPLEMENTARY INFORMATION:**

*Background:* In 2006 the National Institute of Justice (NIJ) funded a study titled ''Gendered Violence and Safety: A Contextual Approach to Improving Security in Women's Facilities.'' More recently, the National Institute of Corrections funded the Prison Rape Elimination Act (PREA) Validation Project for Improving Safety in Women's Facilities (cooperative agreement #10PEI34GKB6), which further contributed to the body of work addressing this issue. Sandwiched between those efforts has been the release of the PREA National Standards to Prevent, Detect, and Respond to Prison Rape, released in 2012, which has significant implications for correctional settings housing women and girls. A collection of standards comparison materials is available on the Web at the following locations: *http://nicic.gov/Library/026085; http://nicic.gov/Library/026082; http://nicic.gov/Library/026083; http://nicic.gov/Library/026084.* Over the past few decades, through research efforts and improved practice, the corrections profession has had access to a great deal of information, which has influenced continuing research efforts, training, assessment and classification, development of program models, and the creation of promising practices specific to improving system outcomes and individual outcomes for justice-involved women. While many current practices within criminal justice are seen as applicable to both justice-involved men and women, more recently the corrections profession has had opportunities to sharpen practice and more effectively manage resources in working with women in correctional settings.

*Scope of Work:* The awardee must develop a blended learning curriculum, including the piloting of the curriculum. The curriculum must use a variety of delivery methodologies, which could include readings, case study review, webinars, onsite delivery, and pre- and post-training activities. A virtual instructor-led training format will be considered if it can be demonstrated that the transfer of knowledge to the participants is effective. Awardees should develop the materials specific to physical and sexual safety in women's correctional facilities, based on current research, knowledge, best practice, and reflective of the experiences of corrections professionals and the target population. It should also include outlined method(s) for the transfer of learning, opportunities for skills practice, follow up coaching/assistance, and a method to measure the effectiveness of the training curriculum. The deliverables will help advance and foster professional correctional environments while enhancing safety and security and positively influencing systems, staff, and justice-involved women.

*Deliverables:* Tasks to be performed through this cooperative agreement include: (1) Conducting a literature search to contribute to curriculum development (2) convening a working session at an approved location; designing the working agenda; providing facilitation; and using content from the session to inform project deliverables. Working session participants will be identified in collaboration with and upon the approval of the NIC project staff. (3) working with NIC project staff and designated experts to develop deliverables. Deliverables could include a facilitator's manual and participant workbook, audiovisual materials, supplemental readings, pre/post measures of learning and other materials that facilitate learning. (4) developing and delivering the final curriculum modeled on the instructional theory into practice format (5) creating a final report that summarizes the project.

**FOR FURTHER INFORMATION CONTACT:** All technical or programmatic questions concerning this announcement should be directed to Maureen Buell, Correctional Program Specialist, National Institute of Corrections, who may be reached by email at *mbuell@bop.gov.* In addition to the direct reply, all questions and responses will be posted on NIC's Web site at *www.nicic.gov* for public review (the names or affiliations of those submitting questions will not be posted). The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation.

*Application Requirements:* Application Requirements: Applications should be typed, double spaced, in 12-point font, and reference the project by the ''NIC Opportunity Number'' (13CS10) and title in this announcement, ''Sexual Safety in Women's Institutions.'' The package must include: a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (e.g., July 1 through June 30); a concisely written program narrative, not to exceed

30 numbered pages, in response to the statement of work, and a detailed budget with a budget narrative explaining projected costs. Applicants may submit a description of the project teams' qualifications and expertise relevant to the project, but should not attach lengthy resumes. Attachments to the proposal describing your organization or examples of other past work beyond those specifically requested above are discouraged. These attachments should not exceed 5MB.

The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://nicic.gov/Downloads/General/certif-frm.pdf.* Failure to supply all required forms with the application package may result in disqualification of the application from consideration.

**Note:** NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR). A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CRR can be done online at the CCR Web site: *http://www.bpn.gov/ccr.* A CCR Handbook and worksheet can also be reviewed at the Web site.

*Review Considerations:* Applications received under this announcement will be subject to the NIC Review Process. Proposals which fail to provide sufficient information to allow evaluation under the criteria below may be judged non-responsive and disqualified.

The criteria for the evaluation of each application will be as follows:

**Programmatic (40%)**

Are all of the project tasks adequately discussed? Is there a clear statement of how each task will be accomplished to include the overall project goal(s), major tasks to achieve the goal(s), the strategies to be employed in completing the tasks, required staffing, and other required resources? Are there any approaches, techniques, or design aspects proposed that are new to NIC and will enhance the project?

**Organizational (35%)**

Do the proposed project staff members possess the skills, knowledge, and expertise necessary to complete the tasks listed under the scope of work? Does the applicant organization, group, or individual have the organizational capacity to achieve all project tasks? Does the proposal contain project management and staffing plans that are realistic and sufficient to complete the project within the project time frame?

**Project Management/Administration (25%)**

Does the applicant identify reasonable objectives, milestones, and measures to track progress? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project, and a clear structure to ensure effective coordination? Is the proposed budget realistic, does it provide a sufficient cost detail/narrative, and does it represent good value relative to the anticipated results?

*Specific Requirements:* Documents or other media that are produced under this award must follow these guidelines: Prior to the preparation of the final draft of any document or other media, the awardee must consult with NIC's Writer/Editor concerning the acceptable formats for manuscript submissions and the technical specifications for electronic media. For all awards in which a document will be a deliverable, the awardee must follow the guidelines listed herein, as well as follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the ''General Guidelines for Cooperative Agreements,'' which can be found on our Web site at *www.nicic.gov/cooperativeagreements.*

All final documents and other materials submitted under this project must meet the federal government's requirement for Section 508 accessibility, including those provisions outlined in 1194 Subpart B, Technical Provisions; Subpart C, Functional Performance Criteria; and Subpart D, Documentation and Support. NIC's government product accessibility template (see *www.nicic.gov/section508*) outlines the agency's minimum criteria for meeting this requirement; a completed form attesting to the accessibility of project deliverables should accompany all submissions.

**Note Concerning Catalog of Federal Domestic Assistance Number:** The Catalog of Federal Domestic Assistance (CFDA) should be entered into box 10 of the SF 424. The CFDA number for this solicitation is 16.601. You are not subject to Executive Order 12372 and should check box b under section 16.

**Robert M. Brown, Jr.,**

*Acting Director, National Institute of Corrections.*

[FR Doc. 2013–16014 Filed 7–2–13; 8:45 am]

BILLING CODE 4410–36–P

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Solicitation for a Cooperative Agreement—Development and Pilot Training of a Curriculum for Pretrial Justice System Stakeholders

**AGENCY:** National Institute of Corrections, U.S. Department of Justice.

**ACTION:** Solicitation for a Cooperative Agreement.

**SUMMARY:** The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement for a 15-month period to begin no later than August 31, 2013. Work under this cooperative agreement will involve the development and pilot of a training curriculum targeted toward teams of pretrial justice stakeholders who have the primary responsibility of developing and maintaining the pretrial justice system within their jurisdiction. This curriculum is intended to prepare these teams to plan, develop, and implement critical policy and systemwide pretrial decisions in a collaborative structure based on the most current legal and evidence-based pretrial knowledge. These teams must have the participation of the judge, prosecutor, defense attorney, sheriff or jail administrator, and pretrial director, who have primary oversight of pretrial justice in their jurisdiction. The curriculum will help teams explore their independent and collaborative roles in the development and daily operational functions of maintaining pretrial justice within their jurisdiction. This project will be a collaborative venture with the NIC Community Services Division.

*NIC Opportunity Number:* 13CS04. This number should appear in the reference line in your cover letter, on Standard Form 424 in section 11 with the title of your proposal, and in the right justified header of your proposal.

*Number of Awards and Funds Available:* Under this solicitation, 1 (one) award will be made. The total amount of funds available under this solicitation is $70,000.00.

*Applications:* All applications must be submitted electronically via *http://*

*www.grants.gov.* Hand delivered, mailed, faxed, or emailed applications will not be accepted.

**DATES:** Application must be submitted before midnight on Tuesday, July 16, 2013.

**Authority:** Public Law 93–415

*Elegibility of Applicants:* An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

**SUPPLEMENTARY INFORMATION:**

*Background:* The National Institute of Corrections recognizes the necessity of having a high functioning pretrial release structure within a criminal justice system. The pretrial detention or release decision is unique and often creates conflicts between criminal justice stakeholders even when the best policy and protocols are followed. This conflict has contributed to increasing numbers of defendants being held in jail during their pretrial period. Nationally, about 65% of jail populations are pretrial defendants, charged but not convicted of a crime. Many of these pretrial detainees are being held on low money bail amounts, are considered to have a high probability to appear at all of their scheduled court hearings, and have a low probability of committing any criminal acts while in the community. NIC currently offers an Orientation for New Pretrial Executives two times per year. This 40-hour training addresses and prepares these executives for the unique challenges they face with the development and implementation of pretrial release and supervision services. Approximately 150 pretrial executives have completed this course and have taken their new skills and knowledge back to their jurisdictions with the intent of implementing the best known practices in pretrial release. When they return to their jurisdictions, other key pretrial release stakeholders do not have the same knowledge and skill set as the pretrial executive now holds. This knowledge gap creates a significant barrier to the implementation of a high functioning pretrial detention and release system. A proposal responsive to this solicitation should, at minimum include strategies to develop a curriculum targeted to a team of pretrial justice stakeholders, including the judge, prosecutor, defense attorney, sheriff or jail administrator, and pretrial director. The curriculum will explore the individual and collaborative roles and functions they have when maintaining a pretrial justice system grounded in relevant legal and evidence-based practices. It should be delivered in a manner that promotes adult learning and collaborative planning and decision making.

*Scope of Work:* The goal of this cooperative agreement is to develop and pilot a blended learning curriculum formatted on the instructional theory into practice (ITIP) model. The curriculum is intended for pretrial justice stakeholder teams that have the primary responsibility of developing pretrial detention and release policy and practices within their jurisdiction. The curriculum will prepare teams with the skills and knowledge necessary to plan, develop, and implement a high functioning pretrial justice system. It should be developed and delivered in methods that promote adult learning and collaborative team decision making. This work will occur in four phases. The first phase is curriculum development and design. Mandatory content areas that the curriculum must address include legal foundations, professional standards, performance and outcome measures, and evidence-based practices of pretrial justice. Stakeholder focus groups will be held to determine other required knowledge and competency areas needed to complete the curriculum. The second phase is training for and review and revision by identified course trainers. The training will introduce trainers to the curriculum, adult learning theory, and effective facilitation strategies. Information gathered from observation of the training and/or feedback from the trainers will be incorporated into the draft curriculum. The third phase is pilot testing. Trainers will deliver the curriculum to 4 to 5 teams from local jurisdictions. Knowledge and competency assessments as well as a testing schedule will be developed and administered to the participants of the pilot training. Information gathered from participant feedback and exit knowledge assessment will be incorporated into the draft curriculum. Finally, the last phase is review and revision of the draft to develop the final curriculum and other deliverables.

Deliverables: (1) Create a 32- to 40-hour blended training curriculum based on the ITIP model. This will include all training material required to deliver the course. Training materials will include, but are not limited to (a) a complete instructor training manual in hard and electronic copy, (b) slide show presentations to support the training curriculum, (c) copies of participant training material, and (d) a final participant manual hard and electronic copy. (2) Design and facilitate stakeholder focus groups to gather information for additional curriculum content. The awardee will work with NIC's Correctional Program Specialist (CPS) to identify subject matter experts to serve on these focus groups. (3) Design and facilitate a 3- to 4-day train-the-trainer experience for the identified trainers of the new curriculum. The awardee will work with NIC's CPS to identify trainers. NIC will make the final approval of trainers for the pilot and any future program offerings. The design of the train the trainer will include adult learning theory, review the curriculum and objectives, practice facilitating the module, guided feedback sessions to provide feedback to the awardee, and guided feedback session for the awardee and CPS to provide feedback to the trainers. This training session will be held at the National Training Academy in Aurora, CO. (4) Pilot the final draft of the curriculum. The curriculum will be delivered to 4 to 5 teams from various jurisdictions. The awardee will be present during the pilot training sessions to observe the training and facilitate a debriefing session(s) with the trainers and participants to assess and address the training and curriculum concerns. (The travel and per diem costs of the 20–25 participants and trainers will be funded outside of this cooperative agreement and cost estimates should not be included in this budget.) The awardee will work with NIC on training logistics, which must follow mandatory training protocols set out by the Bureau of Prisons and NIC. The pilot will take place at the National Training Academy in Aurora, CO. (5) Develop a system and written protocol, in consultation with NIC's CPS and Research and Information Services Division, to assess the effectiveness of the training curriculum in changing identified knowledge and performance over time. (6) Plan and participate in planning meetings and updates with the assigned NIC CPS to initiate the project plan, review the information from the stakeholder focus groups and draft agenda, review draft curriculum, and perform final curriculum review. Maintain contact and advise NIC's CPS of any major changes, barriers, or progress. Face-to-face meetings must be held in an approved NIC training facility or by phone or video conference. (7) All documentation submitted must follow NIC's Service for Results guidelines which will be given to the awardee at the first meeting.

**FOR FURTHER INFORMATION CONTACT:** All technical or programmatic questions concerning this announcement should be directed to Ms. Lori Eville, Correctional Program Specialist, National Institute of Corrections, who

may be reached by email at *leville@bop.gov.* In addition to the direct reply, all questions and responses will be posted on NIC's Web site at *www.nicic.gov* for public review (the names or affiliations of those submitting questions will not be posted). The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation.

*Application Requirements:* Applications should be typed, double spaced, in 12-point font, and reference the project by the ''NIC Opportunity Number'' 13CS04 and title in this announcement, ''Development and Pilot Training of a Curriculum for Pretrial Justice System Stakeholders''. The package must include: a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (e.g., July 1 through June 30); a concisely written program narrative, not to exceed 30 numbered pages, in response to the statement of work, and a detailed budget with a budget narrative explaining projected costs. Applicants may submit a description of the project teams' qualifications and expertise relevant to the project, but should not attach lengthy resumes. Attachments to the proposal describing your organization or examples of other past work beyond those specifically requested above are discouraged. These attachments should not exceed 5MB.

The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://nicic.gov/Downloads/General/certif-frm.pdf*

Failure to supply all required forms with the application package may result in disqualification of the application from consideration.

**Note:** NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CRR can be done online at the CCR Web site: *http://www.bpn.gov/ccr.* A CCR Handbook and worksheet can also be reviewed at the Web site.

*Review Considerations:* Applications received under this announcement will be subject to the NIC Review Process. Proposals which fail to provide sufficient information to allow evaluation under the criteria below may be judged non-responsive and disqualified.

The criteria for the evaluation of each application will be as follows:

**Programmatic (40%)**

Are all of the project tasks adequately discussed? Is there a clear statement of how each task will be accomplished to include the overall project goal(s), major tasks to achieve the goals(s), the strategies to be employed in completing the tasks, required staffing, and other required resources? Are there any approaches, techniques, or design aspects proposed that are new to NIC and will enhance the project?

**Organizational (35%)**

Do the proposed project staff members possess the skills, knowledge, and expertise necessary to complete the tasks listed under the scope of work? Does the applicant organization, group, or individual have the organizational capacity to achieve all project tasks? Does the proposal contain project management and staffing plans that are realistic and sufficient to complete the project within the project time frame?

**Project Management/Administration (25%)**

Does the applicant identify reasonable objectives, milestones, and measures to track progress? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project, and a clear structure to ensure effective coordination? Is the proposed budget realistic, does it provide a sufficient cost detail/narrative, and does it represent good value relative to the anticipated results?

*Specific Requirements:* Documents or other media that are produced under this award must follow these guidelines: Prior to the preparation of the final draft of any document or other media, the awardee must consult with NIC's Writer/Editor concerning the acceptable formats for manuscript submissions and the technical specifications for electronic media. For all awards in which a document will be a deliverable, the awardee must follow the guidelines listed herein, as well as follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the ''General Guidelines for Cooperative Agreements,'' which can be found on our Web site at *www.nicic.gov/cooperativeagreements.*

All final documents and other materials submitted under this project must meet the federal government's requirement for Section 508 accessibility, including those provisions outlined in 1194 Subpart B, Technical Provisions; Subpart C, Functional Performance Criteria; and Subpart D, Documentation and Support. NIC's government product accessibility template (see *www.nicic.gov/section508*) outlines the agency's minimum criteria for meeting this requirement; a completed form attesting to the accessibility of project deliverables should accompany all submissions.

**Note Concerning Catalog of Federal Domestic Assistance Number:** The Catalog of Federal Domestic Assistance (CFDA) should be entered into box 10 of the SF 424. The CFDA number for this solicitation is 16.601. You are not subject to the provisions of Executive Order 12372 and should check box b under section 16.

**Robert M. Brown, Jr.,**

*Acting Director, National Institute of Corrections.*

[FR Doc. 2013–16013 Filed 7–2–13; 8:45 am]

BILLING CODE 4410–36–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Emergency Mine Evacuation

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Emergency Mine Evacuation,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

**DATES:** Submit comments on or before August 2, 2013.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://*

*www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201302-1219-005* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR is to maintain PRA approval for the information collections contained in regulations 30 CFR parts 48 and 75 to improve emergency evacuation and rescue in underground coal mines. These regulations include requirements for immediate accident notification applicable to all mines. In addition, the regulations contain reporting and record keeping requirements for training, including evacuation drills; self-contained self-rescuer storage, training, and use; and installation and maintenance of lifelines in underground coal mines. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 6, 2013 (78 FR 14592).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0141.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on July 31, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. It should also be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0141. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–MSHA.

*Title of Collection:* Emergency Mine Evacuation.

*OMB Control Number:* 1219–0141.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 361.

*Total Estimated Number of Responses:* 1,136,395.

*Total Estimated Annual Burden Hours:* 450,483.

*Total Estimated Annual Other Costs Burden:* $287,232.

Dated: June 27, 2013.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2013–15989 Filed 7–2–13; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request of the ETA 207, Nonmonetary Determination Activities Report; Comment Request on Extension Without Change (OMB 1205–0150)

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The current expiration date is February 28, 2014.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before September 3, 2013.

**ADDRESSES:** Send comments to Edward Medlin, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202)–693–3259 (this is not a toll-free number) or by email: *Medlin.Edward@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The ETA 207 Report, Nonmonetary Determination Activities, contains state data on the number and types of issues that are adjudicated when unemployment insurance (UI) claims are filed. It also has data on the number of disqualifications that are issued for reasons associated with a claimant's separation from employment and reasons related to a claimant's continuing eligibility for benefits. These data are used by the Office of

Unemployment Insurance (OUI) to determine workload counts for allocation of administrative funds, to analyze the ratio of disqualifications to determinations, and to examine and evaluate the program effect of nonmonetary activities.

**II. Desired Focus of Comments**

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the ETA 207, Nonmonetary Determinations Activities Report. Comments are requested to:

- Evaluate whether the proposed collection of information is necessary to assess performance of the nonmonetary determination function, 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**III. Current Actions**

The continued collection of the information contained on the ETA 207 report is necessary to enable the OUI to continue evaluating state performance in the nonmonetary determination area and to continue using the data as a key input to the administrative funding process.

*Type of Review:* Extension without change.

*Agency:* Employment and Training Administration (ETA)

*Title:* Nonmonetary Determination Activities Report

*OMB Number:* 1205–0150

*Agency Number:* ETA 207

*Affected Public:* State Workforce Agencies

*Total Respondents:* 53

*Frequency:* Quarterly

*Total Responses:* 53 respondents × 4 responses per year = 212 responses for the regular program, 53 respondents × 4 responses per year = 212 responses for the Emergency Unemployment Compensation 2008 program, 53 respondents × 4 responses per year = 212 responses for the Federal-State extended benefit program for an estimated total of 636 responses.

*Average Estimated Response Time:* 4 hours per response

*Estimated Annual Burden Hours:* 2,544 hours

*Total Burden Cost (capital/startup):* $0

*Total Burden Cost (operating/maintaining):* $0

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they will also become a matter of public record.

Signed in Washington, DC on this 17th Day of June, 2013.

**Gerri Fiala,**

*Acting Assistant Secretary, Employment and Training Administration.*

[FR Doc. 2013–15969 Filed 7–2–13; 8:45 am]

BILLING CODE 4510–FW–P

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Proposed Information Collection; Application for a Permit To Fire More than 20 Boreholes and/or for the use of Nonpermissible Blasting Units, Explosives, and Shot-Firing Units; Posting Notices of Misfires

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)] (PRA). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed information collection for developing and updating Application for a Permit to Fire More than 20 Boreholes and/or for the use of Nonpermissible Blasting Units, Explosives, and Shot-firing Units; Posting Notices of Misfires.

**DATES:** All comments must be postmarked or received by midnight Eastern Standard Time on September 3, 2013.

**ADDRESSES:** Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number [MSHA–2013–0018].
- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939.

**FOR FURTHER INFORMATION CONTACT:** Sheila McConnell, Deputy Director, Office of Standards, Regulations, and Variances, MSHA, at *McConnell.Sheila.A@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under Section 313 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 873, any explosives used in underground coal mines must be permissible with certain exceptions. The Mine Act also provides that, under safeguards prescribed by the Secretary of Labor, a mine operator may permit the firing of more than 20 shots and the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. Title 30 CFR 75.1321 outlines the procedures by which a permit may be issued for the firing of more than 20 boreholes and/or the use of nonpermissible blasting units in underground coal mines. In those instances in which there is a misfire of explosives, § 75.1327 requires that a qualified person post each accessible entrance to the affected area with a warning to prohibit entry. Section 77.1909–1 outlines the procedures by which a coal mine operator may apply for a permit to use nonpermissible explosives and/or shot-firing units in the blasting of rock while sinking shafts or slopes for underground coal mines.

**II. Desired Focus of Comments**

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Application for a Permit to Fire More than 20 Boreholes and/or for the use of Nonpermissible Blasting Units, Explosives, and Shot-firing Units; Posting Notices of Misfires. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information has practical utility;

• Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to 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.

OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''**Federal Register** Documents'' on the right side of the screen by selecting ''New and Existing Information Collections and Supporting Statements''. The document will be available on MSHA's Web site for 60 days after the publication date of this notice, and on *http://www.regulations.gov.* Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed.

The public may also examine publicly available documents at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington VA 22209–3939.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

### III. Current Actions

The information obtained will be used to issue permits to mine operators or slope contractors for the use of nonpermissible explosives and/or shot-firing units. MSHA has used 2012 data for the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection request.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Application for a Permit to Fire More than 20 Boreholes and/or for the use of Nonpermissible Blasting Units, Explosives, and Shot-firing Units; Posting Notices of Misfires.

*OMB Number:* 1219–0025.

*Affected Public:* Business or other for-profit.

*Total Number of Respondents:* 67.

*Frequency:* Various.

*Total Number of Responses:* 88.

*Total Burden Hours:* 74 hours.

*Total Annual Respondent or Recordkeeper Cost Burden:* $348.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 28, 2013.

**George F. Triebsch,**

*Certifying Officer.*

[FR Doc. 2013–16051 Filed 7–2–13; 8:45 am]

**BILLING CODE 4510–43–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–072]**

## National Environmental Policy Act; Sounding Rockets Program; Poker Flat Research Range

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of availability of the Final Environmental Impact Statement (FEIS) for the NASA Sounding Rockets Program (SRP) at Poker Flat Research Range (PFRR), Alaska.

**SUMMARY:** Pursuant to the National Environmental Policy Act, as amended, (NEPA) (42 U.S.C. 4321 et seq.), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA's NEPA policy and procedures (14 CFR Part 1216, subpart 1216.3), NASA has prepared and issued a FEIS for its continued use of the University of Alaska Fairbanks (UAF) owned and managed PFRR, outside of Fairbanks, Alaska. The Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (USFWS), and UAF have served as Cooperating Agencies in preparing the FEIS.

The purpose of this notice is to apprise interested agencies, organizations, tribal governments, and individuals of the availability of the FEIS.

**DATES:** NASA will issue a Record of Decision (ROD) based on the FEIS no sooner than 30 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's Notice of Availability of the FEIS.

**ADDRESSES:** The FEIS may be reviewed at the following locations:

(a) ARLIS, 3211 Providence Drive, Anchorage, Alaska, 99508 (907–272–7547)

(b) Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska, 99503 (907–343–2975)

(c) Elmer E. Rasmuson Library, 310 Tanana Loop, Fairbanks, Alaska, 99775 (907–474–7481)

(d) Noel Wien Library, 1215 Cowles Street, Fairbanks, Alaska 99701 (907–459–1020)

(e) Juneau Public Library, 292 Marine Way, Juneau, Alaska 99801 (907–586–5249)

(f) NASA Headquarters Library, Room 1J20, 300 E Street SW., Washington, DC 20546–0001 (202–358–0168)

A limited number of hard copies of the FEIS are available, on a first request basis, by contacting Joshua Bundick, NASA Wallops Flight Facility, Mailstop: 250.W, Wallops Island, Virginia 23337; telephone at 757–824–2319; or electronic mail at *Joshua.A.Bundick@nasa.gov.* The FEIS is also available on the Internet in Adobe® portable document format at *http://sites.wff.nasa.gov/code250/pfrr_eis.html.*

NASA's ROD will be made available, once issued, on the same Web site as above and by request to the contact provided above.

**FOR FURTHER INFORMATION CONTACT:** Joshua Bundick, Manager, Poker Flat Research Range EIS, NASA Wallops Flight Facility, Mailstop: 250.W, Wallops Island, Virginia 23337; telephone: 757–824–2319; fax: 757–824–1819; electronic mail: *Joshua.A.Bundick@nasa.gov.* A toll-free telephone number, 800–521–3415, is also available for persons outside the local calling area. When using the toll-free number, please follow the menu options and enter the ''pound sign (#)'' followed by extension numbers ''2319.''

Additional information about NASA's SRP and UAF's PFRR may be found on the Internet at *http://sites.wff.nasa.gov/code810* and *http://www.pfrr.alaska.edu*, respectively. Information regarding the NEPA process for this proposal and supporting documents (as available) are located at *http://sites.wff.nasa.gov/code250/pfrr_eis.html.*

**SUPPLEMENTARY INFORMATION:** Since the late 1960s, NASA, other government agencies, and educational institutions have conducted suborbital rocket launches from the PFRR. While the PFRR is owned and managed by the Geophysical Institute of UAF, the NASA SRP has exclusively funded and managed the support contract with PFRR for more than 25 years.

The PFRR is the only high-latitude, auroral-zone rocket launching facility in the United States where a sounding rocket can readily study the aurora borealis and the sun–earth connection.

**Related Environmental Documents**

In 2010, concerns raised by agencies and organizations regarding the potential impact of its operations at PFRR prompted NASA to review its 2000 SRP Final Supplemental Environmental Impact Statement (FSEIS). In doing so, NASA determined that while the overall environmental analysis in the 2000 SRP FSEIS remains sufficient to support the Agency's broad decision to continue the SRP at PFRR, potential changes in both operations and the environmental context of the launch corridor north of the site warranted preparation of additional site-specific environmental analysis. Accordingly, the FEIS tiers from the programmatic 2000 FSEIS and provides a focused analysis of SRP operations at PFRR.

**Alternatives**

The FEIS evaluates the environmental consequences of five alternative means for continuing sounding rocket launches at PFRR. The alternatives differ primarily in the level of effort that would be exerted to locate and recover past and future launch related items in downrange lands. Two alternatives also include a restriction on planning rocket motor or payload impacts within designated Wild or Scenic Rivers. NASA has identified Alternative 1, *Continue NASA SRP Activities and Flights at PFRR within Existing Flight Zones with Environmental Screening for Recovery of New and Existing Stages and Payloads (Environmentally Responsible Search and Recovery Alternative)* as its Preferred Alternative.

**Cooperating Agency Actions**

The FEIS will serve as a decision-making tool not only for NASA but also for its two Federal Cooperating Agencies, BLM and USFWS. Directly north of the PFRR launch site are its downrange flight zones, over which rockets are launched and within which spent stages and payloads impact the ground. Within these flight zones are BLM's Steese National Conservation Area and White Mountain National Recreational Area, and the USFWS-managed Arctic and Yukon Flats National Wildlife Refuges. Historically, the managing entities have issued UAF annual or multi-year special-use authorizations for impact of rockets and recovery operations on these lands.

BLM and USFWS are currently considering if and how future authorizations for rocket impact and recovery would be issued for the lands under their management. As such, the FEIS considers the effects of each agency's respective action—both issuance and non-issuance of future authorizations.

**Review of Draft EIS**

NASA mailed over 150 copies of the Draft EIS (DEIS) to potentially interested Federal, State, and local agencies; tribal governments; organizations; individuals; and public reading rooms. Following the U.S. EPA's publication of a Notice of Availability (NOA) of the DEIS in the **Federal Register** on September 28, 2012 (77 FR 59611), NASA published its own NOA of the DEIS on October 10, 2012 (77 FR 61642). In addition, NASA held public meetings in Anchorage and Fairbanks, Alaska, and made the DEIS publicly available in electronic format on the project Web site. The public review and comment period for the DEIS closed on November 28, 2012. NASA received a total of 6 submissions (letters, emails, and transcribed oral comments) from Federal agencies, non-governmental organizations, and individuals. The resulting 40 comments received spanned a broad range of topics; however the majority of commenters expressed concern regarding effects of the SRP on special use lands (e.g., designated Wilderness and Wild Rivers) and wilderness-based recreation. Both the comments received on the DEIS and NASA's responses to those comments are included in the FEIS in Appendix K. In parallel with preparing the FEIS, NASA also formally consulted with resource agencies regarding the potential effects of its operations on federally threatened and endangered species and cultural and historic resources. The outcomes of these consultations are summarized in the FEIS and are also included in Appendix A.

In summary, notice of the availability of the FEIS is hereby given.

**Olga M. Dominguez,**

*Assistant Administrator, Office of Strategic Infrastructure.*

[FR Doc. 2013–15986 Filed 7–2–13; 8:45 am]

BILLING CODE 7510–13–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–2013–032]**

## Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before August 2, 2013. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

*Mail:* NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001

*Email: request.schedule@nara.gov.*

*FAX:* 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Margaret Hawkins, Director, Records

Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

**Schedules Pending**

1. Department of Commerce, Bureau of the Census (DAA–0029–2013–0004, 5 items, 4 temporary items). Records relating to reports compiled for outside entities on a reimbursable basis. Proposed for permanent retention historically significant surveys.

2. Department of Defense, Defense Contract Management Agency (DAA–0558–2013–0003, 1 item, 1 temporary item). Contract management files relating to such matters as payments, performance, quality assurance, and product acceptance.

3. Department of Defense, Defense Contract Management Agency (DAA–0558–2013–0005, 2 items, 2 temporary items). Records relating to agency financial matters such as disbursements, procurement, and cost accounting.

4. Department of Defense, Defense Finance and Accounting Service (DAA–0507–2013–0003, 3 items, 3 temporary items). Records related to retirement plan deductions from military payroll.

5. Department of Defense, Office of the Secretary of Defense (DAA–0330–2013–0004, 1 item, 1 temporary item). Master files of an electronic information system used to support and monitor a hearing conservation program.

6. Department of Defense, Office of the Secretary of Defense (DAA–0330–2013–0010, 2 items, 2 temporary items). Master files of an electronic information system used for managing clinical dietetic and food production service information.

7. Department of Homeland Security, U.S. Citizenship and Immigration Services (DAA–0566–2013–0001, 2 items, 2 temporary items). Applications for employment authorizations when not submitted with another immigration application.

8. Department of the Interior, Bureau of Land Management (DAA–0049–2013–0001, 1 item, 1 temporary item). Master files of an electronic information system used to manage emergency responder qualification and certification records.

9. Department of Justice, Federal Bureau of Investigation (N1–65–11–41, 2 items, 2 temporary items). Master files and usage agreements of an information system used to support joint task forces sponsored by the agency.

10. Department of Justice, Justice Management Division (DAA–0060–2012–0006, 4 items, 3 temporary items). Records of a health care fraud control program, including funds allocation and program certification. Proposed for permanent retention are annual program reports.

11. Department of Labor, Employee Benefits Security Administration (N1–317–13–1, 2 items, 2 temporary items). Records that contain Federal tax information relating to employee benefits.

12. Department of State, Bureau of Administration (N1–59–10–09, 9 items, 9 temporary items). Records of the Office of Emergency Management including program files, routine reports, correspondence, and emergency operation files for domestic facilities.

13. Department of State, Bureau of Diplomatic Security (N1–59–10–19, 13 items, 10 temporary items). Records of the Office of Special Programs and Coordination including administrative materials, memorandums, program records, event coordination files, and emergency action plans. Proposed for permanent retention are assessment reports.

14. Department of the Treasury, Internal Revenue Service (DAA–0058–2013–0005, 1 item, 1 temporary item). Records used to document tax compliance and resolution actions.

15. Department of the Treasury, Internal Revenue Service (DAA–0058–2013–0006, 1 item, 1 temporary item). Records used to manage tax return processing activities.

16. Department of the Treasury, Internal Revenue Service (DAA–0058–2013–0008, 2 items, 2 temporary items). Records used to manage and analyze information technology security data and systems.

17. Advisory Council on Historic Preservation, Agency-wide (DAA–0536–2013–0001, 2 items, 1 temporary item). Non-winning nomination files for the Preserve America Presidential Award. Proposed for permanent retention are award files for successful nominations.

18. Architectural and Transportation Barriers Compliance Board, Agency-wide (DAA–0588–2013–0001, 5 items, 2 temporary items). Photographs and video recordings that document routine activities such as award ceremonies, social events, training, and informational sessions. Proposed for permanent retention are historical photographs and video recordings.

19. Jamestown 400th Commemoration Commission, Agency-wide (N1–220–13–1, 17 items, 7 temporary items). Administrative and background records including financial records, draft

publications, research material, and working files. Proposed for permanent retention are significant correspondence, final reports and publications, audio visual material, and the commission's Web site.

20. National Archives and Records Administration, Research Services (N2–288–12–1, 1 item, 1 temporary item). Records of the National Endowment for the Arts comprising program grant case files from 1965 to 1996. These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

21. National Archives and Records Administration, Research Services (DAA–0064–2013–0001, 1 item, 1 temporary item). Records include federal agencies' Web site snapshots and related documentation harvested in the 2001 Web Snapshot Initiative Project.

22. Occupational Safety and Health Review Commission, Office of the Executive Secretary (N1–455–11–3, 2 items, 2 temporary items). Published Internet Web site content and Web site design records.

Dated: June 27, 2013.

**Laurence Brewer,**

*Director, National Records Management Program.*

[FR Doc. 2013–16003 Filed 7–2–13; 8:45 am]

**BILLING CODE 7515–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0140]**

## Draft Spent Fuel Storage and Transportation Interim Staff Guidance

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft interim staff guidance; request for public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) requests public comment on Draft Spent Fuel Storage and Transportation Interim Staff Guidance No. 24 (SFST–ISG–24), Revision 0, ''The Use of a Demonstration Program as Confirmation of Integrity for Continued Storage of High Burnup Fuel Beyond 20 Years.'' The draft SFST–ISG provides guidance to the staff for reviewing if a demonstration of high burnup fuel (HBF) has the necessary properties to qualify as one method that an applicant might use in license and certificate of compliance (CoC) applications to demonstrate compliance with the NRC's regulations. This guidance applies to license and CoC applications for the storage of HBF for periods greater than 20 years.

**DATES:** Submit comments by August 19, 2013. Comments received after this date will be considered if it is practical to do so; however, the NRC is only able to ensure consideration of comments received on or before this date.

**ADDRESSES:** You may submit comment 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–2013–0140. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0140. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Robert Einziger, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9217 or email: *Robert.Einziger@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2013–0140 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 the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0140.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft SFST–ISG–24, Revision 0 is available electronically under ADAMS Accession No. ML13056A516.
- *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–2013–0140 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 posts all comment submissions at *http://www.regulations.gov* as well as entering 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. Background

The NRC issues SFST–ISGs to communicate insights and lessons learned and to address emergent issues not covered in SFST Standard Review Plans (SRPs). In this way, the NRC staff and stakeholders may use the guidance in an SFST–ISG document before it is incorporated into a formal SRP revision. The draft SFST–ISG provides guidance to the staff for reviewing if a demonstration of high burnup fuel (HBF) has the necessary properties to qualify as one method that an applicant might use in license and certificate of compliance (CoC) applications to demonstrate compliance with sections

72.122(h)(1) and 72.122(l) of Title 10 of the *Code of Federal Regulations* (10 CFR). This guidance applies to license and CoC applications for the storage of HBF for periods greater than 20 years. This guidance supplements the guidance given in NUREG–1927 ''Standard Review Plan for Renewal of Spent Fuel Dry Cask Storage System Licenses and Certificates of Compliance'' on aging management for the interior of the cask.

Proposed Action

By this action, the NRC is requesting public comments on draft SFST–ISG–24. This SFST–ISG proposes certain revisions to NRC guidance on implementation of the requirements in 10 CFR part 72. The NRC will make a final determination regarding issuance of SFST–ISG–24 after it considers any public comments received in response to this request.

Backfitting and Issue Finality

This draft ISG, if finalized, would provide guidance to the staff for reviewing an application for an independent spent fuel storage Installation, and an application for a certificate of compliance, either of which involve storage of high-burn-up spent fuel from a nuclear power plant, with respect to compliance with 10 CFR 72.122(h)(1) and 10 CFR 72.122(l).

Issuance of this draft ISG, if finalized, would not constitute backfitting as defined in the backfitting provisions in 10 CFR 72.62 which are applicable to ISFSIs and certificates of compliance. Issuance of the draft ISG, if finalized, would also not constitute backfitting under 10 CFR 50.109, or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The staff's position is based upon the following considerations.

- The draft ISG positions do not constitute backfitting, inasmuch as the ISG is internal guidance directed at the NRC staff with respect to their regulatory responsibilities
- Backfitting and issue finality—with limited exceptions not applicable here—do not protect current or future applicants
- The NRC staff has no intention to impose the draft ISG positions on existing ESP, DCR, and COL applicants where the staff has resolved the applicant's conformance with RG 1.221 as of the effective date of this guidance
- The NRC staff has no intention to impose the draft ISG positions on current licensees or the four current design certifications (10 CFR Part 52, Appendices A through D) either now or in the future

Each of these considerations is discussed in more detail below.

1. The draft ISG positions, if finalized, do not constitute backfitting, inasmuch as the ISG is internal guidance to NRC staff.

The ISG provides interim guidance to the staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of Part 52.

2. Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under Part 52. This is because neither the Backfit Rule nor the issue finality provisions under Part 52—with certain exclusions discussed below—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a Part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in the draft ISG section (if finalized) in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the draft ISG section (if finalized) in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision. The draft ISG addresses newly-adopted or revised regulations whose backfitting and issue finality considerations have already been addressed

3. The NRC staff has no intention to impose the draft ISG positions on existing early site permit, design certificate and combined license applicants where the staff has resolved the applicant's conformance with RG 1.221 as of the effective date of this guidance.

Notwithstanding the NRC's general principle, articulated in Item 2 above, that Backfitting and Issue Finality do not protect applicants, the draft ISG is not backfitting because the NRC does not intend to impose the draft ISG positions on existing ESP, DCR, and COL applicants where the staff has resolved the applicant's conformance with RG 1.221 as of the effective date of this guidance.

4. The NRC staff has no intention to impose the draft ISG positions on existing licensees and regulatory approvals, either now or in the future.

The staff does not intend to impose or apply the positions described in the draft ISG section to existing (already issued) licenses and regulatory approvals—including the four existing design certifications in 10 CFR part 52, Appendices A through D. Hence, the issuance of a final ISG—even if considered guidance which is within the purview of the issue finality provisions in Part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose a position in the ISG on holders of already issued holders of licenses in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must, as applicable, make the showing as set forth in the Backfit Rule, or address the criteria for avoiding issue finality as described applicable issue finality provision.

Dated at Rockville, Maryland, this 25th day of June, 2013.

For the Nuclear Regulatory Commission.

**Mark D. Lombard,**

*Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2013–15982 Filed 7–2–13; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 72–1004, 72–40, 50–269, 50–270, and 50–287; NRC–2013–0135]**

## Duke Energy Carolinas, LLC, Oconee Nuclear Station Units 1, 2, and 3; Independent Spent Fuel Storage Installation; Environmental Assessment and Finding of No Significant Impact

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment and finding of no significant impact; issuance.

**SUMMARY:** The NRC is issuing an environmental assessment (EA) and a finding of no significant impact (FONSI) for an exemption request submitted by Duke Energy Carolinas, LLC, on August 13, 2012 for the Oconee Nuclear Station Independent Spent Fuel Storage Facility (ISFSI).

**ADDRESSES:** Please refer to Docket ID NRC–2013–0135 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–2013–0135. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Davis, Senior Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–287–9173; fax number: 301–287–9341; email: *BJennifer.Davis@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of an exemption to Duke Energy Carolinas, LLC (the applicant or the licensee) pursuant to § 72.7 of Title 10 of the *Code of Federal Regulations* (10 CFR) from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.214, and the portion of 10 CFR 72.212(b)(11) that requires compliance with the terms, conditions, and specifications of the Certificate of Compliance (CoC) only with regard to the loading of the M5 clad Babcock and Wilcox (B & W) Mark B11 and Mark B11A fuel. The applicant submitted its exemption request by letter dated August 13, 2012 (ADAMS Accession No. ML12227A686)). The applicant has previously loaded spent fuel in Transnuclear, Inc. (TN) Standardized NUHOMS® System 24PHB dry storage casks (DSC) for storage in the ISFSI at Oconee Nuclear Station under CoC No. 1004, Amendment No. 9, as authorized by the General License provisions of 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.'' The applicant now seeks an exemption to the CoC conditions that require the general licensee to meet the requirements of the technical specifications (TS) for the NUHOMS® system to permit the loading of M5 fuel into these canisters. Specifically, the applicant is requesting an exemption from TS 12.1, ''Fuel Specifications,'' and the associated tables listed below, which specify requirements for the spent fuel assemblies to be loaded in the 24PHB DSCs under Amendment No. 9.

- Table 1–1i, ''PWR Fuel Specification for Fuel to be Stored in the Standardized NUHOMS®-24PHB DSC''
- Table 1–2n, ''PWR Fuel Qualification Table for Zone 1 with 0.7 kW per Assembly, Fuel With or Without BPRAs [Burnable Poison Rod Assembly], for the NUHOMS®-24PHB DSC''
- Table 1–2o, ''PWR Fuel Qualification Table for Zone 2 with 1.0 kW per Assembly, Fuel With or Without BPRAs, for the NUHOMS®-24PHB DSC''
- Table 1–2p, PWR Fuel Qualification Table for Zone 3 with 1.3 kW per Assembly, Fuel With or Without BPRAs, for the NUHOMS®-24PHB DSC''

Specifically, the applicant is requesting an exemption from the requirement that specifies that the fuel approved for use in these casks is ''zircaloy clad,'' which includes only Zircaloy-2 or Zircaloy-4 cladding. This requirement precludes loading B&W Mark B11 and Mark B11A fuel assemblies, which have M5 cladding, and for which the applicant requests an exemption to load at Oconee.

## II. Environmental Assessment (EA)

*Background:* Oconee Nuclear Station is located on Lake Keowee in Oconee County, South Carolina, 8 miles north of Seneca, South Carolina. Unit 1 began commercial operation in 1973, followed by Units 2 and 3 in 1974. Since 1997, Oconee has been storing spent fuel in an ISFSI operating under a general license as authorized by 10 CFR part 72, subpart K, ''General License for Storage of Spent Fuel at Power Reactor Sites.'' The licensee also has a site-specific ISFSI license, which is not affected by this exemption request and associated EA.

*Identification of Proposed Action:* The CoC is the NRC approved design for each dry storage cask system. The proposed action would exempt the applicant from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.214, and the portion of 10 CFR 72.212(b)(11) that states the licensee shall comply with the terms, conditions, and specifications of the CoC with regard to permitting the loading of B&W Mark B11 and Mark B11A spent fuel assemblies for storage in the generally licensed ISFSI at Oconee. These regulations specifically require storage of spent nuclear fuel under a general license in DSCs approved under the provisions of 10 CFR part 72, and compliance with the terms and conditions set forth in the CoC for each dry spent fuel storage cask used by an ISFSI general licensee.

The TN Standardized NUHOMS® dry cask storage system CoC provides requirements, conditions and operating limits in Attachment A of the TS (ADAMS Accession No. ML062830067). The Table 1–1i of the TSs, ''PWR Fuel Specification for Fuel to be Stored in the Standardized NUHOMS®-24PHB DSC'' specify that the fuel cladding shall be ''zircaloy-clad fuel with no known or suspected gross cladding breaches.'' Zircaloy is a type of zirconium alloy which includes both Zircaloy-2 and Zircaloy-4 cladding, but does not include M5 cladding. The M5 is a different type of zirconium alloy, which does not contain any tin, as Zircaloy does, but which does contain some niobium.

This exemption only considers the loading of B&W 15x15 Mark B11 and Mark B11A spent fuel assemblies at the Oconee Nuclear Station ISFSI. Amendment No. 13 to CoC 1004, which is currently under review by the Commission, would permit storage of ''zirconium alloy'' clad spent fuel assemblies in the 24PHB DSC, which would include both the ''zircaloy clad'' assemblies permitted under previous amendments, as well as the M5 clad assemblies at issue in this exemption request. The NRC was able to draw upon review work already underway in its consideration of Amendment No. 13 for CoC 1004.

*Need for the Proposed Action:* The applicant has requested this exemption in order to load B&W Mark B11 and Mark B11A fuel assemblies in TN

NUHOMS® 24PHB DSCs under CoC No. 1004 at the Oconee Nuclear Station. These fuel assemblies have M5 cladding (a zirconium alloy), but the current TSs allow only ''zircaloy'' clad assemblies.

Approval of the exemption request will allow the applicant to effectively manage its spent fuel inventory to meet decay heat zoning requirements throughout its scheduled loading campaigns. The applicant's ability to load M5 clad fuel in its next scheduled loading campaign will mean that older ''zircaloy clad'' fuel assemblies will be available for future loadings, so that future loadings will not be restricted by the aggregate heat generated by hotter fuel and therefore contain fewer total assemblies. The proposed action enables the applicant to load the fewest possible DSCs by permitting cask loading of the hotter M5 fuel without later needing to ''short load'' casks due to heat load.

*Environmental Impacts of the Proposed Action:* The staff has determined that the proposed action would not endanger life or property and would not have significant impacts on the human environment. The potential impact of using the TN Standardized NUHOMS® dry cask storage system was initially evaluated in the EA for the rulemaking to add the TN Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel to the list of approved spent fuel storage casks in 10 CFR 72.214 (59 FR 28496, June 2, 1994 (Proposed Rule); 59 FR 65920, December 22, 1994 (Final Rule)).

The exemption proposed to Amendment No. 9 to CoC 1004 would permit the loading of M5 clad B&W Mark B11 and B11A fuel. The proposed action does not result in any changes to the types or amounts of any radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure as a result of the proposed action. Therefore, there are no significant environmental impacts associated with the proposed action. The proposed action only affects the requirements associated with the fuel assemblies to be loaded into the 24PHB DSCs and does not affect plant effluents, or any other aspects of the environment. Therefore, there are no significant impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

*Alternative to the Proposed Action:* Because there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impact were not evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the proposed action would involve loading additional DSCs due to heat load restrictions, as described in the safety evaluation report. Denial of the exemption would result in an increase in radiological exposure to workers, potential additional radioactive releases to the environment, additional opportunities for accidents, and increased cost to the licensee. Therefore, the NRC staff has determined that approving the proposed action has a lesser environmental impact than denying the proposed action.

*Agencies and Persons Consulted:* The EA associated with this exemption request was sent to Ms. Shelly Wilson of the South Carolina Department of Health and Environmental Control (SCDHEC) by email dated April 10, 2013 (ADAMS Accession No. ML13107B435). The state response was received by email dated April 11, 2013 (ADAMS Accession No. ML13107B441). The email states that SCDHEC reviewed the draft EA and has no comments. The NRC staff has determined that a consultation under Section 7 of the Endangered Species Act is not required, because the proposed action will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity that has the potential to impact historic properties, because the proposed action would occur within the established Oconee site boundary. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

## III. Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting the exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.214, and the portion of 10 CFR 72.212(b)(11) that states the licensee shall comply with the terms, conditions, and specifications of the CoC limited to the loading of the 24PHB DSCs with M5 clad B&W Mark B11 and Mark B11A fuel assemblies, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that preparation of an environmental impact statement for the proposed exemption is not warranted and that a finding of no significant impact is appropriate.

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

For the Nuclear Regulatory Commission.

**W. Christopher Allen,**

*Acting Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2013–16029 Filed 7–2–13; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee On Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee On Reliability and PRA; Revision to Notice of Meetings

The **Federal Register** Notice for the ACRS Subcommittee Meeting on Reliability and PRA scheduled to be held on July 22, 2013, is being revised to notify the following:

The meeting will be open to public attendance with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(4) to discuss proprietary information of the voluntary site.

The notice of this meeting was previously published in the **Federal Register** on Friday June 21, 2013 [78 FR 37596–37597].

Further information regarding these meetings can be obtained by contacting the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) between 8:15 a.m. and 5:00 p.m.

Dated: June 26, 2013.

**Antonio Dias,**

*Technical Advisor, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2013–16005 Filed 7–1–13; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### National Council on Federal Labor-Management Relations Meeting

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Council on Federal Labor-Management Relations plans to meet on Wednesday, September 18, 2013.

The meeting will start at 10:00 a.m. EDT and will be held at the U.S. Office of Personnel Management, 1900 E Street NW., Room 1350, Washington, DC 20415. Interested parties should consult the Council Web site at

*www.lmrcouncil.gov* for the latest information on Council activities, including changes in meeting logistics.

The Council is an advisory body composed of representatives of Federal employee organizations, Federal management organizations, and senior Government officials. The Council was established by Executive Order 13522, entitled, ''Creating Labor-Management Forums to Improve Delivery of Government Services,'' which was signed by the President on December 9, 2009. Along with its other responsibilities, the Council assists in the implementation of labor-management forums throughout the Government and makes recommendations to the President on innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests. The Council is co-chaired by the Director of the U.S. Office of Personnel Management and the Deputy Director for Management of the U.S. Office of Management and Budget.

At its meetings, the Council will continue its work in promoting cooperative and productive relationships between labor and management in the executive branch by carrying out the responsibilities and functions listed in section 1(b) of the Executive Order. The meetings are open to the public. Please contact the U.S. Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

**FOR FURTHER INFORMATION CONTACT:** Thomas Wachter, Labor Relations Manager, Partnership and Labor Relations, U.S. Office of Personnel Management, 1900 E Street NW., Room 7H28, Washington, DC 20415; phone at (202) 606–2930; or email at *PLR@opm.gov.*

For the National Council.

**Elaine Kaplan,**

*Acting Director.*

[FR Doc. 2013–15870 Filed 7–2–13; 8:45 am]

**BILLING CODE 6325–39–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2013–53 and CP2013–69; Order No. 1767]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add a new product to the competitive product list. This document invites public comments on the request and addresses several related procedural steps.

**DATES:** *Comments are due:* July 8, 2013.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

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

**SUPPLEMENTARY INFORMATION:**

I. Introduction
II. Postal Service's Filings
III. Notice of Filings
IV. Ordering Paragraphs

### I. Introduction

The Postal Service seeks to add Priority Mail International Regional Rate Boxes—Non-Published Rates (PMI RRB–NPR) to the competitive product list.[1] It provides a related model contract (Request, Attachment 4) and addresses filing practices for individual contracts within the new product. Request at 5.

### II. Postal Service's Filings

The Postal Service filed the Request, supporting attachments, sealed documents, and a public Excel file with redacted financial documentation to support the addition of the new product to the competitive product list. The Request is based on Governors' Decision No. 11–6. *Id.* at 1–2. It was filed pursuant to 39 U.S.C. 3642 and 39 CFR 3020 *et seq. Id.* at 1.

The Postal Service describes PMI RRB–NPR as a product that offers incentive pricing to small and medium-size business mailers that satisfy prescribed capability requirements and are willing to enter a contractual commitment to tender certain minimum levels of postage for PMI RRB on an annualized basis. *Id.* at 4. Certain requirements attach if customers use a permit imprint using Postal Service-provided Global Shipping Software. *Id.* at 5.

Attachments to the Request include:

- Attachment 1—an application for non-public treatment of materials filed under seal;
- Attachment 2A—a redacted version of Governors' Decision No. 11–6;
- Attachment 2B—a proposed version of the Mail Classification Schedule language for the new product;
- Attachment 2C—a redacted version of a management analysis of pricing and methodology for the new product;
- Attachment 2D—a redacted version of maximum and minimum prices for Priority Mail International Regional Rate Boxes under PMI RRB–NPR;
- Attachment 2E—the certified statement required by 39 CFR 3015.5 (c)(2) concerning prices for applicable negotiated service agreements under PMI RRB–NPR;
- Attachment 3—the Statement of Supporting Justification required by 39 CFR 3020.32; and
- Attachment 4—a redacted version of the PMI RRB–NPR model contract, which includes Annex One (prices) and Annex Two (country price groups).

*Id.* at 2–3.

The Postal Service addresses several elements of the non-discounted price table for PMI RRB–NPR, including the three box types that will be offered and related weight limits and dimensions. *Id.* at 4. It identifies eight country price groups. *Id.* at 5. The Postal Service states that the Management Analysis (Attachment 2C) provides an explanation of how floor and ceiling prices are established. *Id.* The Postal Service also states it anticipates the Commission will ask that PMI RRB–NPR filings be similar to GEPS–NPR 4 filings and that notice of new rates for PMI RRB–NPR will necessitate the addition of successor filings. *Id.*

The Postal Service presents reasons why the proposed new product satisfies the criteria in 39 U.S.C. 3642(b)(1) and (2) (concerning product category and monopoly status), and states that the Statement of Supporting Justification addresses 39 U.S.C. 3642(b)(3) (market considerations). *Id.* at 6–7.

The Postal Service asserts that redacted portions of materials filed under seal should remain confidential as sensitive business information. *Id.* at 7. The Postal Service also intends to rely on the application for non-public treatment filed as Attachment 1 in this docket when it files actual PMI RRB–NPR customer agreements. *Id.* at 8.

[1] *See* Request of the United States Postal Service to Add Priority Mail International Regional Rate Boxes—Non-Published Rates to the Competitive Product List and Notice of Filing Priority Mail International Regional Rate Boxes–Non-Published Rates Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, June 25, 2013 (Request).

### III. Notice of Filings

The Commission establishes Docket Nos. MC2013–53 and CP2013–69 to consider matters raised by the Request. Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than July 8, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*). Information on how to obtain access to sealed portions of the filing appears at 39 CFR part 3007.

The Commission appoints Manon A. Boudreault to serve as Public Representative in these dockets.

### IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2013–53 and CP2013–69 to consider matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Manon A. Boudreault is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than July 8, 2013.

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

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2013–15909 Filed 7–2–13; 8:45 am]

**BILLING CODE 7710–FW–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30583; File No. 812–14087]**

## ProShare Advisors LLC, et al.; Notice of Application

June 27, 2013.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

**APPLICANTS:** ProShares Trust (''Trust''), ProShare Advisors LLC (''Current Adviser''), and SEI Investments Distribution Co. (''Distributor'').

**FILING DATES:** The application was filed on June 13, 2012 and amended on October 24, 2012, May 14, 2013, and June 26, 2013.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 7501 Wisconsin Avenue Suite 1000E, Bethesda, MD 20814.

**FOR FURTHER INFORMATION CONTACT:** Mark N. Zaruba, Senior Counsel, at (202) 551–6878, or Dalia Osman Blass, Assistant Director, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

### Applicants' Representations

1. The Trust is a Delaware statutory trust is registered under the Act as an open-end management investment company with multiple series.

2. The Current Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and will be the investment adviser to the Self-Indexing Funds (defined below). Any other Adviser (defined below) will also be registered as an investment adviser under the Advisers Act. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Self-Indexing Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust has entered into a distribution agreement with the Distributor. The Distributor is a broker-dealer (''Broker'') registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as distributor and principal underwriter of one or more of the Self-Indexing Funds. The Distributor of any Self-Indexing Fund may be an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of that Self-Indexing Fund's Adviser and/or Sub-Advisers. No Distributor will be affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the initial series of the Trust described in the application (''Initial Self-Indexing Fund''), as well as any additional series of the Trust and other open-end management investment companies, or series thereof, that may be created in the future (''Future Self-Indexing Funds''), each of which will operate as an exchange-traded fund (''ETF'') and will track a specified index comprised of domestic or foreign securities (each, an ''Underlying Index''). Any Future Self-Indexing Fund will (a) be advised by the Current Adviser or an entity controlling, controlled by, or under common control with the Current Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application. The Initial Self-Indexing Fund and

Future Self-Indexing Funds, together, are the ''Self-Indexing Funds.'' [1]

5. Each Self-Indexing Fund will hold certain securities (''Portfolio Securities'') selected to correspond generally to the performance of its Underlying Index. Each Underlying Index will be comprised solely of domestic and/or foreign equity and/or fixed income securities. Each Self-Indexing Fund will track one of the following types of Underlying Indexes: (i) An index that includes domestic equity securities and/or domestic fixed income securities, (ii) an index that includes foreign equity securities and/or foreign fixed income securities (such Funds, ''International Funds''), or (iii) an index that includes foreign and domestic equity securities and/or foreign and domestic fixed income securities (such Funds, ''Global Funds'').

6. Applicants represent that each Self-Indexing Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions [2], and in the case of International and Global Funds, Component Securities and Depositary Receipts [3] representing Component Securities. Each Self-Indexing Fund may also invest up to 20% of its assets in securities and other instruments not included in its Underlying Index but which the Adviser and/or Sub-Adviser believes will help the Self-Indexing Fund track its Underlying Index, including but not limited to certain index futures, options, options on futures, options on index futures, swap contracts or other derivatives, cash and cash equivalents, and other investment companies. A Self-Indexing Fund may also engage in short sales in accordance with its investment objective.

7. The Trust may issue Self-Indexing Funds that seek to track Underlying Indexes constructed using long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will obtain exposures equal to the long and short positions specified by the Long/Short Index.[4]

8. A Self-Indexing Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Self-Indexing Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Self-Indexing Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Self-Indexing Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Self-Indexing Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

9. Each Self-Indexing Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the Affiliated Index Provider.[5] An Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Self-Indexing Fund, of the Adviser, of any Sub-Adviser to or promoter of a Self-Indexing Fund, or of the Distributor (each, an ''Affiliated Index Provider'') [6] will create a proprietary, rules-based methodology to create Underlying Indexes.[7] The Affiliated Index Provider will create, compile, sponsor or maintain the Underlying Indexes.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated. Prior orders granted to self-indexing ETFs (''Prior Self-Indexing Orders'') addressed these concerns by creating a framework that required: (i) Transparency of the Underlying Indexes; (ii) the adoption of policies and procedures not otherwise required by the Act designed to mitigate such conflicts of interest; (iii) limitations on the ability to change the rules for index compilation and the component securities of the index; (iv) that the index provider enter into an agreement with an unaffiliated third party to act as ''Calculation Agent''; and (v) certain limitations designed to separate employees of the index provider, adviser and Calculation Agent (clauses (ii) through (v) are hereinafter referred to as ''Policies and Procedures'').[8]

11. Instead of adopting the same or similar Policies and Procedures, Applicants propose that each day that a Self-Indexing Fund, the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an ''Exchange'')) on which the Self-

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Self-Indexing Funds and not in any other registered investment company.

[2] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[3] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Self-Indexing Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Self-Indexing Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Self-Indexing Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Self-Indexing Fund.

[4] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[5] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[6] The Applicants currently expect that the Adviser will serve as the Affiliated Index Provider for the Self-Indexing Funds. In the event that the Adviser serves as the Affiliated Index Provider for a Self-Indexing Fund, the term ''Affiliated Index Provider,'' with respect to that Self-Indexing Fund, will refer to the employees of the Adviser that are responsible for creating, compiling and maintaining the relevant Underlying Index.

[7] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or sub-adviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or sub-adviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Self-Indexing Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Self-Indexing Fund.

[8] *See, e.g.,* In the Matter of WisdomTree Investments Inc., et al., Investment Company Act Release Nos. 27324 (May 18, 2006) (notice) and 27391 (June 12, 2006) (order); In the Matter of IndexIQ ETF Trust, et al., Investment Company Act Release Nos. 28638 (Feb. 27, 2009) (notice) and 28653 (March 20, 2009) (order); and Van Eck Associates Corporation, et al., et al., Investment Company Act Release Nos. 29455 (Oct. 1, 2010) (notice) and 29490 (Oct. 26, 2010) (order).

Indexing Fund's Shares are primarily listed (''Listing Exchange'') are open for business, including any day that a Self-Indexing Fund is required to be open under section 22(e) of the Act (a ''Business Day''), each Self-Indexing Fund will post on its publicly available Web site (''Web site''),[9] before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the portfolio securities, assets, and other positions held by the Self-Indexing Fund that will form the basis for the Self-Indexing Fund's calculation of its NAV at the end of the Business Day (''Portfolio Holdings'').[10] Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will provide an effective alternative mechanism for addressing any such potential conflicts of interest.

12. Applicants represent that each Self-Indexing Fund's Portfolio Holdings will be as transparent as the portfolio holdings of existing actively managed ETFs. Applicants observe that the framework set forth in the Prior Self-Indexing Orders was established before the Commission began issuing exemptive relief to allow the offering of actively-managed ETFs.[11] Unlike passively-managed ETFs, actively-managed ETFs do not seek to replicate the performance of a specified index but rather seek to achieve their investment objectives by using an ''active'' management strategy. Applicants contend that the structure of actively managed ETFs presents potential conflicts of interest that are the same as those presented by Self-Indexing Funds because the portfolio managers of an actively managed ETF by definition have advance knowledge of pending portfolio changes. However, rather than requiring Policies and Procedures similar to those required under the Prior Self-Indexing Orders, Applicants believe that actively managed ETFs address these potential conflicts of interest appropriately through full portfolio transparency, as the conditions to their relevant exemptive relief require.

13. In addition, Applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self-Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[12]

14. The Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Adviser has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Adviser or an associated person (''Inside Information Policy''). Any Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics [13] and Inside Information Policy of the Adviser and Sub-Advisers, personnel of those entities with knowledge about the composition of the Portfolio Deposit [14] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, no Affiliated Index Provider will provide any information relating to changes to an Underlying Index's methodology for the inclusion or exclusion of component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by such Affiliated Index Provider. The Adviser will also include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

15. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

16. In light of the foregoing, Applicants believe it is appropriate to allow the Self-Indexing Funds to be fully transparent in lieu of Policies and Procedures from the Prior Self-Indexing Orders discussed above.

17. The Shares of each Self-Indexing Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption

[9] The information provided on the Web site will be formatted to be reader-friendly.

[10] Under accounting procedures followed by each Self-Indexing Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, the Self-Indexing Funds will be able to disclose at the beginning of each Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[11] *See, e.g.,* In the Matter of Huntington Asset Advisors, Inc., et al., Investment Company Act Release Nos. 30032 (April 10, 2012) (notice) and 30061 (May 8, 2012) (order); In the Matter of Russell Investment Management Co., et al., Investment Company Act Release Nos. 29655 (April 20, 2011) (notice) and 29671 (May 16, 2011) (order); In the Matter of Eaton Vance Management, et al., Investment Company Act Release Nos. 29591 (March 11, 2011) (notice) and 29620 (March 30, 2011) (order) and; In the Matter of iShares Trust, et al., Investment Company Act Release Nos. 29543 (Dec. 27, 2010) (notice) and 29571 (Jan. 24, 2011) (order).

[12] *See, e.g.,* Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[13] The Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 (''Code of Ethics'').

[14] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the ''Portfolio Deposit.''

Instruments'').[15] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Self-Indexing Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Self-Indexing Fund's portfolio (including cash positions)[16] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[17] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind[18] will be excluded from the Deposit Instruments and the Redemption Instruments;[19] (d) to the extent the Self-Indexing Fund determines, on a given Business Day, to use a representative sampling of the Self-Indexing Fund's portfolio;[20] or (e) for temporary periods, to effect changes in the Self-Indexing Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

18. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Self-Indexing Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Self-Indexing Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[21] (d) if, on a given Business Day, the Self-Indexing Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of International and Global Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Self-Indexing Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of an International Fund or Global Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[22]

19. Creation Units will consist of specified large aggregations of Shares, e.g., at least 25,000 Shares, and it is expected that the initial price of a Creation Unit will range from $1 million to $15 million. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' i.e., a broker-dealer or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Self-Indexing Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

20. Each Business Day, before the open of trading on the Listing Exchange, each Self-Indexing Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Self-Indexing Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Portfolio Securities and other assets of the Self-Indexing Fund.

21. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Self-Indexing Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Self-Indexing Fund's existing shareholders. Each Self-Indexing Fund may (but is not required

[15] The Self-Indexing Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Self-Indexing Funds will comply with the conditions of rule 144A.

[16] The portfolio used for this purpose will be the same portfolio used to calculate the Self-Indexing Fund's NAV for the Business Day.

[17] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[18] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Self-Indexing Fund does not intend to seek such consents.

[19] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[20] A Self-Indexing Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Self-Indexing Fund's portfolio; (ii) consists entirely of instruments that are already included in the Self-Indexing Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[21] In determining whether a particular Self-Indexing Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Self-Indexing Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Self-Indexing Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Self-Indexing Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[22] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

to) impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[23] The Distributor will be responsible for delivering the Self-Indexing Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

22. Shares of each Self-Indexing Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

23. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[24] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

24. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Self-Indexing Fund, or tender such Shares for redemption to the Self-Indexing Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

25. Neither the Trust nor any Self-Indexing Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Self-Indexing Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Self-Indexing Fund or tender such Shares for redemption to the Self-Indexing Fund in Creation Units only. The Self-Indexing Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

**Applicants' Legal Analysis**

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

*Sections 5(a)(1) and 2(a)(32) of the Act*

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Self-Indexing Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Self-Indexing Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

*Section 22(d) of the Act and Rule 22c–1 Under the Act*

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Self-Indexing Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an

[23] Where a Self-Indexing Fund permits an in-kind purchaser (or redeeming investor) to substitute (or receive) cash-in-lieu of depositing one or more of the requisite Deposit Instruments (or receiving one or more Portfolio Securities), the purchaser (or redeeming investor) may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments (or selling such Portfolio Securities).

[24] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Self-Indexing Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

*Section 22(e)*

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for International and Global Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign Portfolio Securities held by an International Fund or Global Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fourteen (14) calendar days. Accordingly, with respect to International and Global Funds only, Applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow International and Global Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption.[25]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of an International Fund or Global Fund to be made within fourteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fourteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to International and Global Funds that do not effect creations and redemptions of Creation Units in-kind.

*Section 12(d)(1)*

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Self-Indexing Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Self-Indexing Funds, and any principal underwriter for the Self-Indexing Funds, and/or any Broker registered Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Self-Indexing Fund.[26] To limit the control that a Fund of Funds may have over a Self-Indexing Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is

[25] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations Applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[26] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Self-Indexing Fund and any person controlling, controlled by or under common control with any of these entities.

advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Self-Indexing Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Self-Indexing Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Self-Indexing Fund) will cause a Self-Indexing Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Self-Indexing Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Self-Indexing Fund in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Self-Indexing Fund under rule 12b–1 under the Act) received from a Self-Indexing Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Self-Indexing Fund, in connection with the investment by the Fund of Funds in the Self-Indexing Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[27]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Self-Indexing Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Self-Indexing Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Self-Indexing Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Self-Indexing Funds and not in any other investment company.

18. Applicants also note that a Self-Indexing Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Self-Indexing Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

[27] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

*Sections 17(a)(1) and (2) of the Act*

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Self-Indexing Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Self-Indexing Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Self-Indexing Funds, may be deemed affiliated persons of the Trust or such Self-Indexing Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Self-Indexing Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Self-Indexing Funds, or Second-Tier Affiliates of the Self-Indexing Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Self-Indexing Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Self-Indexing Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Self-Indexing Fund will be valued in the identical manner as those Portfolio Securities currently held by such Self-Indexing Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Self-Indexing Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to Applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Securities held by a Self-Indexing Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of Applicants to effect a transaction detrimental to the other holders of Shares of that Self-Indexing Fund. Similarly, Applicants submit that, by using the same standards for valuing Portfolio Securities held by a Self-Indexing Fund as are used for calculating ''in-kind'' redemptions or purchases, the Self-Indexing Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Self-Indexing Fund to track closely its Underlying Index and therefore aid in achieving the Self-Indexing Fund's objectives.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Self-Indexing Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[28] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Self-Indexing Fund will be based on the NAV of the Self-Indexing Fund.[29] Applicants believe that any proposed transactions directly between the Self-Indexing Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Self-Indexing Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

**Applicants' Conditions**

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Self-Indexing Fund operates in reliance on the requested order, the Shares of such Self-Indexing Fund will be listed on an Exchange.

3. Neither a Trust nor any Self-Indexing Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Self-Indexing Fund and tender those Shares for redemption to a Self-Indexing Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Self-Indexing Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the identities and quantities of the Self-Indexing Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for a Self-Indexing Fund through a transaction in which the Self-Indexing Fund could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Self-Indexing Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Self-Indexing Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Self-Indexing Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Self-Indexing Fund, it will vote its Shares of the Self-Indexing Fund in the same proportion as the vote of all other holders of the Self-Indexing Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with

[28] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Self-Indexing Fund, a Fund of Funds might seek to transact in Creation Units directly with a Self-Indexing Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Self-Indexing Fund, relief from Section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Self-Indexing Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from Section 17(a) for, and the requested relief will not apply to, transactions where a Self-Indexing Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[29] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Self-Indexing Fund or (b) an affiliated person of a Self-Indexing Fund, or an affiliated person of such person, for the sale by the Self-Indexing Fund of its Shares to a Fund of Funds, may be prohibited by Section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

respect to a Self-Indexing Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of Section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Self-Indexing Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Self-Indexing Fund or a Self-Indexing Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Self-Indexing Fund or Self-Indexing Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Self-Indexing Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Self-Indexing Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the Self-Indexing Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Self-Indexing Fund; (ii) is within the range of consideration that the Self-Indexing Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Self-Indexing Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Self-Indexing Fund under rule 12b–l under the Act) received from a Self-Indexing Fund by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the Self-Indexing Fund, in connection with the investment by the Fund of Funds in the Self-Indexing Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Self-Indexing Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Self-Indexing Fund, in connection with the investment by the Investing Management Company in the Self-Indexing Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Self-Indexing Fund) will cause a Self-Indexing Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Self-Indexing Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Self-Indexing Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Self-Indexing Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Self-Indexing Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Self-Indexing Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Self-Indexing Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Self-Indexing Fund.

8. Each Self-Indexing Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Self-Indexing Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Self-Indexing Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the applicable Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Self-Indexing Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Self-Indexing Fund of the investment. At such time, the Fund of Funds will also transmit to the Self-Indexing Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Self-Indexing Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Self-Indexing Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated

information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Self-Indexing Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Self-Indexing Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Self-Indexing Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Self-Indexing Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–16024 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30584; 812–14009]**

## Charles Schwab Investment Management, Inc., *et al.;* Notice of Application

June 27, 2013.

**AGENCY:** Securities and Exchange Commission (the ''Commission'').

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

*Applicants:* Charles Schwab Investment Management, Inc. (''CSIM''), the Schwab Strategic Trust (the ''Trust''), and SEI Investments Distribution Co. (the ''Distributor'').

*Summary of Application:* Applicants request an order that permits: (a) Actively-managed series of the Trusts to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Shares in-kind in a master-feeder structure.

**DATES:** *Filing Dates:* The application was filed on February 27, 2012, and amended on August 8, 2012, January 25, 2013, and June 21, 2013.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549. Applicants, David J. Lekich, Esq., Charles Schwab Investment Management, Inc., 211 Main Street, SF211–05–491, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** Mark N. Zaruba, Senior Counsel, at (202) 551–6878 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.

*Applicants' Representations:*

1. The Trust is registered as an open-end management investment company under the Act and is organized as a Delaware statutory trust. The Trust will offer Funds (as defined below), each of which will have distinct investment strategies and will attempt to achieve its investment objective by utilizing an active management strategy based on investments in equity and debt securities, including shares of other investment companies. Initially, the requested order will apply to a new series of the Trust (the ''New Fund'') that will seek a high level of current income consistent with preservation of capital and daily liquidity by investing at least 90% of its assets in a portfolio of investment grade short-term fixed income securities issued by U.S. and foreign issuers and other short-term investments.

2. CSIM, a Delaware corporation, is, and any other Adviser (as defined below) will be, registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). Subject to approval of the Trust's Board (as defined below), an Adviser will be the investment adviser to each Fund. The Adviser may enter into sub-advisory agreements with one or more investment advisers to serve as a subadviser to a Fund (each a ''Sub-Adviser''). Any Sub-Adviser will be registered, or not subject to registration, under the Advisers Act. SEI Investments Distribution Co., a Pennsylvania corporation, is registered as a broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (the ''Exchange Act''). A Distributor will serve as the principal underwriter and distributor for each of the Funds.[1]

3. Applicants request that the order apply to the New Fund as well as to additional series of the Trust or to any other open-end investment company or

[1] For purposes of the requested order, the term ''Distributor'' shall include any other entity that acts as the distributor and principal underwriter of the Creation Units of Shares of the Funds in the future and complies with the terms and conditions of the application. Any future Distributor will be a Broker registered under the Exchange Act.

series thereof that may be created in the future that, in each case, (a) is an actively managed exchange-traded fund (''ETF''), (b) is advised by CSIM or an entity controlling, controlled by, or under common control with CSIM (each such entity, an ''Adviser'') and (c) complies with the terms and conditions of the application (individually a ''Fund,'' and collectively, the ''Funds'').[2] The Funds, or their respective Master Funds, may invest in equity securities or fixed income securities traded in the U.S. or non-U.S. markets. Funds that invest in foreign equity securities or foreign fixed income securities, either directly or through a Master Fund, are ''Foreign Funds.'' The Funds, either directly or through a Master Fund, may also invest in ''Depositary Receipts'' [3] and may engage in TBA Transactions (defined below). To implement each Fund's investment strategy, the Adviser and/or Subadvisers of a Fund may review and change the portfolio securities, other assets, and other positions held by the Fund (the ''Portfolio Instruments'') daily.[4]

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund; (ii) any Fund of Funds (as defined below); and (iii) any Brokers selling Shares of a Fund to a Fund of Funds or any principal underwriter of a Fund.[5] A management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that acquires Shares of a Fund in excess of the limits of section 12(d)(1)(A) of the Act is referred to as an ''Investing Management Company'' or an ''Investing Trust,'' respectively, and the Investing Management Companies and Investing Trusts are referred to collectively as ''Funds of Funds.'' [6]

5. A Fund may operate as a feeder fund in a master-feeder structure (''Feeder Fund''). Applicants request that the order permit a Feeder Fund to acquire shares of another registered investment company in the same group of investment companies having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) of the Act and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B) of the Act (''Master-Feeder Relief''). Applicants may structure certain Feeder Funds to generate economies of scale and incur lower overhead costs.[7] There would be no ability by Fund shareholders to exchange Shares of Feeder Funds for shares of another feeder series of the Master Fund.

6. A Creation Unit will consist of at least 25,000 Shares and applicants expect that the trading price of a Share will range from $20 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is either (a) a Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC,'' and such participant a ''DTC Participant''), which, in either case, has executed an agreement with the Distributor with respect to the purchase and redemption of Creation Units.

7. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[8] On any given Business Day [9] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's (or its respective Master Fund's) portfolio (including cash positions),[10] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[11] or (c) TBA Transactions,[12] short positions or other positions that cannot be transferred in kind [13] will be excluded from the Creation Basket.[14] If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party

[2] All entities that currently intend to rely on the order are named as applicants. Any entity that relies on the order in the future will comply with the terms and conditions of the application.

[3] Depositary Receipts are typically issued by a financial institution (a ''Depositary'') and evidence ownership in a security or pool of securities that have been deposited with the Depositary. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants or any Sub-Adviser will serve as the Depositary for any Depositary Receipts held by a Fund (or its respective Master Fund).

[4] If a Fund (or its respective Master Fund) invests in derivatives, then (a) the Fund's board of trustees or directors (for any entity, the ''Board'') will periodically review and approve the Fund's (or its respective Master Fund's) use of derivatives and how the Fund's investment adviser assesses and manages risk with respect to the Fund's (or its respective Master Fund's) use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[5] Any future principal underwriter of a Fund will be a Broker registered under the Exchange Act and will comply with the terms and conditions of the application.

[6] A Fund of Funds may rely on the order only to invest in the Funds and not in any other registered investment company. In no case will a Fund that invests in other investment companies and/or ETFs rely on the exemption from section 12(d)(1) being requested in the application.

[7] Operating in a master-feeder structure could also impose costs on a Feeder Fund and reduce its tax efficiency. The Feeder Fund's Board will consider any such potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure. In a master-feeder structure, the Master Fund—rather than the Feeder Fund—would generally invest its portfolio in compliance with the requested order.

[8] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[9] Each Fund will sell and redeem Creation Units on any day that the Fund is open, including as required by section 22(e) of the Act (each, a ''Business Day'').

[10] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

[11] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[12] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[13] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[14] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Balancing Amount (defined below).

conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Balancing Amount'').

8. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[15]

9. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (a ''Listing Exchange''), on which Shares are listed and traded, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. For each Fund, the relevant Listing Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the current value of the Portfolio Instruments held by the Fund.

10. An investor purchasing or redeeming a Creation Unit from a Fund may be charged a fee (the ''Transaction Fee'') to defray transaction expenses as well as prevent possible shareholder dilution.[16] With respect to Feeder Funds, the Transaction Fee would be paid indirectly to the Master Fund.[17] All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit such orders to the Funds. The Distributor will be responsible for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

11. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded at negotiated prices on a Listing Exchange and it is expected that the relevant Listing Exchange will designate one or more member firms to maintain a market for the Shares.[18] The price of Shares trading on a Listing Exchange will be based on a current bid-offer in the secondary market. Purchases and sales of Shares in the secondary market will not involve a Fund and will be subject to customary brokerage commissions and charges.

12. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[19] Applicants believe that the structure and operation of the Funds will be designed to enable efficient arbitrage and, thereby, minimize the probability that Shares will trade at a material premium or discount to a Fund's NAV.

13. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and may be subject to a Transaction Fee.

14. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or mutual fund. Instead, each Fund will be marketed as an ''exchange-traded fund.'' All marketing materials that describe the features or method of obtaining, buying, or selling Creation Units, or Shares traded on a Listing Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may acquire those Shares from a Fund or tender those Shares for redemption to the Fund in Creation Units only.

15. The Trust's Web site (''Web site''), which will be publicly available prior to the offering of Shares, will include each Fund's prospectus (''Prospectus''), statement of additional information (''SAI''), and summary prospectus, if used. The Web site will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''), and a

[15] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[16] Where a Fund permits a purchaser to substitute cash in lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the costs of purchasing those Deposit Instruments. In all cases, the Transaction Fee will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

[17] Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions of 200,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 200,000 or more shares.

[18] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Listing Exchange (including NYSE Arca, Inc.), one or more member firms of that Listing Exchange will act as market maker (a ''Market Maker'') and maintain a market for Shares trading on that Listing Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq stipulate that at least two Market Makers must be registered in Shares to maintain a listing. Registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares.

[19] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

calculation of the premium or discount of the market closing price or the Bid/Ask Price against such NAV. On each Business Day, prior to the commencement of trading in Shares on the Listing Exchange, each Fund shall post on the Web site the identities and quantities of the Portfolio Instruments held by the Fund [20] that will form the basis for the calculation of the NAV at the end of that Business Day.[21]

**Applicants' Legal Analysis**

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

**Sections 5(a)(1) and 2(a)(32) of the Act**

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust and each Fund to redeem Shares in Creation Units only.[22] Applicants state that investors may purchase Shares in Creation Units from each Fund and that Creation Units will always be redeemable in accordance with the provisions of the Act. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

**Section 22(d) of the Act and Rule 22c–1 Under the Act**

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

**Section 22(e) of the Act**

7. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of the Foreign Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets for underlying foreign Portfolio Instruments in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to fourteen (14) calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within a longer number of calendar days as required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Foreign Fund customarily clear and settle, but in all cases no later than fourteen (14) days

[20] Feeder Funds will disclose information about the securities and other assets held by the Master Fund.

[21] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[22] The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will operate as traditional mutual funds and issue individually redeemable securities.

following the tender of a Creation Unit.[23]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI will identify those instances in a given year where, due to local holidays, more than seven calendar days, up to a maximum of fourteen calendar days, will be needed to deliver redemption proceeds and will list such holidays. Applicants are not seeking relief from section 22(e) for Foreign Funds that do not effect redemptions of Creation Units in-kind.

9. With respect to Feeder Funds, only in-kind redemptions may proceed on a delayed basis pursuant to the relief requested from section 22(e). In the event of such an in-kind redemption, the Feeder Fund would make a corresponding redemption from the Master Fund. Applicants do not believe the master-feeder structure would have any impact on the delivery cycle.[24]

**Section 12(d)(1) of the Act**

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request relief to permit Funds of Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Funds of Funds in excess of the limits in section 12(d)(1)(B) of the Act.

12. Applicants assert that the proposed transactions will not lead to any of the abuses that section 12(d)(1) was designed to prevent. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

13. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (''Fund of Funds' Adviser''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Fund of Funds' Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds' Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Fund of Funds' Adviser or Sponsor (''Fund of Funds' Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to a Fund of Funds (''Fund of Funds' Sub-Adviser''), any person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds' Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser (''Fund of Funds' Sub-Advisory Group'').

14. Applicants propose a condition to ensure that no Fund of Funds or Fund of Funds' Affiliate[25] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds' Adviser, Fund of Funds' Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds' Adviser, Fund of Funds' Sub-Adviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

15. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the Board of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (for any Board, the ''Independent Board Members''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund (or its respective Master Fund) in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[26]

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund (or its respective Master Fund) will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes or pursuant to the Master-Feeder Relief.

17. To ensure that a Fund of Funds is aware of the terms and conditions of the requested order, the Funds of Funds

[23] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

[24] The requested exemption from section 22(e) would only apply to in-kind redemptions by the Feeder Funds and would not apply to in-kind redemptions by other feeder funds.

[25] A ''Fund of Funds' Affiliate'' is any Fund of Funds' Adviser, Fund of Funds' Sub-Adviser, Sponsor, promoter and principal underwriter of a Fund of Funds, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is the Adviser, Sub-Adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[26] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

must enter into an agreement with the respective Funds (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also are seeking the Master-Feeder Relief to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of section 12(d)(1)(A) and (B) shall not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held by the investing investment company (in this case, the Feeder Fund). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and, for a hypothetical moment in the course of a creation or redemption, other securities, applicants request relief from section 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

**Section 17(a) of the Act**

19. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person (''Second Tier Affiliates''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an ''Affiliated Fund'').

20. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are affiliated persons or Second Tier Affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds. Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in the transactions that would accompany such sales and redemptions with, any Fund of Funds of which the Fund is an affiliated person or Second Tier Affiliate.[27]

21. Applicants contend that no useful purpose would be served by prohibiting such affiliated persons or Second Tier Affiliates from acquiring or redeeming Creation Units through in-kind transactions. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemptions Instruments will be valued in the same manner as the Portfolio Instruments held by the relevant Fund. Applicants thus believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

22. Applicants also submit that the sale of Shares to and redemption of Shares from a Fund of Funds satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Creation Units directly from a Fund will be based on the NAV of the Fund.[28] The FOF Participation Agreement will require any Fund of Funds that purchases Creation Units directly from a Fund to represent that the purchase will be in compliance with its investment restrictions and consistent with the investment policies set forth in its registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

23. To the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the customary section 17(a)(1) and 17(a)(2) relief would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve ''overreaching'' by an affiliated person. Such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transaction would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants believe that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned and that the transactions are

[27] Applicants anticipate that most Fund of Funds will purchase Shares in the secondary market and will not purchase or redeem Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares in Creation Units. The requested relief is intended to cover transactions that would accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an investment adviser to the Funds is also an investment adviser to the Fund of Funds.

[28] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

consistent with the general purposes of the Act.

**Applicants' Conditions**

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

*A. Actively Managed Exchange-Traded Fund Relief*

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on a Listing Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire Shares from the Fund and tender Shares for redemption to the Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for the Fund, the prior Business Day's NAV and the market closing price or Bid/Ask Price of the Shares, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. No Adviser or Sub-Adviser, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. On each Business Day, before the commencement of trading in Shares on the Fund's Listing Exchange, the Fund (or its respective Master Fund) will disclose on the Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis of the Fund's calculation of NAV at the end of the Business Day.

*B. Section 12(d)(1) Relief*

1. The members of the Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund (or its respective Master Fund) within the meaning of section 2(a)(9) of the Act. The members of the Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund (or its respective Master Fund) within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its voting securities of the Fund in the same proportion as the vote of all other holders of the Fund's voting securities. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund (or its respective Master Fund) for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or a Fund of Funds' Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds' Affiliate and the Fund (or its respective Master Fund) or a Fund Affiliate.

3. The Board of an Investing Management Company, including a majority of the Independent Board Members, will adopt procedures reasonably designed to ensure that the Fund of Funds' Adviser and any Fund of Funds' Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds' Affiliate from a Fund (or its respective Master Fund) or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of the Fund (or its respective Master Fund), including a majority of the Independent Board Members, will determine that any consideration paid by the Fund (or its respective Master Fund) to the Fund of Funds or a Fund of Funds' Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund (or its respective Master Fund); (ii) is within the range of consideration that the Fund (or its respective Master Fund) would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund (or its respective Master Fund) and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds' Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund (or its respective Master Fund) pursuant to rule 12b-l under the Act) received from a Fund (or its respective Master Fund) by the Fund of Funds' Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds' Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds' Adviser, or trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund (or its respective Master Fund), in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds' Sub-Adviser will waive fees otherwise payable to the Fund of Funds' Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund (or its respective Master Fund) by the Fund of Funds' Sub-Adviser, or an affiliated person of the Fund of Funds' Sub-Adviser, other than any advisory fees paid to the Fund of Funds' Sub-Adviser or its affiliated person by the Fund (or its respective Master Fund), in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds' Sub-Adviser. In the event that the Fund of Funds' Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds' Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund (or its respective Master Fund)) will cause a Fund (or its respective Master Fund) to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund (or its respective Master Fund), including a majority of the Independent Board Members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund (or its respective Master Fund) in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the

purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) whether the purchases were consistent with the investment objectives and policies of the Fund (or its respective Master Fund); (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund (or its respective Master Fund) in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of the owners of beneficial interests in Shares of the Fund.

8. Each Fund (or its respective Master Fund) will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in the Shares of a Fund in excess of the limits in section 12(d)(1)(A), a Fund of Funds will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the requested order, and agree to fulfill their responsibilities under the requested order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds' Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the Board of each Investing Management Company including a majority of the Independent Board Members, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund (or its respective Master Fund) in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund (or its respective Master Fund) will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that (i) the Fund (or its respective Master Fund) acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund (or its respective Master Fund) to acquire securities of one or more investment companies for short-term cash management purposes, or (ii) the Fund acquires securities of the Master Fund pursuant to the Master-Feeder Relief.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–16025 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69872]**

## Order Pursuant to Section 17A of the Securities Exchange Act of 1934 Granting Exemption From the Clearing Agency Registration Requirement Under Section 17A(b) of the Exchange Act for ICE Clear Europe Limited in Connection With Its Proposal To Clear Contracts Traded on the LIFFE Administration and Management Market

June 27, 2013.

### I. Introduction

Section 17A of the Securities Exchange Act of 1934 (''Exchange Act'')[1] sets forth the framework for the regulation of the clearance and settlement of securities transactions and directs the Securities and Exchange Commission (''Commission'') to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. Pursuant to Section 17A(b)(1) of the Exchange Act,[2] absent an exemption, a clearing agency that makes use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security) is required to register with the Commission. The Commission has required a foreign clearing agency to register or obtain an exemption from clearing agency registration if the foreign clearing agency provides clearance and settlement services for U.S. securities directly to U.S. persons.[3] The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of Section 17A or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate

[1] 15 U.S.C. 78q–1.

[2] 15 U.S.C. 78q–1(b)(1).

[3] *See* Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30967 (May 23, 2013), Part V.B, n. 682; and Exemption of Certain Foreign Brokers or Dealers, Exchange Act Release No. 58047 (Jun. 27, 2008), 73 FR 39182 (Jul. 8, 2008), Part III.F.3 (both discussing the Commission's approach to the registration of foreign clearing agencies).

clearance and settlement of securities transactions and the safeguarding of securities and funds.[4]

ICE Clear Europe Limited (''ICE Clear Europe'') is an indirectly wholly-owned subsidiary of IntercontinentalExchange, Inc. (''ICE''). Incorporated in England and Wales in 2007 as a private limited company, ICE Clear Europe is subject to supervision by the Bank of England as a Recognised Clearing House (''RCH'') in the United Kingdom. Pursuant to Section 763(b) of the Dodd-Frank Act,[5] on July 16, 2011, ICE Clear Europe became registered with the Commission as a clearing agency solely for the purpose of clearing security-based swaps (''SBS'').[6]

In connection with the proposed merger of ICE with NYSE Euronext, ICE Clear Europe filed with the Commission a proposed rule change under Section 19(b) of the Exchange Act[7] and Rule 19b–4[8] thereunder to clear futures and options contracts traded on the LIFFE Administration and Management Market (''LIFFE A&M''), including contracts traded over-the-counter and processed through LIFFE A&M's BClear[9] service.[10] The contracts traded on LIFFE A&M proposed to be cleared by ICE Clear Europe (''LIFFE Contracts'') include instruments that constitute securities for the purposes of U.S. securities laws (''LIFFE Securities Products''), including U.S. securities, which for purposes of the Proposal, include futures or options on underlying U.S. equities and equity indices.

In this context, ICE Clear Europe has filed with the Commission an application on Form CA–1 for exemption from clearing agency registration under Section 17A(b) of the Exchange Act and Rule 17Ab2–1 thereunder in connection with ICE Clear Europe's proposed clearing activity involving LIFFE Securities Products.[11] Based on the rules and procedures contained in the Proposal, the representations made and information submitted by ICE Clear Europe in the Proposal, its Form CA–1 application, including the ICE Clear Europe Letter, and additional supplemental materials (collectively, the ''Exemptive Application''), and for the reasons discussed in this Order, the Commission is exempting ICE Clear Europe from the registration requirement under Section 17A(b)(1) of the Exchange Act solely with respect to ICE Clear Europe's provision of clearance and settlement services for LIFFE Securities Products, subject to certain conditions.

## II. Discussion

### *A. Applicable Standards*

Section 17A(b)(1) of the Exchange Act[12] prohibits any clearing agency from directly or indirectly making use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security), unless it is registered with the Commission. Section 17A(b)(1) further provides that the Commission, by rule or order, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of Section 17A of the Exchange Act or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[13]

The Commission has required a foreign clearing agency to register, or obtain an exemption from clearing agency registration, when the foreign clearing agency provides clearance and settlement services for U.S. securities directly to U.S. persons.[14]

### *B. ICE Clear Europe's Request for Exemption*

ICE Clear Europe is a foreign clearing agency registered in the U.S. solely for the purpose of clearing SBS. The Commission has not previously addressed the registration requirements applicable to a foreign clearing agency registered solely for the purpose of clearing SBS that proposes to clear non-SBS securities products. However, the Commission believes that the proposed clearing of the LIFFE Securities Products would exceed the scope of activities permitted by ICE Clear

[4] *See* Section 17A(b)(1) of the Exchange Act, 15 U.S.C. 78q–1(b)(1).

[5] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376 (2010).

[6] Section 763(b) of the Dodd-Frank Act amended Section 17A of the Exchange Act by adding new Section 17A(l) to the Exchange Act, 15 U.S.C. 78q–1(l), which provides that (i) a depository institution registered with the Commodity Futures Trading Commission (''CFTC'') that cleared swaps as a multilateral clearing organization prior to the date of enactment of the Dodd-Frank Act and (ii) a derivatives clearing organization registered with the CFTC that cleared swaps pursuant to an exemption from registration as a clearing agency prior to the date of enactment of the Dodd-Frank Act will be deemed registered with the Commission as a clearing agency solely for the purpose of clearing SBS.

[7] 15 U.S.C. 78s(b).

[8] 17 CFR 240.19b–4.

[9] BClear is a service operated by LIFFE A&M, which enables LIFFE A&M clearing members to report certain bilaterally agreed off-exchange trades to LIFFE A&M. After ICE Clear Europe launches its clearing business for LIFFE A&M, trades would be eligible for clearing by ICE Clear Europe upon being reported.

[10] On May 13, 2013, ICE Clear Europe filed a proposed rule change with the Commission. On May 22, 2013, ICE Clear Europe submitted Amendment No. 1 to the proposed rule change to, among other things, clarify the scope of products proposed to be cleared, add new Rule 207(f) prohibiting broker-dealer/futures commission merchant Clearing Members and other Clearing Members organized in the U.S. from clearing LIFFE Contracts that are futures or options on underlying U.S. securities, add additional clarification surrounding the operation of the combined F&O Guaranty Fund and the margining of LIFFE Contracts, and supplement the statutory basis for the proposed rule change. *See* Exchange Act Release No. 69628 (May 23, 2013), 78 FR 32287 (May 29, 2013) (SR–ICEEU–2013–09) (''Original Filing''). On June 4, 2013, ICE Clear Europe submitted Amendment No. 2 to the proposed rule change to set forth more fully the statutory basis for the proposed rule changes and to make certain additional rule changes relevant to changes in margin requirements. *See* Exchange Act Release No. 69703 (Jun. 5, 2013), 78 FR 35335 (Jun. 12, 2013) (SR–ICEEU–2013–09) (''Amendment No. 2''). On June 20, 2013, ICE Clear Europe filed Amendment No. 3 to the proposed rule change, which modified proposed Rule 207(f) to further define the persons that are subject to the restriction from clearing U.S. securities to include any clearing member having a U.S. residence, based upon the location of its executive office or principal place of business, including, without limitation, (i) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act) and (ii) a foreign branch of a U.S. bank or U.S. registered broker-dealer. The initial rule filing and all subsequent amendments filed are collectively referred to hereinafter as the ''Proposal.''

[11] ICE Clear Europe's Form CA–1 incorporates a letter from Paul Swann, President, ICE Clear Europe, to Elizabeth Murphy, Secretary, SEC, dated June 11, 2013, requesting exemptive relief from clearing agency registration in connection with the clearing of LIFFE Securities Products (''ICE Clear Europe Letter'').

[12] 15 U.S.C. 78q–1(b)(1).

[13] *Id.*

[14] *See supra* n. 3. *See, also, e.g.,* Order Approving Application for Exemption from Registration as a Clearing Agency, Exchange Act Release No. 38328 (Feb. 24, 1997), 62 FR 9225 (Feb. 28, 1997) (granting an exemption from registration as a clearing agency under Section 17A in connection with performing the functions of a clearing agency with respect to transactions involving U.S. government and agency securities for U.S. entities); Order Approving Application for Exemption from Registration as a Clearing Agency, Exchange Act Release No. 39643 (Feb. 11, 1998), 63 FR 8232 (Feb. 18, 1998); and Order Approving Application to Modify an Existing Exemption from Clearing Agency Registration, Exchange Act Release No. 43775 (Dec. 28, 2000), 66 FR 819 (Jan. 4, 2001).

*Cf.* Order Approving Proposed Rule Change to Allow The Depository Trust Company to Provide Settlement Services to European Central Counterparty Limited for U.S. Securities Traded on European Trading Venues, Exchange Act Release No. 61593 (Feb. 25, 2010), 75 FR 9987 (Mar. 4, 2010) (SR–DTC–2009–17) (approving a proposed rule change to allow The Depository Trust Company (''DTC'') to provide settlement services to European Central Counterparty Limited, a separately incorporated foreign subsidiary of The Depository Trust and Clearing Corporation and a RCH, for U.S. securities).

Europe's registration as a SBS clearing agency under Section 17A(l) of the Exchange Act, and therefore ICE Clear Europe may not clear the LIFFE Securities Products pursuant to its existing Commission registration. In addition, because the LIFFE Securities Products include certain products that are considered U.S. securities, and ICE Clear Europe clearing members include financial institutions that are organized or resident in the United States, the Commission has determined that ICE Clear Europe must register or seek an exemption from registration as a clearing agency under Section 17A(b)(1) of the Exchange Act prior to providing clearing services for the LIFFE Securities Products.

In light of the Commission's precedents pertaining to registration requirements for foreign clearing agencies, ICE Clear Europe is proposing to amend its rule book to prohibit U.S. clearing members (''U.S. participants'') from clearing U.S. securities. Specifically, new ICE Clear Europe Rule 207(f) would prohibit U.S. participants [15] from clearing U.S. securities. In addition, ICE Clear Europe has developed policies and procedures to enforce proposed Rule 207(f), including market access controls that prevent U.S. participants from creating or holding cleared positions in U.S. securities and, consequently, from engaging in any clearing-related activity (including give-ups or take-ups in respect of those products).[16] In addition, when a new U.S. participant is approved for clearing, LIFFE A&M and ICE Clear Europe will be jointly responsible to ensure that these access limitations are properly in place.[17] ICE Clear Europe represents that it will report any incidents not in compliance with such proposed Rule 207(f).[18]

In connection with its clearing of the LIFFE Contracts, ICE Clear Europe has represented that it is not seeking an exemption from substantive regulation that it is currently subject to as a registered clearing agency.[19] ICE Clear Europe states that it will clear LIFFE Contracts in a manner consistent with the requirements of Section 17A of the Exchange Act and Rule 17Ad–22 thereunder, including the requirements as to financial resources, operational and managerial resources, participant requirements, settlement procedures, safeguarding of funds and default procedures, among others.[20] ICE Clear Europe further represents that it will manage its clearing activities involving the LIFFE Contracts, including LIFFE Securities Products, to the standards applicable to registered clearing agencies.[21] ICE Clear Europe has noted that, since ICE Clear Europe is a registered clearing agency for SBS, ICE Clear Europe's clearing of LIFFE Contracts, including LIFFE Securities Products, will be subject to the requirements under the Exchange Act applicable to a registered clearing agency, including the rule approval requirements under Section 19(b) of the Exchange Act, regardless of whether ICE Clear Europe is exempt from the registration requirement of Section 17A(b)(1).[22] ICE Clear Europe also acknowledges the Commission's current supervision and examination authority over ICE Clear Europe's business generally, including the authority to conduct regular on-site examination.[23]

In its exemptive request, ICE Clear Europe has expressed concerns that a delay in its ability to clear the LIFFE Contracts beginning July 1, 2013, would cause disruption to the market for these products.[24] In addition, ICE Clear Europe noted that by September 2013, all European clearing agencies will need to apply for authorization under the European Markets and Infrastructure Directive (EMIR).[25] ICE Clear Europe states that the current LIFFE A&M clearing arrangements are not built out for EMIR compliance, and therefore LIFFE A&M, ICE Clear Europe, LCH.Clearnet Limited, and market participants are relying on this transition taking place to be compliant with EU law.[26]

*C. Effect of Exemption*

Based on ICE Clear Europe's representations to clear LIFFE Contracts in a manner consistent with the standards applicable to clearing agencies registered under Section 17A, and the Commission's existing authority over ICE Clear Europe as a registered clearing agency under Section 17A(l), granting an exemption from the clearing agency registration requirement under Section 17A(b) to ICE Clear Europe for the clearing of LIFFE Securities Products would operate as an exemption from the registration process and not from the Commission's statutory authority to substantively oversee and regulate such activities.

Furthermore, ICE Clear Europe's proposed limitations to prevent U.S. participants from clearing U.S. securities, including proposed Rule 207(f) and related policies, procedures, and market access controls, are consistent with clearing arrangements involving foreign clearing agencies for which the Commission has granted exemptive relief from registration requirements under Section 17A(b).[27]

An exemption granted to ICE Clear Europe from the clearing agency registration requirement under Section 17A(b)(1) of the Exchange Act provides legal certainty for ICE Clear Europe as to its activities associated with the clearing of LIFFE Securities Products, avoids disruption in the European markets, and facilitates compliance with EMIR, consistent with promoting the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions. In addition, the Commission's continued supervision over ICE Clear Europe as a registered clearing agency, notwithstanding the exemption from the registration requirement, permits the Commission to oversee that ICE Clear Europe provides clearance and settlement services with respect to LIFFE Contracts, including LIFFE Securities Products, in a manner consistent with the requirements of Section 17A of the Exchange Act. Accordingly, based on the foregoing, the amended rules and procedures contained in the Proposal, and the representations made by ICE Clear Europe in its Exemptive Application, the Commission finds that an exemption from registration with respect to the clearing activity for the LIFFE Securities Products under Section 17A(b)(1) is

[15] The term ''U.S. participant'' was previously defined for the limited purposes of a clearing agency exemptive order as a person having a U.S. residence, based upon the location of its executive office or principal place of business, including, without limitation, (i) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act), (ii) a foreign branch of a U.S. bank or U.S. registered broker-dealer, and (iii) any broker-dealer registered as such with the Commission even if such broker-dealer does not have a U.S. residence. *See* Exchange Act Release No. 39643 (Feb. 11, 1998), 63 FR 8232 (Feb. 18, 1998) (order exempting Euroclear Bank's predecessor, Morgan Guaranty Trust Company, as operator of the Euroclear system, from clearing agency registration), n. 62. Consistent with this definition of U.S. participant, ICE Clear Europe's Proposal contains rule changes that would prohibit a person (i) that is a FCM/BD, (ii) organized in the United States of America, or (iii) having a U.S. residence, based on the location of its executive office or principal place of business, including, without limitation, a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act) or a foreign branch of a U.S. bank or U.S. registered broker-dealer, from participating in clearing U.S. securities.

[16] *See* Amendment No. 2 at 35337.

[17] *Id.*

[18] *See* Exemptive Application.

[19] *Id.*

[20] *Id. See also* Original Filing, *supra* n. 10.

[21] *See* Exemptive Application.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *See supra* n. 14.

consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

## III. Scope and Modification of Order

This exemption granted by this order is solely with respect to the registration requirement in Section 17A(b)(1) applicable to the clearance and settlement services to be provided by ICE Clear Europe for LIFFE Securities Products as described in ICE Clear Europe's Proposal, and does not in any way affect the Commission's existing supervisory authority over ICE Clear Europe as a registered clearing agency. ICE Clear Europe as a registered clearing agency continues to be subject to the applicable provisions of the Exchange Act, including Sections 17A,[28] 17(a),[29] 17(b),[30] and 19(b),[31] and the rules and regulations thereunder applicable to clearance and settlement activities and registered clearing agencies.

The Commission may modify by order the terms, scope, or condition of this exemptive order if the Commission determines that such modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Furthermore, the Commission may limit, suspend, or revoke this exemption if the Commission finds that ICE Clear Europe has violated or is unable to comply with the conditions of this Order or applicable provisions in the Exchange Act with respect to a registered clearing agency, if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

## IV. Conclusion

The Commission finds that ICE Clear Europe's application for exemption from the registration requirement under Section 17A(b)(1) is consistent with the public interest, the protection of investors, and the purposes of Section 17A.

*It is hereby ordered,* pursuant to Section 17A(b)(1) of the Exchange Act, that the application for exemption from registration under Section 17A(b)(1) filed by ICE Clear Europe Limited be, and hereby is, approved within the scope described in this order subject to the following conditions:

(1) ICE Clear Europe shall have rules, policies, and procedures reasonably designed to prohibit the clearing of U.S. securities by U.S. participants, including market access controls preventing U.S. participants from creating or holding cleared positions in U.S. securities and, consequently, from engaging in any clearing-related activity for such products.

(2) ICE Clear Europe shall immediately notify the Commission of incidents of non-compliance with its rules, policies, or procedures prohibiting U.S. participants from clearing U.S. securities, whether intentional or otherwise, including any failure of any operational controls proposed by ICE Clear Europe to prevent U.S. participants from creating or holding cleared positions in U.S. securities.

(3) ICE Clear Europe shall clear LIFFE Contracts, including LIFFE Securities Products, in a manner consistent with the requirements of Section 17A of the Exchange Act and Rule 17Ad-22 thereunder.

(4) ICE Clear Europe, as a registered clearing agency, shall continue to be subject to the applicable provisions of the Exchange Act, including Sections 17A,[32] 17(a),[33] 17(b),[34] and 19(b),[35] and the rules and regulations thereunder applicable to clearance and settlement activities and registered clearing agencies.

By the Commission.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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[28] 15 U.S.C. 78q–1.

[29] 15 U.S.C. 78q(a).

[30] 15 U.S.C. 78q(b).

[31] 15 U.S.C. 78s(b).

[32] 15 U.S.C. 78q–1.

[33] 15 U.S.C. 78q(a).

[34] 15 U.S.C. 78q(b).

[35] 15 U.S.C. 78s(b).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69880; File No. SR–NASDAQ–2013–090]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 4754 Governing the NASDAQ Closing Cross (''Cross'')

June 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 20, 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 and II below, which Items have been prepared by 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 the Substance of the Proposed Rule Change

Nasdaq proposes to amend Exchange Rule 4754 governing the NASDAQ Closing Cross (''Cross'') to specify contingency plans for determining the NASDAQ Official Closing Price (''NOCP'') in the event NASDAQ experiences a system disruption that precludes normal execution of the Cross pursuant to Rule 4754.

The text of the proposed rule change is attached as Exhibit 5.[3]

### 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. 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

*Background.* Since June of 2002, NASDAQ has published contingency plans in the event the NASDAQ closing process was to be disrupted during the annual reconstitution of the Russell indexes. The Russell-targeted contingency plans began as a series of scenarios, and the set has accreted new scenarios from year to year as NASDAQ's system and the market-wide trading ecosystem have evolved. NASDAQ has established a pattern of communication and testing of contingency plans to ensure that NASDAQ, its members, and the public are prepared to implement the contingency plans if needed.

While NASDAQ has communicated the contingency plans broadly to its members and to the investing public, NASDAQ has never included those

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that Exhibit 5 is attached to the filing, not to this Notice.

contingency plans in NASDAQ's rule manual. NASDAQ has determined to approach contingency planning differently than in the past, and it has also determined to add the contingency plans to NASDAQ's rule manual.

The Contingency Closing Cross process begins with communication. Under the proposal, when NASDAQ experiences a disruption that will preclude execution of the standard Closing Cross, the President of NASDAQ or any Executive Vice President designated by the President will be authorized to invoke the Contingency Procedures. When that occurs, NASDAQ will at the earliest possible time communicate to members and the public its determination to implement the Contingency Closing Cross process. NASDAQ will communicate with members and the public via system status alerts on NASDAQTrader.com, as well as via Equity Trader Alerts and emails to pre-established notification lists.

NASDAQ is proposing to use a single method for determining the NOCP in response to any situation in which NASDAQ's standard closing cross process fails to operate properly. NASDAQ will employ a single offline process to determine the price, size, and component executions for the closing cross trade in any and all affected securities on a security-by-security basis. NASDAQ believes that a single offline process will address potential failures in the NASDAQ execution system due to its separation from that system and its ability to draw on stored order files regardless of any impairment to the execution system.[4]

The first step in NASDAQ's proposed Contingency Closing Cross is to determine the proper closing price. If the standard closing cross process fails in any security, NASDAQ will identify the last consolidated regular way trade reported by the network processor before 4:00:00:00 p.m. for an NMS Security and it will use that price as the NOCP. In the event an impacted security has no consolidated last sale price (*i.e.* the security has not traded during the day), NASDAQ will have no NOCP and no Contingency Cross for that security. NASDAQ will report each NOCP to the network processor as soon as practical using existing closing modifiers.

Once NASDAQ has identified the NOCP for a given security, NASDAQ will operate a modified closing cross to determine the number of shares and the specific orders that can be executed at the NOCP. Only ''on close'' orders will participate in the Contingency Closing Cross. All Market-on-Close (''MOC''), Limit-on-Close (''LOC'') and Imbalance Only orders received and not cancelled prior to 3:50 p.m., as well as all Imbalance Only orders received between 3:50 and 4:00 p.m. will be eligible to participate. Resting DAY orders will *not* be eligible to participate because the contingency closing cross will be an offline process and it will be unable to interact with the continuous book.

Once NASDAQ has identified orders eligible to participate in the Contingency Closing Cross and able to execute at the NOCP, NASDAQ will execute on a price-time priority basis, the maximum number of shares able to execute at the NOCP. If an order imbalance exists in the MOC and LOC interest that is marketable at the NOCP, NASDAQ will select Imbalance Only orders on the side of the market that is short of trading interest (in price/time priority) in order to maximize the number of paired shares to execute at the NOCP.

Once NASDAQ has completed the Contingency Closing Cross, it will report the results to the appropriate network processor and deliver execution reports to members. NASDAQ will publish the NOCP and total shares executed in the Contingency Closing Cross using the proper trade report modifiers already utilized by the processors.[5] Additionally, NASDAQ will deliver component executions to participants via a flat data file formatted in DROP protocol.[6]

After hours trading will begin either as scheduled at 4:00 p.m. or upon resolution of the disruption that triggered NASDAQ to operate the Contingency Closing Cross.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it 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. The proposal is consistent with this provision in that it will ensure that the Exchange continues to operate a fair and orderly market and to provide for an effective pricing mechanism for the critical period of the market close. The proposed independent, off-line process improves NASDAQ's ability to maintain a fair and orderly market when the NASDAQ execution system or network is impaired for any reason.

The proposed Contingency Procedures for the Closing Cross are designed to preserve NASDAQ's ability to move quickly to establish a reliable closing price under unusual conditions. By simplifying and codifying the Contingency Procedures, NASDAQ also enables NASDAQ members to plan for the contingencies, including the ability to test their systems and how they will interact with NASDAQ's systems in the event NASDAQ triggers the Contingency Procedures.

*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. To the contrary, the proposal is specifically designed to protect the other markets and investors from harm that a NASDAQ disruption could impose. In actuality, the proposal is pro-competitive because it promotes fair and orderly markets and investor protection, which in turn will buttress investor confidence and attract more investors into U.S. equities markets. NASDAQ has never used contingency planning by other exchanges as a competitive weapon; nor has any competitor used NASDAQ's planning against it.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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

[4] NASDAQ maintains a database of all orders entered into the execution system, as well as other data regarding order processing. The database is independent of and isolated from the execution system and network and, as a result, it can operate regardless of impairment to those systems. NASDAQ will operate the contingency process from a server that is also independent of and isolated from the execution system and network, and that is supported by multiple redundant backups.

[5] NASDAQ will report both an official closing price and a bulk trade report for each Closing Cross.

[6] ''DROP'' is a proprietary protocol that NASDAQ uses to deliver real-time execution information to members using the NASDAQ system. It facilitates members' efforts to monitor, track, enter, and cancel orders.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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 [9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[11] 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.[12] The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can establish this process prior to the Russell Reconstitution on June 28, 2013 and notes that there is significant benefit to investors from providing certainty prior to that date. The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule will provide certainty regarding the contingency procedures to market participants prior to the date of the Russell Reconstitution. Therefore, the Commission designates the proposal operative upon filing.[13]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–090 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–2013–090. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NASDAQ. 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–2013–090, and should be submitted on or before July 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15931 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69870; File No. SR–EDGX–2013–17]**

## Self-Regulatory Organizations; EDGX Exchange, Inc.; Order Approving a Proposed Rule Change Relating to the EDGX Exchange, Inc.'s Routing Broker Dealer, as Described in EDGX Rule 2.12(b)

June 27, 2013.

### I. Introduction

On May 16, 2013, EDGX Exchange, Inc. (''EDGX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the existing pilot program that permits the Exchange's inbound router, as described in Rule 2.12(b), to receive inbound routes of equities orders through Direct Edge ECN LLC d/b/a DE Route (''DE Route''), the Exchange's routing broker dealer, from EDGA Exchange, Inc. (''EDGA''). The proposed rule change was published for comment in the **Federal Register** on May 28, 2013.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

### II. Background

DE Route is a registered broker-dealer that is a member of the Exchange and is permitted to provide members of EDGA optional routing services to other trading centers.[4] DE Route is owned by Direct Edge Holdings LLC (''DE Holdings''). DE Holdings also owns two registered securities exchanges—the Exchange and EDGA.[5] Thus, DE Route is an affiliate of the Exchange and EDGA.[6]

On May 12, 2010, the Commission approved the Exchange's application for registration as a national securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69614 (May 21, 2013), 78 FR 31994 (''Notice'').

[4] DE operates as a facility of EDGA that provides outbound routing from EDGA to other trading centers, subject to certain conditions. *See* Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File No. 10–194 and 10–196) (order granting the exchange registration of EDGA and EDGX.) (''Exchange Registration Approval Order'').

[5] *See id.*

[6] *See* Exchange Registration Approval Order, 75 FR at 13165 n.219 and accompanying text.

exchange.[7] As part of the approval, the Exchange was approved to receive inbound routes of orders that DE Route routes in its capacity as a facility of EDGA on a pilot basis for 12 months.[8] The pilot was originally set to expire on July 1, 2011, but was subsequently extended and is currently set to expire on June 30, 2013.[9] The Exchange now seeks permanent approval of this inbound routing pilot.[10]

## 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.[11] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[12] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] 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, and 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to DE Route's affiliation with the Exchange to permit the Exchange to accept inbound orders that DE Route routes in its capacity as a facility of EDGA, on a pilot basis.[14] The Exchange now seeks to make this pilot permanent, subject to the same limitation and conditions. Specifically, the Exchange committed to the following limitations and conditions: [15]

- The Exchange shall enter into a plan pursuant to Rule 17d–2 under the Exchange Act with a non-affiliated self-regulatory organization (''SRO'') to relieve the Exchange of regulatory responsibilities for DE Route with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and enter into a regulatory contract (''Regulatory Contract'') with a non-affiliated SRO to perform regulatory responsibilities for DE Route for unique Exchange rules.
- The Regulatory Contract shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively ''Exceptions'') in which DE Route is identified as a participant that has potentially violated Exchange or Commission Rules, and shall require that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which DE Route is identified as a participant that has potentially violated Exchange or Commission Rules.
- The Exchange, on behalf of DE Holdings, shall establish and maintain procedures and internal controls reasonably designed to ensure that DE Route does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound order routing to the Exchange.[16]

The Exchange states that is has complied with the above-listed conditions during the pilot.[17] The Exchange believes that by meeting such conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to DE Route, and has demonstrated that DE Route cannot use any information that it may have because of its affiliation with the Exchange to its advantage.[18]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[19] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit DE Route, in its capacity as a facility of EDGA, to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.[20]

The Exchange has proposed ongoing conditions applicable to DE Route's inbound routing activities in its capacity

[7] *See* Exchange Registration Approval Order, 75 FR 13151.

[8] *See id.*

[9] *See* Securities Exchange Act Release Nos. 64361 (April 28, 2011), 76 FR 25388 (May 4, 2011) (SR–EDGX–2011–12); and 66644 (March 22, 2012), 77 FR 18877 (March 28, 2012) (SR–EDGX–2012–09).

[10] *See* Notice, 78 FR 31996.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Exchange Registration Approval Order, 75 FR at 13165–13166.

[15] *See* Notice, 78 FR at 31995.

[16] The Commission notes that this condition is set forth in EDGX Rule 2.12(a)(3).

[17] *See* Notice, 78 FR at 31995.

[18] *See id.*

[19] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR–Amex–2008–62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

[20] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR–BX–2011–007); 66808 (April 13, 2012), 77 FR 23294 (April 18, 2012) (SR–BATS–2012–013); 66807 (April 13, 2012), 77 FR 23300 (April 18, 2012) (SR–BYX–2012–006); 67256 (June 26, 2012) 77 FR 39277 (July 2, 2012) (SR–BX–2012–030); 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR–NASDAQ–2013–028); 69232 (March 25, 2013), 78 FR 19342 (March 29, 2013) (SR–BX–2013–013); and 69229 (March 25, 2013), 78 FR 19337 (March 29, 2013) (SR–Phlx–2013–15).

as a facility of EDGA, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of DE Route,[21] combined with a non-affiliated SRO's monitoring of DE Route's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to DE Route. The Commission also believes that the Exchange's Rule 2.12(a)(3) is designed to ensure that DE Route cannot use any information advantage it may have because of its affiliation with the Exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–EDGX–2013–17) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15914 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[21] This oversight will be accomplished through a 17d–2 Agreement. *See* Approval Order, 75 FR at 13165; and Notice, 78 FR at 31995.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69875; File No. SR–EDGX–2013–23]**

## Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.5(c), NBBO Offset Peg Order

June 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 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 Rule 11.5(c), which describes the manner in which the NBBO Offset Peg Order operates. 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,* 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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 11.5(c)(15), the NBBO Offset Peg Order, to state that the order type will: (1) Only be eligible for execution once the Market Maker quoting obligations under Rule 11.21(d) are triggered; (2) not be repriced when it would establish the National Best Bid or Offer (''NBBO''); and (3) delay the implementation date of the order type [sic] from April 15, 2013 to no later than October 31, 2013.

On September 25, 2012, the Exchange filed for immediate effectiveness a proposed rule change to adopt the NBBO Offset Peg Order.[3] The NBBO Offset Peg Order will enable Users[4] to submit buy and sell orders to the Exchange that are pegged to a designated percentage away from the NBB and NBO, respectively, while providing them full control over order origination and order marking.[5] This retention of control, in turn, is designed to allow Market Makers[6] to comply independently with the requirements of Regulation SHO[7] under the Act and Rule 15c3–5[8] under the Act (the ''Market Access Rule''). The Exchange subsequently amended the text of Rule 11.5(c)(15) to remove the ability of Users to cancel or reject NBBO Offset Peg Orders under certain circumstances.[9]

When is a NBBO offset peg order eligible for execution?

First, the Exchange proposes that the NBBO Offset Peg Order will only be eligible for execution once the Market Maker quoting obligations under Rule 11.21(d) are triggered. Currently, Rule 11.5(c)(15) allows Users to submit NBBO Offset Peg Orders at the beginning of the Pre-Opening Session,[10] but states that the order is not executable or automatically priced until the beginning of Regular Trading Hours.[11] However, a Market Maker's quoting obligations under Rule 11.21(d) do not commence during any trading day until after the first regular way transaction on the primary listing market in the security as reported by the responsible single plan processor.[12] Such a transaction may not occur until after the start of Regular Trading Hours. Therefore, the Exchange proposes to amend the text of Rule 11.5(c)(15) to state that an NBBO Offset Peg Order is not executable until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67959 (October 2, 2012), 77 FR 61449 (October 9, 2012) (SR–EDGX–2012–44) (notice of filing and immediate effectiveness of the proposal to adopt the NBBO Offset Peg Order) (''EDGX Adopting Release'').

[4] ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' EDGX Rule 1.5(ee).

[5] *See* EDGX Rule 11.5(c)(15).

[6] ''Market Maker'' is defined as ''a Member that acts as a Market Maker pursuant to Chapter XI.'' EDGX Rule 1.5(l).

[7] 17 CFR 242.200 through 242.204.

[8] 17 CFR 242.15c3–5.

[9] *See* Securities Exchange Act Release No. 68596 (January 7, 2013), 78 FR 2477 (January 11, 2013) (SR–EDGX–2012–49) (notice of filing and immediate effectiveness).

[10] ''Pre-Opening Session'' is defined as ''the time between 8:00 a.m. and 9:30 a.m. Eastern Time.'' EDGX Rule 1.5(s).

[11] ''Regular Trading Hours'' is defined as ''the time between 9:30 a.m. and 4:00 p.m. Eastern Time.'' EDGX Rule 1.5(y).

[12] Under Exchange Rule 11.21(d)(2), the pricing obligations for Market Makers ''(i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.'' Securities Exchange Act Release No. 65964 (December 15, 2011), 76 FR 79254 (December 21, 2011) (order approving SR–EDGX–2011–28).

processor, rather than the beginning of Regular Trading Hours. Accordingly, the amended text would read as follows:

Users may submit NBBO Offset Peg Orders to the Exchange starting at the beginning of the Pre-Opening Session, but the order is not executable or automatically priced until *after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor* and expires at the end of Regular Trading Hours (emphasis added).

The Exchange believes that the proposed amendment is necessary because it clarifies that the NBBO Offset Peg Order would only be eligible for execution once the quoting obligations for Market Makers apply. While use of the NBBO Offset Peg Order would not be limited to Market Makers, the Exchange believes that Market Makers would likely be the predominant, if not exclusive, users of the order type. Thus, the NBBO Offset Peg Order is designed such that its price would be automatically set and adjusted, both upon entry and at any time thereafter, in order to comply with the Exchange's Market Maker quotation requirements.[13]

Repricing When NBBO Offset Peg Order Establishes NBBO

Second, the Exchange proposes to amend Rule 11.5(c)(15) to make clear that a NBBO Offset Peg Order will not use its own pegged price as the basis for adjusting the order's price. Where there is no NBBO and a NBBO Offset Peg Order, whether upon entry or already on the EDGX Book,[14] is pegged to the last reported sale from the single plan processor, the NBBO Offset Peg Order will be reported to the responsible securities information processors and will be disseminated to the Exchange as the NBBO. The Exchange proposes that if after entry, the NBBO Offset Peg Order is priced based on the consolidated last sale and such NBBO Offset Peg Order establishes the NBBO, the NBBO Offset Peg Order will not be subsequently adjusted in accordance with the proposed rule until either there is a new consolidated last sale, or a new NBB or NBO is established by a national securities exchange. The Exchange believes that not adjusting the price in this instance is consistent with the intent of the NBBO Offset Peg Order (i.e., keeping the order a certain percentage away from the inside market) while also avoiding a situation where the order would use its own pegged price as a basis for adjusting the price of the order. The Exchange notes that the proposal amends the functionality of the NBBO Offset Peg Order to more closely resemble analogous order types offered by The NASDAQ Stock Market LLC (''Nasdaq''),[15] BATS Exchange, Inc. (''BATS''),[16] and BATS Y-Exchange, Inc. (''BYX'').[17]

Implementation Date Delay

The Exchange originally proposed to implement the NBBO Offset Peg Order on or about November 19, 2012 [18] and later delayed the implementation date to on or about April 15, 2013.[19] The Exchange now proposes to further delay the implementation date to no later than October 31, 2013. The Exchange anticipates uniform industry-wide amendments to the market making quoting requirements' Designated Percentages [20] and Defined Limits [21] to realign the percentages based on the Appendix A Percentage Parameters of the National Market System Plan to Address Extraordinary Market Volatility (the ''Limit-Up/Limit-Down Plan'').[22] This additional time will enable the Exchange to make the necessary system changes to implement the NBBO Offset Peg Order to accommodate those amendments.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [23] and furthers the objectives of Section 6(b)(5) of the Act,[24] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposing that the order type will only be eligible for execution once the Market Maker quoting obligations under Rule 11.21(d) are triggered makes the order type consistent with when market making obligations begin [25] and therefore, simplifies its functionality. While use of the NBBO Offset Peg Order would not be limited to Market Makers, the Exchange believes that Market Makers would likely be the predominant, if not exclusive, users of the order type. Thus, the NBBO Offset Peg Order is designed such that its price would be automatically set and adjusted, both upon entry and at any time thereafter, in order to comply with the Exchange's Market Maker quotation requirements.[26] Therefore, the Exchange believes the proposed rule change is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange also believes that the proposed amendment removes impediments to and perfects the

[13] Exchange Rule 11.21 describes the obligations of Members registered with the Exchange as Market Makers. Among other things, Market Makers are required to maintain continuous, two-sided quotations consistent with the requirements of paragraph (d) of Rule 11.21, which generally states that such quotations must be priced within a designated percentage of the NBB for buy quotations, and the NBO for sell quotations.

[14] ''EDGX Book'' is defined as ''the System's electronic file of orders.'' EDGX Rule 1.5(d).

[15] *See* NASDAQ Rule 4751(f)(15). *See also* Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR–NASDAQ–2012–066) (order approving Nasdaq's Market Maker Peg Order available for exchange market makers) (''Nasdaq Approval Order'').

[16] *See* BATS Rule 11.9(c)(16). *See also* Securities Exchange Act Release No. 67756 (August 29, 2012), 77 FR 54633 (September 5, 2012) (SR–BATS–2012–026) (order approving BATS's Market Maker Peg Order available for exchange market makers) (''BATS Approval Order''); *and* Securities Exchange Release No. 69310 (April 4, 2013), 78 FR 21447 (April 10, 2013) (SR–BATS–2013–022) (notice of filing and immediate effectiveness to amend BATS' Market Maker Peg Order).

[17] *See* BYX Rule 11.9(c)(16). *See also* Securities Exchange Act Release No. 67755 (August 29, 2012), 77 FR 54630 (September 5, 2012) (SR–BYX–2012–012) (order approving BYX's Market Maker Peg Order available for exchange market makers) (''BYX Approval Order''); *and* Securities Exchange Act Release No. 69309 (April 4, 2013), 78 FR 21455 (April 10, 2013) (SR–BYX–2013–011) (notice of filing and immediate effectiveness to amend the BYX Market Maker Peg Order).

[18] *See* EDGX Adopting Release, *supra* note 3.

[19] *See* Securities Exchange Act Release No. 68596, *supra* note 9.

[20] ''Designated Percentage'' is defined as ''8% with respect to securities included in the S&P 500® Index and the Russell 1000® Index, as well as a pilot list of Exchange Traded Products for securities subject to an individual stock pause trigger under the applicable rules of a primary listing market (''Original Circuit Breaker Securities''). For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market, the Designated Percentage shall be 20% for Original Circuit Breaker Securities.'' EDGX Rule 11.21(d)(2)(D).

[21] ''Defined Limit'' is defined as ''9.5% for Original Circuit Breaker Securities. For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market, the Defined Limit shall be 21.5% for Original Circuit Breaker Securities.'' EDGX Rule 11.21(d)(2)(F).

[22] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (approving the Limit-Up/Limit-Down Plan on a pilot basis).

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] The Exchange notes while use of the NBBO Offset Peg Order would not be limited to Market Makers that Market Makers would likely be the predominant, if not exclusive, users of the order type.

[26] EDGX Rule 11.21(d)(2).

mechanisms of a free and open market and a national market system because it clarifies that a NBBO Offset Peg Order will not use its own pegged price as the basis for adjusting the order's price. The Exchange notes that the proposed clarification is substantially similar to that for similar order types (Market Maker Peg Orders) on Nasdaq, BATS, and BYX.[27] Further, clarifying when a NBBO Offset Peg Order would not be re-priced to align with the functionality of similar order types on other exchanges fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and removes impediments to a free and open market and a national market system because it will result in a continuing benefit to market participants by simplifying the functionality of the order type and its complexity of implementation.

Lastly, the Exchange believes that the delay of the implementation date is also consistent with Section 6(b)(5) of the Act[28] because it is designed to coordinate the implementation of the NBBO Offset Peg Order with anticipated changes to market making quoting requirements in response to the Limit-Up/Limit-Down Plan. Thus, the Exchange believes that the proposed rule change promotes the efficient execution of investor transactions, and thus investor confidence, over the long term.

*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 proposed rule change would increase intermarket competition among the exchanges because the NBBO Offset Peg Order will directly compete with similar existing order types offered by Nasdaq, BATS and BYX.[29] Amending Rule 11.5(c)(15), to clarify that the NBBO Offset Peg Order will not use its own pegged price as the basis for adjusting the order's price is similar to the functionality of the Market Maker Peg Order on Nasdaq, BATS, and BYX;[30] and, therefore, reduces the potential for confusion amongst market participants. In addition, the Exchange believes proposing that the NBBO Offset Order will only be eligible for execution once its Market Maker quoting obligations under Rule 11.21(d) are triggered simplifies the functionality and corresponding complexity of implementation. The proposed rule change would not burden intramarket competition because the NBBO Offset Peg Order would be available to all Members[31] on a uniform basis.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[32] and Rule 19b–4(f)(6)[33] thereunder.

At any time within sixty (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 under Section 19(b)(2)(B)[34] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2013–23 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–2013–23. 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–2013–23 and should be submitted on or before July 24, 2013.

[27] Nasdaq Rule 4751(f)(15); BATS Rule 11.9(c)(16); BYX Rule 11.9(c)(16). The Exchange has previously noted that such Market Maker Peg Orders are similar in functionality to the NBBO Offset Peg Order. *See* EDGX Adopting Release, *supra* note 3.

[28] 15 U.S.C. 78f(b)(5).

[29] Nasdaq Rule 4751(f)(15); BATS Rule 11.9(c)(16); BYX Rule 11.9(c)(16).

[30] *Id.*

[31] ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' EDGX Rule 1.5(n).

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give 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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15912 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69867; File No. SR–CBOE–2013–066]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extending AIM Pilot Programs

June 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I 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 amend its rules related to its Automated Improvement Mechanism (''AIM''). The text of the proposed rule change is provided below.

(Additions are *italicized;* deletions are [bracketed].)

* * * * *

### Chicago Board Options Exchange, Incorporated Rules

* * * * *

### Rule 6.74A. Automated Improvement Mechanism (''AIM'')

Notwithstanding the provisions of Rule 6.74, a Trading Permit Holder that represents agency orders may electronically execute an order it represents as agent (''Agency Order'') against principal interest or against a solicited order provided it submits the Agency Order for electronic execution into the AIM auction (''Auction'') pursuant to this Rule.

(a)–(b) No change.

* * * Interpretations and Policies:

.01–.02 No change.

.03 Initially, and for at least a Pilot Period expiring on July 18, 201*4*[3], there will be no minimum size requirement for orders to be eligible for the Auction. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any data which is submitted to the Commission will be provided on a confidential basis.

.04–.05 No change.

.06 Subparagraph (b)(2)(E) of this rule will be effective for a Pilot Period until July 18, 201*4*[3]. During the Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, relating to the frequency with which early termination of the Auction occurs pursuant to this provision as well as any other provision, and also the frequency with which early termination pursuant to this provision results in favorable pricing for the Agency Order. Any data which is submitted to the Commission will be provided on a confidential basis.

.07–.08 No change.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In February 2006, CBOE obtained approval from the Commission to adopt the AIM auction process.[3] AIM exposes certain orders electronically to an auction process to provide these orders with the opportunity to receive an execution at an improved price. The AIM auction is available only for orders that a Trading Permit Holder represents as agent (''Agency Order'') and for which a second order of the same size as the Agency Order (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).

The Commission approved two components of AIM on a pilot basis: (1) That there is no minimum size requirement for orders to be eligible for the auction; and (2) that the auction will conclude prematurely anytime there is a quote lock on the Exchange pursuant to Rule 6.45A(d).[4] In connection with the pilot programs, the Exchange has submitted to the Commission reports providing detailed AIM auction and order execution data, and the Exchange will continue to submit to the Commission these reports. Seven one-year extensions to the pilot programs have previously become effective.[5] The proposed rule change merely extends the duration of the pilot programs until July 18, 2014. Extending the pilots for an additional year will allow the Commission more time to consider the impact of the pilot programs on AIM order executions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR–CBOE–2005–060).

[4] A quote lock occurs when a CBOE Market-Maker's quote interacts with the quote of another CBOE Market-Maker (i.e. when internal quotes lock).

[5] *See* Securities Exchange Act Release Nos. 54147 (July 14, 2006), 71 FR 41487 (July 21, 2006) (SR–CBOE–2006–064); 56094 (July 18, 2007), 72 FR 40910 (July 25, 2007) (SR–CBOE–2007–080); 58196 (July 18, 2008), 73 FR 43803 (July 28, 2008) (SR–CBOE–2008–076) (in this filing, the Exchange agreed to provide to the Commission additional information relating to the AIM auctions each month in order to aid the Commission in its evaluation of the pilot program, which the Exchange will continue to do); 60338 (July 17, 2009), 74 FR 36803 (July 24, 2009) (SR–CBOE–2009–051); 62522 (July 16, 2010), 75 FR 43596 (July 26, 2010) (SR–CBOE–2010–067); 64930 (July 20, 2011), 76 FR 44636 (July 26, 2011) (SR–CBOE–2011–066); and 67302 (June 28, 2012), 77 FR 39779 (July 5, 2012) (SR–CBOE–2012–061).

Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change protects investors and the public interest by allowing for an extension of the AIM pilot programs, and thus allowing additional time for the Commission to evaluate the AIM pilot programs. The AIM pilot programs will continue to allow (1) smaller orders to receive the opportunity for price improvement pursuant to the AIM auction, and (2) Agency Orders in AIM auctions that are concluded early because of quote lock on the Exchange to receive the benefit of the lock price.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change imposes any burden on intramarket competition because it applies to all Trading Permit Holders. All Trading Permit Holders that submit orders into an AIM auction are still subject to the same requirements. In addition, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition, as it merely extends the duration of existing pilot programs, which are available to all market participants through Trading Permit Holders. AIM will continue to function in the same manner as it currently functions for an extended period of time.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (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[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[12] 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 AIM 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 programs. Further, the Commission notes that, because the filing was submitted for immediate effectiveness on June 26, 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.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–066 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–2013–066. 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

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 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).

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–CBOE–2013–066 and should be submitted on or before July 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15917 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69882; File No. SR–NYSEArca–2013–65]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 6.91 To Modify the Information Disseminated at the Initiation of a Complex Order Auction

June 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2013, NYSE Arca, Inc. (''NYSE Arca'' 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 amend Exchange Rule 6.91 to modify the information disseminated at the initiation of a Complex Order Auction. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend NYSE Arca Rule 6.91 to modify the information disseminated at the initiation of a Complex Order Auction (''COA'').

Current Rule 6.91(c)(2) provides that upon receipt of a COA-eligible order, as defined in Rule 6.91(c)(1), and at the direction of the entering OTP Holder that an auction be initiated, the Exchange will send an automated request for responses (''RFR'') message to all OTP Holders who subscribe to RFR messages. RFR messages identify the component series, the size of the order and any contingencies, but do not identify the side of the market. OTP Holders then have an opportunity to submit bids and offers with the price and size they would be willing to participate in the execution of the COA-eligible order (an ''RFR Response'').

NYSE Arca proposes to amend NYSE Arca Rule 6.91(c)(2) to include the side (*i.e.,* buy or sell) of a Complex Order entered into COA when broadcasting an automated RFR to OTP Holders. This proposed rule change is similar to a recent change by the Chicago Board Options Exchange, Inc. (''CBOE'').[3] Like the CBOE, because same-side responses to an RFR would not trade with the COA-eligible order, NYSE Arca has determined that the submission of RFR Responses on the same side as the COA-eligible order are [sic] unnecessary.[4] In order to reduce the number responses on the same side of the market as the COA-eligible order, the Exchange now proposes to amend Rule 6.91(c)(2) to include the side of the market of the order being auctioned when sending out an RFR.

By providing the side of the market, OTP Holders will be able to tailor their responses to RFRs and will only need to submit one order on the contra side of the order being auctioned, as opposed to two orders, one on each side of the COA-eligible order, as is generally the case today. In addition, the Exchange believes that the dissemination of the additional information about the terms of an order will encourage more meaningful and competitively priced RFR Responses, which could result in deeper liquidity and better prices for market participants.

Because a same-side RFR Response cannot trade with a COA-eligible order, the Exchange considers same-side RFR Responses to be unnecessary to the COA process. Therefore, the Exchange proposes to amend Rule 6.91(c)(4) to provide that RFR Responses must be on the opposite side of the COA-eligible order and that same-side RFR Responses will be rejected by the Exchange. Requiring that RFR Responses be on the opposite side of a COA-eligible order and rejecting same-side RFR Responses is consistent with the processing of RFR Responses by the CBOE.[5] The Exchange believes that the proposed rule change will improve the efficiency of the COA process by eliminating excess RFR Responses that can never actually trade with the COA-eligible order.[6]

Pursuant to this proposed rule change, same-side RFR Responses will be rejected; therefore contra-side RFR Responses will not be eligible to trade against same-side RFR Responses. Accordingly, the Exchange proposes to delete a reference to RFR Responses in Rule 6.91(c)(7).

The Exchange also proposes to amend Rule 6.91(c)(4) by correcting the rule text describing how RFR Responses are treated. Existing rule text states that RFR Responses will be ranked and displayed in the Consolidated Book. However, in accordance with Rule 6.91(c)(7), RFR Responses are only firm with respect to COA-eligible orders and unrelated orders that are received during the Response Time Interval, as defined in Rule 6.91(c)(3), and any unexecuted RFR Responses will expire at the end of the Response Time Interval (signifying the end of the auction). Because RFR Responses are only firm with respect to COA-eligible orders and unrelated

[3] *See* Exchange Act Release No. 68095 (October 24, 2012), 77 FR 65751 (October 30, 2012) (Order approving SR–CBOE–2012–85) (''CBOE Filing'').

[4] *See* CBOE Filing.

[5] *See* CBOE Filing.

[6] The Exchange notes that only same-side Responses will be rejected and that unrelated Complex Orders on the same side of the market as a COA-eligible order that are received during the Response Time Interval will continue to be processed pursuant to Rule 6.91(c)(8).

orders that are received during an auction, and the fact that unexecuted RFR Responses expire at the conclusion of the auction, RFR Responses should not be ranked and/or displayed in the Consolidated Book. Thus, the language stating that RFR Responses will be ranked and displayed in the Consolidated Book is inaccurate. The Exchange therefore proposes to delete language in Rule 6.91(c)(4) stating that RFR Responses will be ranked and displayed in the Consolidated Book and affirmatively state in Rule 6.91(c)(7) that RFR Responses will not be displayed in the Consolidated Book.

The Exchange also proposes to make non-substantive change to Rule 6.91(c)(7) by correcting a minor typographical error in the existing rule text.

The Exchange will announce the implementation date of the systems functionality associated with the proposed rule change by Trader Update to be published no later than 90 days following the effective date. The implementation date will be no later than 90 days following the issuance of the Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. In particular, the Exchange believes the proposed rule change protects investors and is in the public interest because it will eliminate unnecessary RFR Responses on the same side of the market as a COA-eligible order, which will ultimately make the COA process more efficient. In addition, the Exchange believes that including the side of the market in the RFR will encourage more meaningful and competitively priced RFR Responses, which could result in deeper liquidity and better prices for market participants. Disseminating additional information regarding the terms of an order should reduce confusion and provide for a less disruptive COA process, thus aiding in perfecting the mechanisms of the open market.

Also, by amending Rule 6.91(c)(4) and (7) the Exchange is correcting inaccurate language describing the functionality of the COA for the reasons set forth above. Correcting inaccurate rule language will provide clarity as to the functionality of the COA. The Exchange believes that having clear and precise rules furthers the objectives of the Act by removing of impediments to and helping to perfect the mechanisms of a free and open market and a national market system.

*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. Specifically, the proposal is structured to offer the same enhancement to all market participants, regardless of account type, and will not impose a competitive burden on any participant. The Exchange believes that adopting similar COA rules to those of other exchanges will allow NYSE Arca to more efficiently compete for complex order business. In addition, by disseminating enhanced RFRs, OTP Holders will be able to provide more efficient responses thus creating a more competitive market. The Exchange does not believe that requiring RFR responses to be on the opposite side of a COA eligible order and/or rejecting same-side Responses will impose any burden on market participants because market participants will still have the ability to submit unrelated same-side Complex Orders to the Exchange.

Because this proposal adopts a rule that is already in effect at a competing exchange, the NYSE Arca does not believe that the proposed changes will impose a burden on other options exchanges. Rather, making this functionality available to market participants on the Exchange may foster more competition, thus improving the overall efficacy of the options markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–65 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–2013–65.* 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

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

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–NYSEArca–2013–65* and should be submitted on or before July 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15934 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69866; File No. SR–DTC–2013–07]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Harmonize and Clarify Language Within the DTC Service Guides Regarding Restrictions on Use of Information and Data Distributed by DTC

June 27, 2013

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 13, 2013, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by DTC. DTC filed the proposal pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(4)(i)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to harmonize and clarify language within the DTC Service Guides regarding restrictions on use of information and data distributed by DTC.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Proposal Overview

As the central depository of securities in the U.S. securities markets, DTC is the registered holder of securities on the books of issuers of those securities (in its nominee name, Cede & Co.) and, accordingly, receives information and data relating to those securities from the issuers, for distribution to the DTC participants (''Participants'') holding interests in such securities on the books of DTC. As a further service to these Participants with respect to securities held by DTC for their benefit, DTC additionally compiles information from other sources to enhance data provided by it to its Participants. The information and data so received and compiled by DTC includes information such as descriptive reference data, names, country of incorporation, exchange, dividend announcement and corporate action announcement information on securities and other financial assets, as further described in the applicable Service Guides which are being amended by this rule filing, including, the Custody Service Guide, the Deposits Service Guide, the Dividend Service Guide, the Money Market Instruments Service Guide, the Redemptions Service Guide, the Reorganization Service Guide, the Settlement Service Guide and the Underwriting Service Guide (''Affected Service Guides''). Each of the Affected Service Guides, except the Deposits Service Guide and the Underwriting Service Guide, specifically provides that the information and data so received and compiled by DTC may not be redistributed to any other persons who, to a Participant's knowledge, use the information as a basis for producing and distributing data or related services. However, DTC has observed that these restrictions may require some clarification.

Proposed Rule Changes

By this filing DTC will harmonize the language regarding restrictions on redistribution of data between all of the Affected Service Guides as the described restrictions apply to all data and information distributed by DTC through its services. In addition, DTC is amending the text of each of the Affected Service Guides to clarify that the data and information so received and compiled by DTC is proprietary to DTC and shall not be used for commercial purposes by Participants (or third parties acting on behalf of Participants) to which the data and information is distributed by DTC. To the extent any such person wishes to rightfully redistribute the data or information, a further amendment to the Affected Service Guides will direct interested Participants and third parties to DTCC Solutions, LLC, an affiliate of DTC which, under service level agreements with DTC, is licensed to further process and distribute such information and data pursuant to appropriate agreements with Participants and third parties.

(b) Statutory Basis

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act, and the rules and regulations thereunder applicable to DTC as it does not adversely affect the safeguarding of funds or securities in DTC's custody and control, or for which it is responsible, but, rather, clarifies the procedures set forth in the Affected Service Guides with respect to the use of data and information received and compiled by DTC.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(i).

[5] The Commission has modified the text of the summaries prepared by DTC.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 19b–4(f)(4)(i).[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–DTC–2013–07 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2013–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2013/dtc/SR–DTC–2013–07.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2013–07 and should be submitted on or before July 24, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15930 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(4)(i).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69868; File No. SR–C2–2013–023]**

## Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extending the AIM Pilot Program

June 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change proposes to amend the Exchange's rules related to its Automated Improvement Mechanism (''AIM''). The text of the proposed rule change is provided below.

(Additions are *italicized*; deletions are [bracketed].)

* * * * *

**C2 Options Exchange, Incorporated Rules**

* * * * *

**Rule 6.51. Automated Improvement Mechanism (''AIM'')**

Notwithstanding the provisions of Rule 6.50, a Participant that represents agency orders may electronically execute an order it represents as agent (''Agency Order'') against principal interest or against a solicited order provided it submits the Agency Order for execution into the AIM auction (''Auction'') pursuant to this Rule.

(a)–(b) No change.

* * * Interpretations and Policies:

.01–.02 No change.

.03 Initially, and for at least a Pilot Period expiring on July 18, 2014[3], there will be no minimum size requirement for orders to be eligible for the Auction. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any data which is submitted to the Commission will be provided on a confidential basis.

.04–.09 No change.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/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 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

In December 2009, the Securities and Exchange Commission (the ''Commission'') approved adoption of C2's rules, including the AIM auction process.[3] AIM exposes certain orders electronically to an auction process to provide these orders with the opportunity to receive an execution at an improved price. The AIM auction is available only for orders that a Trading Permit Holder represents as agent (''Agency Order'') and for which a second order of the same size as the Agency Order (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).[4]

The Commission approved on a pilot basis the component of AIM that there is no minimum size requirement for orders to be eligible for the auction. In connection with the pilot program, the Exchange has submitted to the Commission reports providing AIM auction and order execution data, and the Exchange will continue to submit to the Commission these reports. Three one-year extensions to the pilot program have previously become effective.[5] The proposed rule change merely extends the duration of the pilot program until July 18, 2014. Extending the pilot for an additional year will allow the Commission more time to consider the impact of the pilot program on AIM order executions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change protects investors and the public interest by allowing for an extension of the AIM pilot program, and thus allowing additional time for the Commission to evaluate the AIM pilot program. The AIM pilot program will continue to allow smaller orders to receive the opportunity for price improvement pursuant to the AIM auction.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

C2 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 does not believe the proposed rule change imposes any burden on intramarket competition because it applies to all Trading Permit Holders. All Trading Permit Holders that submit orders into an AIM auction are still subject to the same requirements. In addition, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition, as it merely extends the duration of an existing pilot program, which is available to all market participants through Trading Permit Holders. AIM will continue to function in the same manner as it currently functions for an extended period of time.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (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[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[12] 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 AIM 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 Commission notes that, because the filing was submitted for immediate effectiveness on June 26, 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.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[3] *See* Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009) (SR–C2–2011–015).

[4] The Exchange first activated AIM on October 17, 2011 for P.M.-settled options on the S&P 500 Index (SPXpm), which are no longer listed on the Exchange.

[5] *See* Securities Exchange Act Release Nos. 63238 (November 3, 2010), 75 FR 68844 (November 9, 2010) (SR–C2–2010–008); 64929 (July 20, 2011), 76 FR 44635 (July 26, 2011) (SR–C2–2011–015); and 67303 (June 28, 2012), 77 FR 39777 (July 5, 2012) (SR–C2–2012–021).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 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).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2013–023 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–C2–2013–023. 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–C2–2013–023 and should be submitted on or before July 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15918 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69881; File No. SR–NYSEMKT–2013–57]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 980NY To Modify the Information Disseminated at the Initiation of a Complex Order Auction

June 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2013, NYSE MKT LLC (''NYSE MKT'' 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 amend Exchange Rule 980NY to modify the information disseminated at the initiation of a Complex Order Auction. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Exchange Rule 980NY to modify the information disseminated at the initiation of a Complex Order Auction (''COA'').

Current Rule 980NY(e)(2) provides that upon receipt of a COA-eligible order, as defined in Rule 980NY(e)(1), and at the direction of the entering ATP Holder that an auction be initiated, the Exchange will send an automated request for responses (''RFR'') message to all ATP Holders who subscribe to RFR messages. RFR messages identify the component series, the size of the order and any contingencies, but do not identify the side of the market. ATP Holders then have an opportunity to submit bids and offers with the price and size they would be willing to participate in the execution of the COA-eligible order (an ''RFR Response'').

NYSE Amex Options proposes to amend Rule 980NY(e)(2) to include the side (*i.e.,* buy or sell) of a Complex Order entered into COA when broadcasting automated RFRs to ATP Holders. This proposed rule change is similar to a recent change by the Chicago Board Options Exchange, Inc. (''CBOE'').[3] Like the CBOE, because same-side responses to an RFR would not trade with the COA-eligible order, the Exchange has determined that the submission of RFR Responses on the same side as the COA-eligible order are [sic] unnecessary.[4] In order to reduce the number responses on the same side of the market as the COA-eligible order, the Exchange now proposes to amend Rule 980NY(e)(2) to include the side of the market of the order being auctioned when sending out an RFR. By providing the side of the market, ATP Holders will be able to tailor their responses to RFRs and will only need to submit one order on the contra side of the order being auctioned, as opposed to two orders, one on each side of the COA-eligible order, as is generally the case today. In addition, the Exchange believes that the dissemination of the additional information about the terms of an order will encourage more meaningful and competitively priced RFR Responses, which could result in deeper liquidity

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 68095 (October 24, 2012), 77 FR 65751 (October 30, 2012) (Order approving SR–CBOE–2012–85) (''CBOE Filing'').

[4] *See* CBOE Filing.

and better prices for market participants.

Because a same-side RFR Response cannot trade with a COA-eligible order, the Exchange considers same-side RFR Responses to be unnecessary to the COA process. Therefore, the Exchange proposes to amend Rule 980NY(e)(4) to provide that RFR Responses must be on the opposite side of the COA-eligible order and that same-side RFR Responses will be rejected by the Exchange. Requiring that RFR Responses be on the opposite side of a COA-eligible order and rejecting same-side RFR Responses is consistent with the processing of RFR Responses by the CBOE.[5] The Exchange believes that the proposed rule change will improve the efficiency of the COA process by eliminating excess RFR Responses that can never actually trade with the COA-eligible order.[6]

Pursuant to this proposed rule change, same-side RFR Responses will be rejected, therefore incoming RFR Responses will no longer be eligible to trade against same-side RFR Responses. Accordingly, the Exchange proposes to delete a reference to RFR Responses in Rule 980NY(e)(7).

The Exchange also proposes to amend Rule 980NY(e)(4) by correcting the rule text describing how RFR Responses are treated. Existing rule text states that RFR Responses will be ranked and displayed in the Consolidated Book. However, in accordance with Rule 980NY(e)(7), RFR Responses are only firm with respect to COA-eligible orders and unrelated orders that are received during the Response Time Interval, as defined in Rule 980NY(e)(3), and any unexecuted RFR Responses will expire at the end of the Response Time Interval (signifying the end of the auction). Because RFR Responses are only firm with respect to COA-eligible orders and unrelated orders that are received during an auction, and the fact that unexecuted RFR Responses expire at the conclusion of the auction, RFR Responses should not be ranked and/or displayed in the Consolidated Book. Thus, the language stating that RFR Responses will be ranked and displayed in the Consolidated Book is inaccurate. The Exchange therefore proposes to delete language in Rule 980NY(e)(4) stating that RFR Responses will be ranked and displayed in the Consolidated Book and affirmatively state in Rule 980NY(e)(7) that RFR Responses will not be displayed in the Consolidated Book.

The Exchange also proposes to make non-substantive changes to Rule 980NY subsections (e)(2) and (e)(7) by correcting minor typographical errors in the existing rule text.

The Exchange will announce the implementation date of the systems functionality associated with the proposed rule change by Trader Update to be published no later than 90 days following the effective date. The implementation date will be no later than 90 days following the issuance of the Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[8] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. In particular, the Exchange believes the proposed rule change protects investors and is in the public interest because it will eliminate unnecessary RFR Responses on the same side of the market as a COA-eligible order, which will ultimately make the COA process more efficient. In addition, the Exchange believes that including the side of the market in the RFR will encourage more meaningful and competitively priced RFR Responses, which could result in deeper liquidity and better prices for market participants. Disseminating additional information regarding the terms of an order should reduce confusion and provide for a less disruptive COA process, thus aiding in perfecting the mechanisms of the open market.

Also, by amending Rule 980NY(e)(4) and (7) the Exchange is correcting inaccurate language describing the functionality of the COA for the reasons set forth above. Correcting inaccurate rule language will provide clarity as to the functionality of the COA. The Exchange believes that having clear and precise rules furthers the objectives of the Act by removing of impediments to and helping to perfect the mechanisms of a free and open market and a national market system.

*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. Specifically, the proposal is structured to offer the same enhancement to all market participants, regardless of account type, and will not impose a competitive burden on any participant. The Exchange believes that adopting similar COA rules to those of other exchanges will allow NYSE Amex Options to more efficiently compete for complex order business. In addition, by disseminating enhanced RFRs, ATP Holders will be able to provide more efficient responses thus creating a more competitive market. The Exchange does not believe that requiring RFR responses to be on the opposite side of a COA eligible order and/or rejecting same-side Responses will impose any burden on market participants because market participants will still have the ability to submit unrelated same-side Complex Orders to the Exchange.

Because this proposal adopts a rule that is already in effect at a competing exchange, the Exchange does not believe that the proposed changes will impose a burden on other options exchanges. Rather, making this functionality available to market participants on the Exchange may foster more competition, thus improving the overall efficacy of the options markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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[9] and Rule 19b–4(f)(6) thereunder.[10]

[5] *See* CBOE Filing.

[6] The Exchange notes that only same-side Responses will be rejected and that unrelated Complex Orders on the same side of the market as a COA-eligible order that are received during the Response Time Interval will continue to be processed pursuant to Rule 980NY(e)(8).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–57 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–NYSEMKT–2013–57. 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–NYSEMKT–2013–57 and should be submitted on or before July 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69883; File No. SR–BATS–2013–024]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending and Restating the Amended and Restated By-Laws of BATS Exchange, Inc.

June 27, 2013.

**I. Introduction**

On April 29, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and restate the Amended and Restated By-Laws of BATS Exchange. The proposed rule change was published for comment in the **Federal Register** on May 15, 2013.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

The Exchange has proposed to amend and restate its Amended and Restated By-Laws (the ''Current By-Laws'') and adopt these changes as its Second Amended and Restated By-Laws (the ''New By-Laws''). The Exchange's proposed amendments to the Current By-Laws include: (i) Providing that the Board of Directors will consist of four (4) or more directors, with the board fixing the actual number of directors from time to time by resolution of the Board of Directors rather than fixing the number of directors in the by-laws; (ii) clarifying that the existing procedures for filling vacancies on the Board of Directors apply only for non-Member Director Representative Director positions; (iii) clarifying separate procedures for filling vacancies on the Board of Directors for Member Representative Director positions; and (iv) adding a new requirement that the processes for filling any director vacancies apply to vacancies created as a result of an increase in the size of the board.

*A. Number of Directors*

Article III, Section 2(a) of the Exchange's Current By-Laws fixes the number of directors of the Exchange at ten (10) directors. Article III, Section 2(a) of the New By-Laws would amend Article III, Section 2(a) to state that the Board of Directors of the Exchange shall consist of four (4) or more members, the number thereof to be determined from time to time by resolution of the Board of Directors, subject to the compositional requirements of the board set forth in Article III, Section 2(b).

The Current By-Laws and the New By-Laws require that the Board of Directors consist of the following: (i) One (1) director who is the Chief Executive Officer of the Company; (ii) representation by Member Representative Directors of at least twenty percent (20%) of the board;[4] and (iii) representation by Non-Industry Directors (including at least one (1) Independent Director) that equals or exceeds the sum of the number of Industry Directors and Member Representative Directors.[5] Under the Current By-Laws and the New By-Laws, the Chief Executive Officer is considered to be an Industry Director.[6] Additionally, under the Current By-Laws and New By-Laws, the Member Representative Director requirement of twenty percent (20%) would require the board to include at least one (1) Member Representative Director.[7] Thus, under the proposal, the minimum requisite sum of the number of Industry Directors and Member Representative Directors

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69540 (May 8, 2013), 78 FR 28663 (May 15, 2013) (''Notice'').

[4] The Exchange noted that because the number of Member Representative Directors must be at least twenty percent (20%) of the board, it is required under the Current By-Laws and the New By-Laws that if twenty percent (20%) of the directors then serving on the board is not a whole number, such number of Member Representative Directors must be rounded up to the next whole number.

[5] *See* Article III, Section 2(b) of the Current By-Laws.

[6] *See id.*

[7] *Id.*

would equal two (2) directors. As such, under the composition requirements, the board would also have to include at least two (2) Non-Industry Directors, bringing the total minimum size of the board to four (4) directors.

*B. Member Representative Director Vacancies*

A Member Representative Director is defined in relevant part in Article I of the Current By-Laws as a Director ''elected by the stockholders after having been nominated by the Member Nominating Committee [8] or by an Exchange Member pursuant to these By-Laws.'' Article III, Section 4 of the Current By-Laws in turn specifies the precise process the Member Nominating Committee is required to follow with the respect to the election and nomination of Member Representative Directors.[9]

As distinguished from the nomination and election of directors as part of the Exchange's annual stockholders meeting, Article III, Section 6 of the Current By-Laws specifies the procedures for filling vacancies on the board when a director position becomes vacant prior to the election of a successor at the end of such director's term, whether because of death, disability, disqualification, removal, or resignation. Under these circumstances, the Nominating Committee [10] must nominate, and the stockholders must elect, a person satisfying the classification for the directorship in compliance with the board compositional requirements of Article III, Section 2(b) of the Current By-Laws to fill such vacancy; provided, however, that if the remaining term of office of a Member Representative Director at the time of such director's termination is not more than six (6) months, during the period of vacancy the board is not deemed to be in violation of the board compositional requirements because of such vacancy.

The Exchange has proposed, in Article III, Section 6(a) of the New By-Laws, to clarify that the procedures therein for filling director vacancies would apply only to non-Member Representative Director positions. The Exchange also has proposed in new Section 6(b) of the New By-Laws to clarify separate procedures for filling Member Representative Director vacancies on the board, which procedures would require that the Member Nominating Committee shall either (i) recommend an individual to the stockholders to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the stockholders from which the stockholders shall elect the individual to fill such vacancy.

In addition, the Exchange has proposed, in Article III, Section 6(a) and (b) of the New By-Laws, to add the requirement that the process for filling vacancies described therein would be followed in the circumstance where such vacancy is created as a result of an increase in the size of the board. Under the New By-Laws, in the case of a director filling a vacancy not resulting from a newly-created directorship, the new director would serve until the expiration of the remaining term. However, in the case of a director filling a vacancy resulting from a newly-created directorship, the new director would serve until the expiration of such person's designated term. In all cases, however, if the remaining term of office of a director at the time of such director's vacancy is not more than six (6) months, during the period of vacancy the board would not be deemed to be in violation of Article III, Section 2(b) because of such vacancy. Under the Current By-Laws, this six-month grace period applies only to Member Representative Director vacancies. Under the New By-Laws, this six-month grace period would be expanded to apply to any director vacancy, which the Exchange notes is consistent with precedent from other exchanges.[11]

## III. Comment Letter and the Exchange's Response

The Commission received no comment letters on the proposed rule change.

## IV. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] which requires, among other things, that an exchange be so organized and have the capacity to carry out the purposes of the Act and to comply, and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Commission notes that the proposed rule change would provide a minimum number of directors for the Board of Directors of the Exchange, rather than a fixed number of directors. As such, the Exchange has noted that the New By-Laws would provide the board with the flexibility to increase or decrease the size of the board by resolution, rather than amending the by-laws each time the board seeks to increase or decrease the size of the board.[14] The Commission notes that the Exchange has represented that it is not proposing to amend any of the compositional requirements of the board, which are set forth in in Article III, Section 2(b) of the Current By-Laws and the New By-Laws.[15]

The proposed rule change would clarify that the Current By-Laws' existing procedures for filling director positions on its Board of Directors apply only to non-Member Representative Director positions and would clarify a specific process for filling vacancies for Member Representative Director positions. The Exchange has represented that the lack of such a specific process in the Current By-Laws for filling a Member Representative Director position that becomes vacant prior to the election of a successor at the end of such director's term has led to some confusion regarding the exact process to follow.[16] In particular, the Exchange has noted that the Current By-Laws would appear to require that a Member Representative Director vacancy be filled by the Nominating Committee; however, the Exchange has stated that such a requirement would conflict with the Current By-Laws' definition of a Member Representative Director, which requires in all cases that such person be nominated by the Member Nominating Committee or by an Exchange Member. The Exchange has represented that it intended that its Current By-Laws would require that the Member Nominating Committee nominate one or more candidates to fill Member Representative Director vacancies, which is consistent with

[8] *See* Article VI, Section 3 of the Current By-Laws for a detailed description of the Member Nominating Committee and its responsibilities.

[9] *See* Article III Section 4(c) of the Current By-Laws for detailed provisions relating to the Member Representative Director nomination and election process.

[10] *See* Article VI, Section 2 of the Current By-Laws for a detailed description of the Nominating Committee and its responsibilities.

[11] *See* Notice *supra* note 3, 78 FR at 28665 n. 7.

[12] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(1).

[14] *See* Notice *supra* note 3, 78 FR at 28664.

[15] *See id.*

[16] *Id.*

precedent from other exchanges.[17] The Commission notes that the proposed rule change would make such intended process for filling vacancies for Member Representative Director positions explicit in the New By-Laws.

The proposed rule change would also clarify that the procedures for filling any vacancies would also apply to vacancies created as a result of an increase in the size of the board. The Exchange has represented that generally, if the board has determined to increase the size of the board, it is creating the new directorship seat(s) because it has identified a qualified candidate(s) who would improve the overall quality of the board.[18] The Exchange has stated that, under these circumstances, time is of the essence and waiting to elect a director(s) to fill a newly created directorship seat(s) at the next scheduled annual stockholder meeting is not in the best interests of the Exchange or its stockholders. Consequently, the Exchange has stated that it is necessary that the New By-Laws provide a more streamlined process to fill a vacancy created by increasing the size of the board.[19] The Commission notes that Exchange has represented that any vacancies filled pursuant to the New By-Laws would be required to continue to comply with its existing compositional requirements.

Finally, the proposed rule change would also provide that if the remaining term of office of any director at the time of the director's vacancy is not more than six months, during the period of such vacancy the board will not be deemed to be in violation of the compositional requirements of Article III, Section 2(b) because of such vacancy. The Exchange notes that applying the six month grace period to any director vacancy, rather than just a Member Representative Director vacancy, is consistent with precedent from other exchanges. Further, the Exchange notes that this would be less disruptive to the director election process by permitting any vacancy to be filled at the next scheduled annual stockholder meeting, rather than through an earlier-held special stockholder meeting.

For the reasons stated above, the Commission believes that the proposal is consistent with the requirements of the Act and is designed to enable the Exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply with, and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–BATS–2013–024) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15935 Filed 7–2–13; 8:45 am]

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[17] *Id.*

[18] *See* Notice *supra* note 3, 78 FR at 28665.

[19] *See id.*

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69877; File No. SR–BATS–2013–036]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Introduce a Connectivity Option Through Points of Presence

June 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 19, 2013, 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 proposed rule change to offer a new means of connecting to the Exchange via physical connections in a data center other than the data centers where the Exchange's servers are located.

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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to offer new physical connections to Members and non-Members of the Exchange.

The Exchange currently maintains a presence in two third-party data centers: (i) The primary data center where the Exchange's business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. Exchange participants, including participants trading on the Exchange and market data recipients, are required to connect directly to the Exchange at the data centers where the Exchange maintains servers. If an Exchange participant does not have a presence within the same data centers as the Exchange then such connection necessarily involves acquiring connectivity from a participant's location or data center to the data centers where the Exchange's servers are located. The Exchange is proposing to provide market participants with the ability to access the Exchange's network through data center entry points at one or more data centers other than the Exchange's primary or secondary data center (''Remote Data Centers''), or Points of Presence (''PoPs'').

PoP ports will be located at Remote Data Centers in order to provide participants that may not have a presence at the Exchange's primary or secondary data center with connectivity to such data centers. Connectivity established via PoP ports at any data center where the Exchange offers them will allow market participants to perform all operations that they would typically perform when connecting directly to the Exchange at the Exchange's primary or secondary data

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

center, including order entry and receipt of market data. In providing this service, participants will establish a physical connection to the PoP ports in the Remote Data Center, from which point the Exchange will provide the requisite connectivity for the participants to access the Exchange's primary and/or secondary data centers through one or more third party telecommunications carriers.

PoP access will not provide any market participant a connectivity option from the PoP data center to the Exchange's primary or secondary data center that the Exchange can guarantee is any faster or more reliable than can be achieved through independently established connections to the Exchange's primary or secondary data center. However, the Exchange does believe that some participants may choose to connect to the Exchange at a PoP to the extent the Exchange's service offering makes connecting to the Exchange in this way more easily established (i.e., rather than separately establishing relationships with one or more connectivity providers) or more cost effective. While PoP access will be available to all participants, the Exchange believes it will be most attractive to smaller market participants that otherwise may not connect to the Exchange at all.

As noted above, participants that do not maintain a presence in either of the Exchange's data centers must establish connectivity to such data centers and currently must do so through third party telecommunications providers. By making PoP entry points available, the Exchange is adding additional entry points to the Exchange's network and reducing the need for such connectivity for participants located in the same data center as such PoPs. Thus, the optional means of access to the Exchange via PoPs at other data centers will provide market participants with another means of accessing the Exchange.

The Exchange proposes to provide the option to connect to the Exchange via physical ports at data centers where the Exchange maintains PoPs to any Member or non-member that has been approved to connect to the Exchange. Specifically, a PoP connection could be used by any Member, non-member service bureau that acts as a conduit for orders entered by Exchange Members, Sponsored Participant, or market data recipient. This new access option is in response to industry demand. Clients opting not to access the Exchange at a PoP point of entry will still be able to access the Exchange in the existing data centers in the same way as they do currently. The Exchange does not anticipate that demand will exceed the capacity planned for PoP access. In the event that demand does exceed the capacity planned for PoP access, the Exchange will expand its infrastructure as necessary in order to meet demand.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[3] Specifically, the Exchange believes the proposal furthers the objectives of Section 6(b)(5)[4] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

Competition for customers and order flow amongst exchanges and other non-exchange market participants is considerable and the Exchange believes that the proposal to offer PoP connectivity clearly evidences such competition. The Exchange is offering this new connectivity option to keep pace with changes in the industry and evolving customer needs. PoP connectivity will be available to all Exchange constituents to whom such connectivity will be useful and cost-effective. The offering is entirely optional, and is geared towards attracting new customers, as well as retaining existing customers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, this proposal will promote competition through the offering of an optional, additional mechanism to connect to the Exchange. The proposed rule change will 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 connectivity 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 their customers, and to win and maintain their business. The offering is consistent with the Exchange's own incentives to facilitate as many market participants as possible in connecting to its market.

*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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2013–036 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2013–036. 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/*

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

*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–BATS–2013–036 and should be submitted on or before July 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15929 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69888; File No. SR–ICEEU–2013–09]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 3 and Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2 and 3 Thereto, To Clear Contracts Traded on the LIFFE Administration and Management Market

June 28, 2013.

### I. Introduction

On May 13, 2013, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICEEU–2013–09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder[2] to implement a clearing relationship in which ICE Clear Europe will clear contracts traded on the LIFFE Administration and Management (''LIFFE A&M'') market[3] (''LIFFE Contracts'').[4] On May 22, 2013, ICE Clear Europe filed Amendment No. 1 to the proposed rule change.[5] Notice of the proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on May 29, 2013.[6] On June 4, 2013, ICE Clear Europe filed Amendment No. 2 to the proposed rule change.[7] Notice of Amendment No. 2 to the proposed rule change was published for comment in the **Federal Register** on June 12, 2013.[8] On June 20, 2013, ICE Clear Europe filed Amendment No. 3 to the proposed rule change.[9]

The Commission did not receive comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment Nos. 1, 2 and 3.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] LIFFE A&M is a recognized investment exchange under the UK Financial Services and Markets Act of 2000.

[4] The LIFFE Contracts include interest rate and government bond futures and options, certain agricultural futures and options, and futures and options on underlying equity securities and equity indices.

[5] In Amendment No. 1, ICE Clear Europe, among other things, clarified the scope of products proposed to be cleared, added new Rule 207(f) prohibiting its U.S. Clearing Members from clearing LIFFE Contracts that are futures or options on underlying U.S. securities, added additional clarification surrounding the operation of the combined F&O Guaranty Fund and the margining of LIFFE Contracts, and supplemented the statutory basis for the proposed rule change.

[6] Exchange Act Release No. 69628 (May 23, 2013), 78 FR 32287 (May 29, 2013) (SR–ICEEU–2013–09).

[7] In Amendment No. 2, ICE Clear Europe elaborated on certain aspects of the proposed clearing activities as they relate to LIFFE Contracts that are securities products and made a partial amendment to certain rules and procedures that would clarify the considerations under which certain margin and risk management requirements would be established and modified from time to time.

[8] Exchange Act Release No. 69703 (Jun. 5, 2013), 78 FR 35335 (Jun. 12, 2013) (SR–ICEEU–2013–09).

[9] In Amendment No. 3, ICE Clear Europe modified proposed Rule 207(f) to further define the persons that are subject to the restriction from clearing U.S. securities to include any Clearing Member having a U.S. residence, based upon the location of its executive office or principal place of business, including, without limitation, (i) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act) and (ii) a foreign branch of a U.S. bank or U.S. registered broker-dealer. The amendment is technical in nature and meant to clarify the scope of Rule 207(f) so that it is consistent with prior Commission actions. *See infra* n. 11 and accompanying text. Amendment No. 3 therefore did not require an additional comment period. The initial rule filing and all subsequent amendments filed are collectively referred to hereinafter as the ''Proposal.''

### II. Description of the Proposed Rule Change

#### *A. Background*

As announced on December 20, 2012, ICE Clear Europe has agreed to act as the clearing organization for futures and option contracts traded on LIFFE A&M, including contracts traded over-the-counter and processed through LIFFE A&M's BClear service.[10] The LIFFE Contracts proposed to be cleared by ICE Clear Europe include instruments that constitute securities for the purposes of U.S. securities laws (''LIFFE Securities Products''), including U.S. securities, which for purposes of the Proposal, include futures or options on underlying U.S. equities and equity indices. The purpose of the Proposal is to implement this clearing relationship.

In the Proposal, ICE Clear Europe submitted revised Parts 1, 2, 4, 5, 7, 8, 11, and 12 and new Part 18 of the ICE Clear Europe Clearing Rules (''Rules'') (along with other clarifying and conforming Rule amendments) and revisions to its Finance Procedures, Clearing Procedures, Delivery Procedures and Membership Procedures. The other proposed changes in the Rules and procedures reflect conforming changes to definitions and related provisions and other drafting clarifications, and do not affect the substance of the Rules and procedures.

#### *B. ICE Clear Europe Clearing Rules*

The Proposal revises Part 1 of the Rules, in which Rule 101, which provides definitions for certain terms, is modified to add new defined terms and revise existing definitions. Included in the changes to Rule 101 are the designation of LIFFE A&M as a Market for which ICE Clear Europe provides clearing services, the addition of defined terms and other revisions to cover LIFFE Contracts and the creation of a new category ''F&O Contracts'' that will include Energy Contracts and LIFFE Contracts (and related definitions). The Energy Guaranty Fund will be re-designated as the F&O Guaranty Fund, which fund will be sub-divided with respect to Energy Contracts and LIFFE Contracts.

Part 2 of the Rules has been revised to address requirements for LIFFE Clearing Members and other conforming changes. New Rule 207(f), as modified by Amendment No. 3 of the Proposal,

[10] BClear is a service operated by LIFFE A&M, which enables LIFFE A&M Clearing Members to report certain bilaterally agreed off-exchange trades to LIFFE A&M. After ICE Clear Europe launches its clearing business for LIFFE A&M, trades would be eligible for clearing by ICE Clear Europe upon being reported.

would be adopted to provide that Clearing Members that are U.S. persons will not be permitted to clear LIFFE Contracts that are futures or options on underlying U.S. securities (other than futures contracts on broad-based security indices). Specifically, Rule 207(f) defines the persons that are subject to this restriction to include any (i) FCM/BD Clearing Members; (ii) other Clearing Members that are organized in the United States of America; and (iii) other Clearing Members having a U.S. residence, based upon the location of their executive office or principal place of business, including, without limitation, (a) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act) and (b) a foreign branch of a U.S. bank or U.S. registered broker-dealer. As modified by Amendment No. 3, the proposed rule would restrict the clearing of U.S. securities by U.S. participants consistent with prior Commission actions.[11] In furtherance of this restriction, ICE Clear Europe, together with LIFFE A&M, will implement operational controls to restrict the activities of U.S. Clearing Members. Specifically, the clearing system to be used for the LIFFE Securities Products will have market access controls that prevent U.S. Clearing Members from creating or holding cleared positions in LIFFE Securities Products involving underlying U.S. securities. This is intended to prevent U.S. Clearing Members from engaging in any clearing-related activity (including give-ups or take-ups) in respect of those products. Furthermore, when a new U.S. clearing member is approved for clearing, LIFFE A&M and ICE Clear Europe will take the necessary steps in their respective systems to implement these access controls prior to granting the new member access to the clearing system.

Part 3 of the Rules contain certain conforming changes.

Changes to Part 4 of the Rules address the submission of LIFFE Contracts for clearing and related matters. A new Rule 410 has been added to set out a framework for Link Agreements, which are generally defined as agreements entered into between ICE Clear Europe and another exchange for which ICE Clear Europe does not otherwise provide clearing services that provides for the transfer of contracts to or from that exchange (or its clearing house) to ICE Clear Europe. LIFFE A&M currently has link arrangements with Tokyo Financial Exchange Inc. and Tokyo Stock Exchange Inc., which exchanges would constitute ''Participating Exchanges'' pursuant to the new Rules.

The Proposal revises Part 5 of the Rules, which addresses margin requirements. Existing Rule 502(d) addresses a number of margin requirements, including the assets eligible to be provided as Margin or Permitted Cover, and existing Rule 502(e) addresses haircuts that the clearing house may apply to such assets. Under the existing Rules, changes to such requirements may be determined by the clearing house from time to time and notified by Circular (which will also be posted on the clearing house's Web site). ICE Clear Europe proposes to add a new Rule 502(k) to provide that for F&O Contracts, changes to the matters set forth in Rules 502(d) and (e), including assets eligible as Margin or Permitted Cover and the haircuts established with respect to such assets, will be based on an analysis of appropriate factors as determined by the clearing house. These factors will include, without limitation, historical and implied price volatility of those assets, current and anticipated conditions in the market for those assets, spreads and correlations between assets, liquidity in the trading market for those assets, composition of the relevant market, default risk (including sovereign risk) with respect to those assets, relevant foreign exchange market conditions and other relevant information as determined by ICE Clear Europe. Consistent with its existing policies and procedures, ICE Clear Europe regularly reviews its current eligible Margin and Permitted Cover assets and related haircuts and makes any necessary adjustments.

Part 6 of the Rules contain no changes.

The Proposal revises Part 7 of the Rules, which deals with settlement and delivery of futures, to address settlement of LIFFE Contracts. Specifically, Rule 703 has been amended to address the treatment of tenders delivered in relation to Futures that are not settled in cash. Additionally, Rule 704, which deals with the credit and debit of accounts, has been amended to provide that any payment or other allowance payable by or to either the Buyer or Seller under the terms of the Contract shall be paid by or to the Clearing House for onward payment to the Buyer or Seller, as the case may be.

The Proposal revises Part 8 of the Rules, which deals with Options, to provide additional terms with respect to the exercise of option contracts other than options on futures. Specifically, new Rule 806 provides that upon exercise of any Option with a Deliverable which is not a Future, a Contract for the sale and purchase of the relevant Deliverable (a ''Contract of Sale'') at the Strike Price (or such other price as is required pursuant to the Contract Terms) will arise pursuant to Rule 401 and in accordance with the Contract Terms for the Option and applicable Market Rules. Additionally, new Rule 806 provides that upon such Contract of Sale or Contracts of Sale having arisen and all necessary payments having been made by the Clearing Member and Clearing House pursuant to the Clearing Procedures, the rights, obligations and liabilities of the Clearing House and the relevant Clearing Member in respect of the Option shall be satisfied and the Option shall be terminated.

The Proposal revises Part 8 of the Rules to include the addition of new Rule 809, which clarifies the delivery and settlement procedures with respect to Contracts of Sale arising from Options. Pursuant to new Rule 809, the Clearing House has the authority to direct a Clearing Member, who is a Seller under a Contract of Sale subject to delivery, to deliver the Deliverable under such Contract to another Clearing Member that is a Buyer. New Rule 809 further provides that if a Buyer under a Contract of Sale rejects a Deliverable delivered to it, the Clearing House as Buyer under the back-to-back Contract with the Seller shall be entitled, if to do so would be in accordance with the applicable Contract Terms, to take the same action as against the Seller under the equivalent Contract and the Clearing House shall not be deemed to have accepted such delivery until the relevant Buyer has accepted delivery under the first Contract.

New Rule 810 addresses the cash settlement terms of Options with Deliverables other than Futures. New Rule 811 provides that the Clearing House shall make any necessary credits or debits to or from Clearing Members' Proprietary Margin Account and Customer Margin Accounts, as appropriate, arising as a result of each cash settlement and delivery in accordance with Part 3 of the Rules.

Part 9 of the Rules contain certain conforming changes.

Part 10 of the Rules contain no changes.

[11] *See, e.g.,* Morgan Guaranty Trust Company of New York, Brussels Office, as Operator of the Euroclear System, Order Approving Application for Exemption From Registration as a Clearing Agency, Exchange Act Release No. 39643 (Feb. 11, 1998), 63 FR 8232 (Feb. 18, 1998) (''Euroclear Order'') at n. 62 (defining ''U.S. participant'' in the context of granting an exemption from registration as a clearing agency under Section 17A in connection with performing the functions of a clearing agency for transactions involving U.S. government and agency securities for U.S. participants).

The Proposal revises Part 11 of the Rules, which deals with the Guaranty Funds. The clearing of LIFFE Contracts will be supported by the existing Energy Guaranty Fund, which will be re-designated the ''F&O Guaranty Fund.'' Contributions to the F&O Guaranty Fund will be primarily allocated to losses from either Energy Contracts or LIFFE Contracts, and secondarily allocated to the other such class of Contracts, as set forth in Rule 1103. The size of each segment will be determined separately based on ICE Clear Europe's risk assessment of the Energy Contracts and LIFFE Contracts, respectively, and each segment will be separately stress-tested in accordance with the clearing house's risk management policies and procedures. In the event of a default of a clearing member for which ICE Clear Europe needs to apply the F&O Guaranty Fund in accordance with the risk waterfall under the Rules, the energy segment will be applied first to losses resulting from Energy Contracts, and the LIFFE segment will be applied first to losses resulting from cleared LIFFE Contracts. Once a segment has been exhausted by losses in its product category, remaining assets from the other segment may be applied to those losses.

The Proposal also revises Part 12 of the Rules, which addresses UK Settlement Finality Regulations and the Companies Act 1989. Conforming changes have been made to incorporate LIFFE Contracts in the provisions addressing various categories of transfer orders.

The Proposal includes a new Part 18 of the Rules, which provide for transitional provisions concerning the novation of open contracts with LIFFE A&M and LCH.Clearnet Limited, under LIFFE A&M's existing clearing arrangements, to ICE Clear Europe, under the new clearing relationship, and the transfer of Clearing Member cash and securities from LCH.Clearnet Limited to ICE Clear Europe.

*C. ICE Clear Europe Procedures*

Membership Procedures

The Proposal updates ICE Clear Europe's Membership Procedures to provide for the clearing of LIFFE Contracts and to reflect a new membership category, ''F&O Clearing Members'', which identify Clearing Members seeking to clear LIFFE Contracts as well as existing Energy Clearing Members. The amendments reflect various other updates and changes to conform to other provisions of the Rules and procedures. In Section 4 (''Matters Requiring Notification by Clearing Members''), the chart governing all notifications, their timing and their form requirements have been generally updated to address the changes to the numbering of provisions and otherwise to reflect the latest version of ICE Clear Europe's Clearing Rules. New subsections G (''Clearing Procedures''), H (''Finance Procedures''), I (''Complaint Resolution Procedures'') and J (''Business Continuity Procedures'') have also been added, reflecting the notifications, timing and form requirements contained in such procedures.

Finance Procedures

The Proposal also contains revisions to Parts 2, 3, 4, 5, 6, 9 and 13 of ICE Clear Europe's Finance Procedures, which reflect general updates as well as changes to the clearing of LIFFE Contracts.

Section 2.1 has been revised to clarify the currencies supported by ICE Clear Europe in various contexts. Initial and Original Margin obligations may be met only in USD, GBP and EUR currency. CAD, CHF and SEK currency may be used by Clearing Members only for the receipt of income on non-cash Permitted Cover with coupons payable in those currencies. CAD may also be used for Variation Margin and settlement payments only for Energy Contracts which settle in CAD. Certain additional currencies may be used for Variation Margin and settlement payments for LIFFE Contracts which settle in such currencies.

Similarly, Section 3.7 has been amended to clarify that currencies eligible for Triparty Collateral for Original or Initial Margin are limited to USD, GBP and EUR.

Section 4.1 governing currency requirements for the accounts of the Clearing Members has been slightly modified: all F&O Clearing Members must have an account, denominated in USD; all CDS Clearing Members must have an account denominated in EUR; all F&O Clearing Members must additionally have at least one further account denominated in either GBP or EUR; all CDS Clearing Members must additionally have at least one further account denominated in either GBP or USD; a Clearing Member which has an Open Contract Position in a contract for which EUR, GBP, USD or CAD is the settlement currency must have an account denominated in such currency; a Clearing Member which transfers non-cash Permitted Cover to the Clearing House which pays a coupon, interest or redemptions in USD, EUR, GBP, CAD, CHF or SEK must have an account in that currency; and an F&O Clearing Member that is a LIFFE Clearing Member and is party to LIFFE Contracts which settle in CAD, CHF, CZK, DKK, HUF, JPY, NOK, PLN, SEK or TRY must have an account in each such currency.

The procedures of the assured payment system have been updated under Section 5.5 of the Finance Procedures to conform to changes recently made to Rule 301(f) regarding the liability of Clearing Members for the remittance of funds through Approved Financial Institutions.

Section 6.1(h), which addresses the various payments that may be included in a cash transfer, has been modified to address intra-day call of additional Initial or Original Margin Call, the proceeds of which may be applied against future Variation Margin or Mark-to-Market Margin calls. Intra-day Calls will now only be processed in USD, GBP or EUR. Section 6.1(h)(vi) has been revised to address general procedures for rebates, fee discounts and incentive programs that the Clearing House may adopt from time to time. In addition, the provisions on Currency Holidays and payments on other currencies, Section 6.1(h)(viii), have also been updated and now include language on Force Majeure Events and Financial Emergencies.

In Section 9, the definitions relating to the use of Emission Allowances and Permitted Cover have been updated to reflect changes in EU Law with respect to Registry Regulations. Certain conforming changes are made in Part 10 of the Finance Procedures. Finally, Section 12.1 has been revised to reflect the sub-categories of Letters of Credit that might be used to satisfy Original Margin, being a ''Standard Letter of Credit'' and a ''Pass-Through Letter of Credit''. The relevant forms of the Letters of Credit have also been updated in Section 12.4.

Section 13.6 of the Finance Procedures addresses the determination and change of original margin rates from time to time. Margin requirements for LIFFE Contracts will be calculated using the SPAN®1 v4 algorithm,[12] with modifications for concentration charges and a trinomial model used with respect to certain LIFFE A&M option transactions. ICE Clear Europe will determine the margin parameters used in the SPAN algorithm for LIFFE Contracts cleared by ICE Clear Europe, and make appropriate modifications to those parameters from time to time, within the framework of the margin requirement policy approved by the

[12] SPAN is a registered trademark of Chicago Mercantile Exchange Inc. and used by ICE Clear Europe under license. SPAN is a risk evaluation and margin framework algorithm.

ICEEU F&O Risk Committee. As set forth in existing Section 13.6, ICE Clear Europe regularly reviews its margin rates in light of market conditions and makes appropriate modifications. ICE Clear Europe proposes to amend Section 13.6 to provide that changes to original margin rates for F&O Contracts will be based on an analysis of appropriate factors as determined by the clearing house. These include market prices, historical and implied volatilities of relevant contracts, spreads and correlations between related commodities, other current and anticipated conditions (including liquidity) in the market for the contracts and other relevant information as determined by ICE Clear Europe. ICE Clear Europe believes that Section 13.6 provides it the flexibility to adjust the calculation of margin rates in order to react to changes in market conditions, particularly changes in volatility. These changes may occur suddenly, and failure to update margin rates to take into account such changes may lead to insufficient margin being collected by the clearing house. The proposed revisions to Section 13.7 of the Finance Procedures are substantially the same as the amendments to Rule 502(k), and are being made for the reasons discussed above in connection with that rule change.

Clearing Procedures

The Proposal also updates ICE Clear Europe's Clearing Procedures to provide for the clearing of LIFFE Contracts as well as certain other updates and confirmations. Accordingly, amendments have been made to the provisions relating to ICE Clear Europe's post-trade administration, clearing and settlement systems, position management and position accounts in Sections 1, 2 and 3, respectively.

Delivery Procedures

The Proposal revises ICE Clear Europe's Delivery Procedures to provide for the delivery of LIFFE Contracts. The following provisions have been added to the Delivery Procedures, which set out the new delivery arrangements:

- Section 8 (''Alternative Delivery Procedure: LIFFE White Sugar and Raw Sugar'');
- Section 17 (''LIFFE Guardian''), which describes the LIFFE Guardian electronic grading and delivery system which will be used in certain LIFFE deliveries; and
- Parts I–Q, which set out the delivery arrangements for the additional LIFFE Contracts as follows:
- Part I: ''LIFFE Cocoa Contracts''
- Part J: ''LIFFE Coffee Contracts''
- Part K: ''LIFFE White Sugar Contracts''
- Part L ''LIFFE Wheat Contracts''
- Part M: ''LIFFE Deliveries''
- Part N: ''LIFFE Common Delivery Procedures''
- Part O: ''LIFFE Gilt Contracts''
- Part P: ''LIFFE Japanese Government Bond Contracts''
- Part Q: ''LIFFE Equity Futures/Options''.

Further, the Schedule of Forms and Reports has been updated and lists additional delivery forms used for the LIFFE Contracts.

Part A of the Delivery Procedures relating to emissions contracts has also been amended, reflecting changes to EU legislation, certain new emission contracts previously launched by ICE Futures Europe and the use of a single EU registry together with additional conforming and updating changes to the Delivery Procedures generally.

ICE Clear Europe believes that the proposed rule and procedure changes are consistent with the requirements of Section 17A of the Act [13] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[14] The amendments will provide for clearing of LIFFE Contracts by ICE Clear Europe, consistent with ICE Clear Europe's existing clearing arrangements and related financial safeguards, protections and risk management procedures, as discussed herein. ICE Clear Europe believes acceptance of LIFFE Contracts for clearing, and conditions set out in these rule and procedure amendments, will promote the prompt and accurate clearance of and settlement of securities transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[15] The proposed amendments do not impact ICE Clear Europe's financial resources devoted to its security-based swap related (i.e., credit default swap) clearing business. ICE Clear Europe believes the clearing of LIFFE Contracts will satisfy relevant requirements of Rule 17Ad–22,[16] as discussed below.

*Financial Resources.* As discussed above, ICE Clear Europe believes it has structured the F&O Guaranty Fund to provide sufficient additional financial resources to support the clearing of LIFFE Contracts consistent with the requirements of Rule 17Ad–22.[17] The proposed amendments do not impact ICE Clear Europe's financial resources devoted to its security-based swap related (i.e., credit default swap) clearing business. Moreover, new policies were approved covering margin requirements, mark-to-market margin, capital to margin, membership, internal rating, backtesting, wrong-way risk, concentration charges, intraday margin and stress testing in respect of the LIFFE A&M clearing relationship. Relevant models applicable to the clearing of LIFFE Contracts were subjected to independent validation as required by ICE Clear Europe's model governance framework.

*Operational Resources.* ICE Clear Europe believes it will have the operational and managerial capacity to clear the LIFFE Contracts as of the commencement of clearing, consistent with the requirements of Rule 17Ad–22(d)(4).[18] Staffing levels and resources at ICE Clear Europe related to operational and technology needs for the clearing of LIFFE Contracts will be subject to ongoing review. ICE Clear Europe believes that its existing systems are appropriately scalable to handle the expected increase in volume. ICE Clear Europe may also enter into services arrangements with LIFFE A&M from time to time in connection with the clearing of LIFFE Contracts, under which LIFFE A&M or its personnel may assist with certain clearing functions, particularly with respect to contracts that go to delivery.

*Participant Requirements.* ICE Clear Europe believes that the Proposal and the clearing of LIFFE Contracts are consistent with the requirements of Rule 17Ad–22(d)(2) [19] to provide fair and open access through participation requirements that are objective and publicly disclosed. ICE Clear Europe believes that the Proposal establishes fair and objective criteria for the eligibility to clear LIFFE Contracts. ICE Clear Europe clearing membership is available to participants that meet such criteria. ICE Clear Europe Clearing Members that wish to clear LIFFE Contracts will have to satisfy the financial resources requirements to clear these products and continue to do so in order to preserve their eligibility to clear LIFFE Contracts. Clearing Member compliance with the requirements to clear LIFFE Contracts will be monitored by ICE Clear Europe.

*Settlement.* ICE Clear Europe believes that the Proposal will improve the

[13] 15 U.S.C. 78q–1.

[14] 17 CFR 240.17Ad–22.

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22.

[17] *Id.*

[18] 17 CFR 240.17Ad–22(d)(4).

[19] 17 CFR 240.17Ad–22(d)(2).

finality and accuracy of its daily settlement process and reduce the risk to ICE Clear Europe of settlement failures, consistent with the requirements of Rule 17Ad–22(d)(5), (12) and (15).[20] The Proposal would require ICE Clear Europe Clearing Members that clear LIFFE Contracts to maintain accounts at approved financial institutions and that are denominated in the settlement currency of the LIFFE Contracts such Clearing Member clears. Also, the proposed amendments to the Finance Procedures clarify the steps a Clearing Member (and its approved financial institutions) must take in order for the Clearing Member's obligations to pay ICE Clear Europe to be deemed satisfied and complete.

Likewise, the proposed amendments to the Delivery Procedures clarify the obligations of ICE Clear Europe and its Clearing Members in respect of physically-settled LIFFE Contracts. The Proposal contemplates that ICE Clear Europe may, from time to time, enter into clearing services arrangements with LIFFE A&M, in respect of LIFFE Contracts, pursuant to which certain functions may be performed by LIFFE A&M for ICE Clear Europe. In general, the terms to be added to the ICE Clear Europe Delivery Procedures in large part reflect the terms currently applicable to the LIFFE Contracts under their existing clearing arrangements.

ICE Clear Europe believes these changes are thus in furtherance of, and are consistent with, the requirements of Rule 17Ad–22[21] and will facilitate the continued operation of the clearing house's settlement process. ICE Clear Europe believes that its Rules and procedures related to settlements (including physical settlements), as amended, appropriately identify and manage the risks associated with settlements under LIFFE Contracts.

*Default Procedures.* ICE Clear Europe believes that the Rules and its relevant procedures allow for it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of Clearing Member insolvencies or defaults, including in respect of LIFFE Contracts, in accordance with Rule 17Ad–22(d)(11).[22]

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[23] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(1) of the Act[24] prohibits any clearing agency from directly or indirectly making use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security), unless it is registered with the Commission. Section 17A(b)(3)(F) of the Act[25] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

After careful review, the Commission finds that the Proposal, in conjunction with exemptive relief granted by the Commission to ICE Clear Europe (the ''Exemptive Order''),[26] is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, the Commission finds that the Proposal, in conjunction with the Exemptive Order, is consistent with the requirement of Section 17A(b)(1) of the Act[27] regarding clearing agency registration. Section 17A(b)(1) of the Exchange Act requires a clearing agency that makes use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security) to register with the Commission, unless an exemption is granted by the Commission. The Commission has required a foreign clearing agency to register or obtain an exemption from clearing agency registration if the foreign clearing agency provides clearance and settlement services for U.S. securities directly to U.S. persons.[28]

ICE Clear Europe is a foreign clearing agency registered in the U.S. solely for the purpose of clearing SBS. In light of the Commission's precedents pertaining to registration requirements for foreign clearing agencies, ICE Clear Europe has proposed to amend its Rules to include new ICE Clear Europe Rule 207(f), which would prohibit Clearing Members that are U.S. participants[29] from clearing U.S. securities. In addition, ICE Clear Europe has developed policies and procedures to enforce proposed Rule 207(f), including market access controls that prevent U.S. participants from creating or holding cleared positions in U.S. securities and, consequently, from engaging in any clearing-related activity (including give-ups or take-ups in respect of those products). In addition, when a new U.S. participant is approved for clearing, LIFFE A&M and ICE Clear Europe will be jointly responsible to ensure that these access limitations are properly in place.

Notwithstanding new ICE Clear Europe Rule 207(f) and its attendant policies and procedures and operational controls, the Commission believes that the proposed clearing of the LIFFE Securities Products would exceed the scope of activities permitted by ICE Clear Europe's registration solely to clear SBS under Section 17A(l) of the Exchange Act. Thus, ICE Clear Europe must register or seek an exemption from registration as a clearing agency under Section 17A(b) of the Exchange Act in

[20] 17 CFR 240.17Ad–22(d)(5), (12) and (15).

[21] 17 CFR 240.17Ad–22.

[22] 17 CFR 240.17Ad–22(d)(11).

[23] 15 U.S.C. 78s(b)(2)(C).

[24] 15 U.S.C. 78q–1(b)(1).

[25] 15 U.S.C. 78q–1(b)(3)(F).

[26] Order Pursuant to Section 17A of the Securities Exchange Act of 1934 Granting Exemption from the Clearing Agency Registration Requirement under Section 17A(b) of the Exchange Act for ICE Clear Europe Limited in Connection With its Proposal to Clear Contracts Traded on the LIFFE Administration and Management Market, Exchange Act Release No. 34–69872 (Jun. 27, 2013), 78 FR ___ (July ___, 2013).

[27] 15 U.S.C. 78q–1(b)(1).

[28] *See, e.g.,* Order Approving Application for Exemption from Registration as a Clearing Agency, Exchange Act Release No. 38328 (Feb. 24, 1997), 62 FR 9225 (Feb. 28, 1997) (granting an exemption from registration as a clearing agency under Section 17A in connection with performing the functions of a clearing agency with respect to transactions involving U.S. government and agency securities for U.S. entities); Euroclear Order, *supra* n. 11; and Order Approving Application to Modify an Existing Exemption from Clearing Agency Registration, Exchange Act Release No. 43775 (Dec. 28, 2000), 66 FR 819 (Jan. 4, 2001) (replacing MGT-Brussels with Euroclear Bank as operator of the Euroclear System).

[29] The term ''U.S. participant'' was previously defined for the limited purposes of a clearing agency exemptive order as a person having a U.S. residence, based upon the location of its executive office or principal place of business, including, without limitation, (i) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act), (ii) a foreign branch of a U.S. bank or U.S. registered broker-dealer, and (iii) any broker-dealer registered as such with the Commission even if such broker-dealer does not have a U.S. residence. *See* Euroclear Order, *supra* n. 11, at n. 62. Consistent with this definition of U.S. participant, ICE Clear Europe's Proposal contains rule changes that would prohibit a person (i) that is a FCM/BD, (ii) organized in the United States of America, or (iii) having a U.S. residence, based on the location of its executive office or principal place of business, including, without limitation, a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act) or a foreign branch of a U.S. bank or U.S. registered broker-dealer, from participating in clearing U.S. securities.

order to provide clearing services for the LIFFE Securities Products. Accordingly, ICE Clear Europe has submitted, and the Commission has granted, ICE Clear Europe's application for exemptive relief from clearing agency registration under Section 17A(b) of the Exchange Act and Rule 17Ab2–1 thereunder solely with respect to ICE Clear Europe's provision of clearance and settlement services for LIFFE Securities Products.[30] Given the Exemptive Order,[31] the Commission finds that the Proposal is consistent with the requirement of Section 17A(b)(1) of the Act[32] regarding clearing agency registration.

In addition, the Commission finds that the Proposal is consistent with the requirement of the Exchange Act with respect to promoting the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. The Proposal contains provisions designed to permit and facilitate LIFFE Contracts to be transitioned to and cleared on an ongoing basis by ICE Clear Europe, including changes to ICE Clear Europe's Rules, as well as its Finance Procedures, Clearing Procedures, Delivery Procedures, and Membership Procedures.

In addition, the Commission finds that the Proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act[33] regarding the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. Among other things, the Proposal revises margin requirements, establishes the F&O Guaranty Fund to accommodate the clearing of both LIFFE contracts and ICE Clear Europe's existing Energy Contracts, and revises ICE Clear Europe's risk management framework with respect to LIFFE contracts. The Proposal includes new policies covering margin requirements, mark-to-market margin, capital to margin, membership, internal rating, backtesting, wrong-way risk, concentration charges, intraday margin and stress testing in respect of the LIFFE A&M clearing relationship. Relevant models applicable to the clearing of LIFFE Contracts were subjected to independent validation as required by ICE Clear Europe's model governance framework.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[34] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (File No. SR–ICEEU–2013–09) be, and hereby is, approved.[36]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[37]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15999 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[30] ICE Clear Europe's Form CA–1 incorporates a letter from Paul Swann, President, ICE Clear Europe, to Elizabeth Murphy, Secretary, SEC, dated June 11, 2013, requesting exemptive relief from clearing agency registration in connection with the clearing of LIFFE Securities Products.

[31] *Supra* n. 26.

[32] 15 U.S.C. 78q–1(b)(1).

[33] 15 U.S.C. 78q–1(b)(3)(F).

[34] 15 U.S.C. 78q–1.

[35] 15 U.S.C. 78s(b)(2).

[36] In approving this proposed rule change the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[37] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69874; File No. SR–NSX–2013–13]**

## Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 11.11 to Automatically Prevent Entry of Zero Display Reserve Orders Marked ''Sell Short''

June 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2013, National Stock Exchange, Inc. (''NSX®'' or 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 11.11 (Orders and Modifiers) to add new subparagraph (c)(2)(E), which addresses the manner in which the Exchange's Trading System (the ''System'') will handle a sell short Zero Display Reserve Order[3] entered by an Exchange User[4] in a security that subsequently becomes subject to a short sale price test restriction under Rule 201 of Regulation SHO[5] of the Act. The rule amendment and accompanying technology change address a System limitation that causes a sell short Zero Display Reserve Order to be executed at or below the national best bid during a period that the security is subject to the short sale price test restriction. Accordingly, the Exchange has determined to amend Rule 11.11 by adding new subparagraph (c)(2)(E) which will provide that the Exchange's System will automatically reject the entry of a Zero Display Reserve Order marked as ''sell short.'' The Exchange has stated that the present rule amendment is a temporary measure intended to address Rule 201 Regulation SHO compliance with regard to Zero Display Reserve Orders. The Exchange has further stated that it intends to make subsequent permanent modifications to the System that will eliminate the need to automatically reject all Zero Display Reserve Orders marked ''sell short.'' Accordingly, the Exchange will seek Commission approval of a proposal to replace subparagraph (c)(2)(E) by August 30, 2013, the date by which the Exchange anticipates the permanent modifications to the System will be ready to implement, and to propose any other rule amendments necessary to further address the Exchange's Rule 201 Regulation SHO compliance.

The text of the proposed rule change is available on the Exchange's Web site at *www.nsx.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under Exchange Rule 11.11(c)(2), a Reserve Order is defined as a limit order with a portion of the quantity displayed (''display quantity'') and with a reserve portion of the quantity (''reserve quantity'') that is not displayed. Rule 11.11(c)(2)(A) provides, in relevant part, that a Reserve Order can be entered with a display quntity of zero, in which case the Reserve Order will be known as ''Zero Display Reserve Order.''

[4] NSX Rule 1.5 defines the term ''User'' as any ETP Holder or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.9.

[5] 17 CFR 242.201. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (''Rule 201 Adopting Release'') and Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, January 20, 2011 at *http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm* (''Rule 201 FAQs''). Rule 201 applies to any ''trading center'' as defined in Rule 201(a)(9) of Regulation SHO that executes or displays a short sale order in a covered security.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to amend Rule 11.11 to add new subparagraph (c)(2)(E), which will provide that the Exchange will automatically block the entry by Users of Zero Display Reserve Orders marked ''sell short.'' All such orders will be rejected back to the entering User. The rule amendment and accompanying changes to the System will automatically reject the entry of such orders and thereby prevent a subsequent execution of such orders at or below the national best bid during a time period that the security is the subject of a short sale price test restriction.

Rule 201(b)(1)(i) of Regulation SHO requires trading centers,[6] including the Exchange, to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from such security's closing price on the listing market at the close of regular trading hours on the prior day. Rule 201(b)(1)(ii) of Regulation SHO provides that trading centers must establish, maintain and enforce written policies and procedure reasonably designed to enforce the short sale price test restriction for the remainder of the trading day and the following day, when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.

Rule 201(b)(1)(iii)(A) of Regulation SHO provides that a trading center's written policies and procedures must be reasonably designed to permit the execution of a displayed short sale order of a covered security by a trading center if, at the time of initial display of the short sale order, the order was at a price above the current national best bid.[7]

Exchange Rule 11.11(c)(2)(A) provides that a User may enter a Reserve Order with a display quantity of zero, in which case the Reserve Order will be known as a Zero Display Reserve Order. Because no order designated by a User as a Zero Display Reserve Order ever becomes displayed, any such order marked ''sell short'' does not qualify for the exception under Rule 201(b)(1)(iii)(A) of Regulation SHO.

Recently, the Exchange became aware of a System limitation that permits the execution of a sell short Zero Display Reserve Order at or below the national best bid while the covered security was in a short sale price test restriction. The operation of the System in these circumstances is not consistent with Rule 201(b) of Regulation SHO.

Accordingly, the Exchange has determined to amend Rule 11.11 by adding new subparagraph(c)(2)(E) which will provide that the Exchange's System will automatically reject the entry of a Zero Display Reserve Order marked as ''sell short.'' The Exchange has stated that the present rule amendment is a temporary measure intended to address Rule 201 Regulation SHO compliance with regard to Zero Display Reserve Orders. The Exchange has further stated that it intends to make subsequent permanent modifications to the System that will eliminate the need to automatically reject all Zero Display Reserve Orders marked ''sell short.'' Accordingly, the Exchange will seek Commission approval of a proposal to replace subparagraph (c)(2)(E) by August 30, 2013, the date by which the Exchange anticipates the permanent modifications to the System will be ready to implement, and to propose any other rule amendments necessary to further address the Exchange's Rule 201 Regulation SHO compliance.

2. Statutory Basis

The proposed rule change to provide that the System will automatically reject the entry of Zero Display Reserve orders marked ''sell short'' is consistent with Section 6(b)[8] of the Act and, specifically with Rule 201 of Regulation SHO. Because such orders are not displayed, they are not within the exception under Rule 201(b)(1)(iii)(A) discussed above. The rule amendment will address Rule 201 of Regulation SHO compliance by preventing the execution or display of a short sale order of a covered security at an impermissible price when the short sale price restriction is in effect. In this regard, the amendment will further the purposes of the Act and specifically Rule 201 of Regulation SHO.

### *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 for the furtherance of the Act. The Exchange plans to issue written notification of the rule amendment to all Users, advising them that all Zero Display Reserve Orders marked ''sell short'' will be rejected by the System. Users can assess the impact of the rule amendment on their order entry strategies and practices, and determine whether to send orders to another execution venue.

### *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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder because the proposed rule change (i) Does not significantly affect the

[6] For purposes of Regulation SHO, the term ''trading center'' has the same meaning as in Rule 600(b)(78) of Regulation NMS, which defines a ''trading center'' as ''. . . a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.''

[7] The second exception, not relevant for purposes of this filing, requires the trading center to have policies and procedures permitting the execution of an order in a covered security marked ''short exempt'' without regard to whether the order is at a price that is less than or equal to the current national best bid.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested a waiver of this requirement.

protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days from the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has requested the Commission to waive the 30-day operative delay, as well as the 5-day pre-filing requirement, so that the proposed rule change may become effective and operative upon filing. The Commission believes that waiving the 30-day operative delay and the 5-day pre-filing requirement is consistent with the protection of investors and the public interest. The Exchange, as a trading center, is required under Regulation SHO to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution of sell short orders of covered securities subject to the short sale price test restriction at or below the current national best bid. Because the rule amendment is designed to address this requirement under Rule 201, the Commission agrees to waive the operative delay and pre-filing requirement. Accordingly, the Commission grants the Exchange's request and designates the proposal effective upon filing.[13]

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 Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2013–13 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–NSX–2013–13. This file number should be included in the subject line if email is used. To help the Commission process and review 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. eastern time. Copies of such filings 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 number SR–NSX–2013–13 and should be submitted on or before July 24, 2013.

For the Commission by the Division of Trading and Markets, pursuant to the delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15932 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[11] *Id.*

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes of only 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).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69864; File No. SR–DTC–2013–08]**

## Self-Regulatory Organizations; The Depository Trust Company (''DTC''); Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement a Fee Associated With the Expansion of DTC's Ability To Collect and Pass Through Fees Owed by Participants to American Depositary Receipt Agents

June 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 13, 2013, DTC filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by DTC. DTC filed the rule change pursuant to Section 19(b)(3)(A) [3] of the Act and Rule 19b–4(f)(2) [4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purposed of the proposed rule change is to implement a fee associated with the expansion of DTC's ability to collect and pass through fees owed by DTC participants (''Participants'') to American Depositary Receipt Agents.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Commission has modified the text of the summaries prepared by DTC.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Proposal Overview

On June 12, 2006, the Commission approved a rule filing for the establishment of a mechanism by which DTC could collect and pass through Depositary Service Fees (''DSFs'') owed by Participants to American Depositary Receipt (''ADR'') agents for issues that did not pay periodic dividends.[6] In 2009, DTC expanded the scope and timing by which DTC could collect and pass through fees owed by Participants to ADR agents so that DTC now collects all allowable DSFs, dividend fees, pass-through expenses and other special fees governed by the ADR agreement.[7] DTC collects such fees at the request of the depositary bank. In order to cover the costs incurred in collecting and passing through these fees, DTC retains a collection charge equal to three percent (3%) of the ADR agent fee amount collected from each Participant up to a maximum of $20,000 per CUSIP.[8]

Based on the experience to date, and with increased challenges due to the rapid growth of unsponsored ADRs, the depositary banks and DTC have held discussions on expanding and refining the current DSF collection process in order to include unsponsored ADR programs. Unsponsored ADR programs differ from sponsored ADR programs in two primary ways. First, multiple depositary banks can file a registration statement in respect of the same foreign private issuer, and, second, there is no contractual relationship between the foreign private issuer and the ADR depositary that establishes an unsponsored ADR program. In the case of an unsponsored ADR program, the terms and conditions are between the depositary bank and the investor and are contained in the form of an ADR receipt, which is filed as an exhibit to a Depositary's Form F–6 registration statement.

In order to streamline the process associated with collecting DSFs on unsponsored ADRs, DTC has agreed to collect and pass through the fees from Participants to ADR agents. In order to make this possible, the ADR depositary banks have agreed that the depositary bank that first files an F–6 registration statement for a particular unsponsored ADR program (''First Filer'') will establish the record date and rate at which the DSF will be assessed on all Participants holding depositary receipts.[9] DTC will require the ADR depositary banks to notify DTC thirty calendar days prior to the ''record date'' that a DSF is due and payable. In addition, DTC will require the First Filer to submit an attestation that (i) under the terms and conditions of the ADR receipt with the investor, the specific fee is allowable and that (ii) all depositaries have been contacted and have confirmed they are likewise entitled to charge the shareholder the same depositary servicing fee in accordance with the respective terms and conditions applicable to the ADRs issued by them for this unsponsored program.[10] The attestation will be in a form prescribed by DTC, and may be changed periodically to address operational issues. In the event that a Participant asks DTC to substantiate the fee, DTC may require the ADR depositary to provide DTC with a copy of its fee schedule. DTC may, at its discretion, provide copies of the fee schedule to its Participants to substantiate the fee.

DTC states that it has discussed this proposal with the Securities Industry and Financial Markets Association (''SIFMA'') Securities Operation Division (''SOD''). DTC states that SIFMA's SOD endorses DTC's plan to collect such fees through its monthly billing process. According to DTC, this process will eliminate invoice and check processing for Participants and the depositary banks and ADR depositaries will no longer have to mail invoices and reminders to Participants holding ADR securities at DTC. Furthermore, according to DTC, Participants will have a transparent view into upcoming ADR fees, and a centralized source for information about the ADR fee and the collection of the fees. DTC expects to begin collecting ADR agent fees as expanded by this proposed rule change filing on August 1, 2013. DTC will charge a service fee associated with this expansion, the details of which are contained in Exhibit 5 to this proposed rule change filing.

(b) Statutory Basis

DTC states the proposed rule change is consistent with the provisions of the Act, and the rules and regulations thereunder applicable to DTC and in particular Section 17A(b)(3)(D)[11] because it implements a fee associated with the collection of unsponsored ADRs and as such it clarifies and updates DTC's Fee Schedule in order to facilitate a more efficient fee collection process for unsponsored ADRs and provides for an equitable allocation of fees.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(2).[13] 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

[6] Release No. 34–53970 (June 12, 2006) 71 FR 34974 (June 16, 2006) (SR–DTC–2006–08).

[7] Release No. 34–59821 (April 24, 2009) 74 FR 20513 (May 4, 2009) (SR–DTC–2009–05).

[8] *See* Release No. 34–59821 (March 23, 2009) 74 FR 13490 (March 27, 2009) (SR–DTC–2009–05) which modified the fees from the original filing.

[9] This process mirrors the process established for the payment of dividends on unsponsored depositary receipts whereby the First Filer establishes a uniform dividend distribution rate paid by each depositary with an outstanding issued ADR position at DTC.

[10] In their ADR terms and conditions applicable to investors some depositaries have decided, for some issues, not to have depositary servicing fees. Since shares held at Cede & Co, DTC's nominee name, are held in fungible mass, DTC will not collect a DSF fee for an issue if one or more of the ADR depositary banks do not charge a fee or charge different fees.

[11] 15 U.S.C. 78q–1(b)(3)(D).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2013–08 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–DTC–2013–08. 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 filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2013/dtc/SR_DTC_2013_08.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2013–08 and should be submitted on or before July 24, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15897 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69869; File No. SR–NYSE–2013–32]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Proposing an Amendment to the Bylaws of Its Wholly-Owned Subsidiary, NYSE Regulation, Inc. (''NYSE Regulation''), To Eliminate a Requirement That Not Less Than Two Members of the Board of Directors of NYSE Regulation Must Qualify as ''Fair Representation Candidates''

June 27, 2013.

### I. Introduction

On May 8, 2013, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the bylaws of its wholly-owned subsidiary NYSE Regulation, Inc. (''NYSE Regulation'') to eliminate a requirement that not less than two members of the board of directors of NYSE Regulation (''NYSE Regulation Board'' or ''Board'') must qualify as ''fair representation candidates'' (as that term is defined in those bylaws). A requirement that such directors constitute a minimum of 20% of the NYSE Regulation Board would remain in place. The proposed rule change was published for comment in the **Federal Register** on May 22, 2013.[3] The Commission received no comments on the proposed rule change.

### II. Description of the Proposal

The Exchange proposes to amend the Fourth Amended and Restated Bylaws of NYSE Regulation (''NYSE Regulation Bylaws'') to eliminate the requirement that not less than two members of the NYSE Regulation Board must be ''fair representation candidates'' (as defined in the NYSE Regulation Bylaws). However, the current requirement that such directors constitute a minimum of 20% of the Board would continue to apply. Furthermore, under the proposal, if the number that is equal to 20% of the entire Board is not a whole number, such number would be rounded up to the next whole number, and a provision so stating would be added to the NYSE Regulation Bylaws.

As defined in the NYSE Regulation Bylaws, the fair representation candidates are Board members who are determined by member organizations of the Exchange through a specified petition process (''Petition Candidates'') or, in the absence of a sufficient number of Petition Candidates, candidates would be recommended by the Director Candidate Recommendation Committee (''DCRC'') of NYSE Regulation. In addition, fair representation candidates for the NYSE Regulation Board must qualify as ''non-affiliated directors'' (as such term is defined in the NYSE Regulation Bylaws), *i.e.,* such persons must be U.S. Persons who are not members of the board of directors of NYSE Euronext and qualify as independent under the director independence policy of NYSE Regulation.[4] Finally, like all members of the NYSE Regulation Board except for the Chief Executive Officer, the fair representation candidates must qualify as independent under the director independence policy of NYSE Regulation.[5] The Exchange stated that it is not proposing to change the NYSE Regulation independence requirements.[6]

The NYSE Regulation Bylaws provide that the Board shall consist of not less than three persons and that the number of directors shall be fixed from time to time by the Exchange, as sole equity member of NYSE Regulation. The size of the NYSE Regulation Board is currently fixed at five members, of which four positions are currently filled and one position is open.[7] The Exchange represented that both the Exchange and NYSE Regulation believe that a board

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69590 (May 16, 2013), 78 FR 30378 (''Notice'').

[4] *See* Securities Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR–NYSE–2012–17) (approving a new director independence policy for NYSE, NYSE Regulation, NYSE Market, Inc., and NYSE MKT LLC).

[5] The NYSE Regulation Bylaws require that a majority of the NYSE Regulation Board must consist of non-affiliated directors. The remaining directors are comprised of the Chief Executive Officer of NYSE Regulation and members of the board of directors of NYSE Euronext that qualify as independent under the NYSE Euronext independence policy. The NYSE Regulation Bylaws do not require any affiliated directors other than the Chief Executive Officer of NYSE Regulation.

[6] *See* Notice, 78 FR at 30379.

[7] The Exchange noted that the number of directors on the NYSE Regulation Board was reduced from ten to five in early 2013 in connection with the Financial Industry Regulatory Authority's (''FINRA'') completion of specified milestones in the regulatory services agreement by and among FINRA, NYSE Group, Inc., NYSE, NYSE Regulation, NYSE Arca, Inc., and NYSE MKT LLC pursuant to which FINRA assumed responsibility for performing the market surveillance and enforcement functions previously conducted by NYSE Regulation. *See* Notice, 78 FR at 30379 n.6.

consisting of five members is sufficiently large to effectively perform the NYSE Regulation Board's oversight responsibilities.[8] In addition, with a Board size of five directors, the Exchange stated that it believes that retaining the requirement that at least two directors must be ''fair representation candidates'' is now unwarranted, because such directors would constitute 40% of the Board rather than 20% as was the case when the number of directors was fixed at ten members.[9]

The Exchange represented that the DCRC of NYSE Regulation is aware of and is in agreement with the proposed plan of implementation. The Exchange also represented that there is otherwise no change to the fair representation candidate selection and petition process.[10]

The Exchange stated that it believes that the elimination of the two-director minimum requirement for fair representation candidates is consistent with the governance structures of other national securities exchanges that have been approved by the Commission.[11] The Exchange pointed out that similar changes were approved subsequently to the Commission's approval of a structure for the board of NYSE Alternext US LLC (now NYSE MKT LLC), an affiliate of the Exchange, that included a requirement that at least 20% of that exchange's board constitute fair representation directors, but without the requirement that there be no less than two such directors.[12] The Exchange also noted that, more recently, the Commission approved a similar change when it considered a proposal to revise the Operating Agreement and Bylaws of the Exchange's wholly owned subsidiary, NYSE Market, Inc.[13]

## III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(3) of the Act, which provides that the rules of an exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.[15]

The fair representation requirement in Section 6(b)(3) of the Act is intended to give members a voice in the selection of the exchange's directors and the administration of its affairs. Moreover, the Section 6(b)(3) requirement helps to ensure that members are protected from unfair, unfettered actions by an exchange and that, in general, an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities. The Commission notes that the requirement that at least 20% of the directors on the NYSE Regulation Board be fair representation candidates is designed to ensure the fair representation of NYSE members on its Board. The Commission notes that, while the proposal eliminates the requirement regarding a specific minimum number of fair representation candidates on the Board, it does not alter the minimum 20% requirement for fair representation candidates or the process by which members can directly petition and vote for representatives on the NYSE Regulation Board. Moreover, the Commission notes that the proposal adds to the NYSE Regulation Bylaws a provision that whenever 20% of the Board would not result in a whole number, such number would in all cases be rounded up to the nearest whole number, thus ensuring that the fair representation candidates never constitute less than 20% of the Board. Furthermore, as the Exchange noted, the proposed change to the NYSE Regulation Bylaws is consistent with previous proposals approved by the Commission.[16] The Commission therefore finds that the Exchange's proposal is consistent with Section 6(b)(3) of the Act.[17]

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSE–2013–32) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15916 Filed 7–2–13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69871; File No. SR–EDGA–2013–13]**

## Self-Regulatory Organizations; EDGA Exchange, Inc.; Order Approving a Proposed Rule Change Relating to the EDGA Exchange, Inc.'s Routing Broker Dealer, as Described in EDGA Rule 2.12(b)

June 27, 2013.

## I. Introduction

On May 16, 2013, EDGA Exchange, Inc. (''EDGA'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the existing pilot program that permits the Exchange's inbound router, as described in Rule 2.12(b), to receive inbound routes of equities orders through Direct Edge ECN LLC d/b/a DE Route (''DE Route''), the Exchange's routing broker dealer, from EDGX Exchange, Inc. (''EDGX'') . The proposed rule change was published for comment in the **Federal Register** on May 28, 2013.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

## II. Background

DE Route is a registered broker-dealer that is a member of the Exchange and is permitted to provide members of EDGX optional routing services to other

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[8] *See* Notice, 78 FR at 30379.

[9] *See id.*

[10] *See* Notice, 78 FR at 30379 n.7.

[11] *See* Notice, 78 FR at 30379. The Exchange noted that, for example, Article III, Section 5(e) of the By-Laws of the of the NASDAQ Stock Market LLC (''NASDAQ'') requires that the Regulatory Oversight Committee of the NASDAQ Board of Directors (''NASDAQ ROC''), which has an oversight role comparable to that of the NYSE Regulation Board, must consist of three members, each of whom must be a ''Public Director'' (*i.e.,* ''a Director who has no material business relationship with a broker or dealer, [NASDAQ] or its affiliates, or FINRA'') and an ''independent director'' as defined by NASDAQ Marketplace Rule 4200. The Exchange also noted that there is no requirement that the NASDAQ ROC have any members who would be the equivalent of a fair representation candidate on the NYSE Regulation Board.

[12] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707, 57711–12 (October 3, 2008) (SR–Amex–2008–62).

[13] Securities Exchange Act Release No. 59683 (April 1, 2009), 74 FR 15799 (April 7, 2009 (SR–NYSE–2009–12).

[14] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(3).

[16] *See supra* notes 12 and 13 and accompanying text.

[17] 15 U.S.C. 78f(b)(3).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69613 (May 21, 2013), 78 FR 31996 (''Notice'').

trading centers.[4] DE Route is owned by Direct Edge Holdings LLC (''DE Holdings''). DE Holdings also owns two registered securities exchanges—the Exchange and EDGX.[5] Thus, DE Route is an affiliate of the Exchange and EDGX.[6]

On May 12, 2010, the Commission approved the Exchange's application for registration as a national securities exchange.[7] As part of the approval, the Exchange was approved to receive inbound routes of orders that DE Route routes in its capacity as a facility of EDGX on a pilot basis for 12 months.[8] The pilot was originally set to expire on July 1, 2011, but was subsequently extended and is currently set to expire on June 30, 2013.[9] The Exchange now seeks permanent approval of this inbound routing pilot.[10]

## 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.[11] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[12] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] 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, and 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to DE Route's affiliation with the Exchange to permit the Exchange to accept inbound orders that DE Route routes in its capacity as a facility of EDGX, on a pilot basis.[14] The Exchange now seeks to make this pilot permanent, subject to the same limitation and conditions. Specifically, the Exchange committed to the following limitations and conditions:[15]

- The Exchange shall enter into a plan pursuant to Rule 17d–2 under the Exchange Act with a non-affiliated self-regulatory organization (''SRO'') to relieve the Exchange of regulatory responsibilities for DE Route with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and enter into a regulatory contract (''Regulatory Contract'') with a non-affiliated SRO to perform regulatory responsibilities for DE Route for unique Exchange rules.
- The Regulatory Contract shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively ''Exceptions'') in which DE Route is identified as a participant that has potentially violated Exchange or Commission Rules, and shall require that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which DE Route is identified as a participant that has potentially violated Exchange or Commission Rules.
- The Exchange, on behalf of DE Holdings, shall establish and maintain procedures and internal controls reasonably designed to ensure that DE Route does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound order routing to the Exchange.[16]

The Exchange states that is has complied with the above-listed conditions during the pilot.[17] The Exchange believes that by meeting such conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to DE Route, and has demonstrated that DE Route cannot use any information that it may have because of its affiliation with the Exchange to its advantage.[18]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[19] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit DE

[4] DE operates as a facility of EDGX that provides outbound routing from EDGX to other trading centers, subject to certain conditions. *See* Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File No. 10–194 and 10–196) (order granting the exchange registration of EDGA and EDGX.) (''Exchange Registration Approval Order'').

[5] *See id.*

[6] *See* Exchange Registration Approval Order, 75 FR at 13165 n.219 and accompanying text.

[7] *See* Exchange Registration Approval Order, 75 FR 13151.

[8] *See id.*

[9] *See* Securities Exchange Act Release Nos. 64362 (April 28, 2011), 76 FR 25386 (May 4, 2011) (SR–EDGA–2011–13); and 66643 (March 22, 2012), 77 FR 18876 (March 28, 2012) (SR–EDGA–2012–10).

[10] *See* Notice, 78 FR 31996.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Exchange Registration Approval Order, 75 FR at 13165–13166.

[15] *See* Notice, 78 FR at 31996–31997.

[16] The Commission notes that this condition is set forth in EDGA Rule 2.12(a)(3).

[17] *See* Notice, 78 FR at 31997.

[18] *See id.*

[19] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR–Amex–2008–62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

Route, in its capacity as a facility of EDGX, to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.[20]

The Exchange has proposed ongoing conditions applicable to DE Route's inbound routing activities in its capacity as a facility of EDGX, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of DE Route,[21] combined with a non-affiliated SRO's monitoring of DE Route's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to DE Route. The Commission also believes that the Exchange's Rule 2.12(a)(3) is designed to ensure that DE Route cannot use any information advantage it may have because of its affiliation with the Exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–EDGA–2013–13) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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[20] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR–BX–2011–007); 66808 (April 13, 2012), 77 FR 23294 (April 18, 2012) (SR–BATS–2012–013); 66807 (April 13, 2012), 77 FR 23300 (April 18, 2012) (SR–BYX–2012–006); 67256 (June 26, 2012) 77 FR 39277 (July 2, 2012) (SR–BX–2012–030); 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR–NASDAQ–2013–028); 69232 (March 25, 2013), 78 FR 19342 (March 29, 2013) (SR–BX–2013–013); and 69229 (March 25, 2013), 78 FR 19337 (March 29, 2013) (SR–Phlx–2013–15).

[21] This oversight will be accomplished through a 17d–2 Agreement. *See* Approval Order, 75 FR at 13165; and Notice, 78 FR at 31996.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69884; File No. SR–BYX–2013–013]**

## Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending and Restating the Amended and Restated By-Laws of BATS Y-Exchange, Inc.

June 27, 2013.

### I. Introduction

On April 29, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and restate the Amended and Restated By-Laws of BATS Y-Exchange. The proposed rule change was published for comment in the **Federal Register** on May 15, 2013.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

### II. Description of the Proposal

The Exchange has proposed to amend and restate its Amended and Restated By-Laws (the ''Current By-Laws'') and adopt these changes as its Second Amended and Restated By-Laws (the ''New By-Laws''). The Exchange's proposed amendments to the Current By-Laws include: (i) Providing that the Board of Directors will consist of four (4) or more directors, with the board fixing the actual number of directors from time to time by resolution of the Board of Directors rather than fixing the number of directors in the by-laws; (ii) clarifying that the existing procedures for filling vacancies on the Board of Directors apply only for non-Member Director Representative Director positions; (iii) clarifying separate procedures for filling vacancies on the Board of Directors for Member Representative Director positions; and (iv) adding a new requirement that the processes for filling any director vacancies apply to vacancies created as a result of an increase in the size of the board.

*A. Number of Directors*

Article III, Section 2(a) of the Exchange's Current By-Laws fixes the number of directors of the Exchange at ten (10) directors. Article III, Section 2(a) of the New By-Laws would amend Article III, Section 2(a) to state that the Board of Directors of the Exchange shall consist of four (4) or more members, the number thereof to be determined from time to time by resolution of the Board of Directors, subject to the compositional requirements of the board set forth in Article III, Section 2(b).

The Current By-Laws and the New By-Laws require that the Board of Directors consist of the following: (i) one (1) director who is the Chief Executive Officer of the Company; (ii) representation by Member Representative Directors of at least twenty percent (20%) of the board;[4] and (iii) representation by Non-Industry Directors (including at least one (1) Independent Director) that equals or exceeds the sum of the number of Industry Directors and Member Representative Directors.[5] Under the Current By-Laws and the New By-Laws, the Chief Executive Officer is considered to be an Industry Director.[6] Additionally, under the Current By-Laws and New By-Laws, the Member Representative Director requirement of twenty percent (20%) would require the board to include at least one (1) Member Representative Director.[7] Thus, under the proposal, the minimum requisite sum of the number of Industry Directors and Member Representative Directors would equal two (2) directors. As such, under the composition requirements, the board would also have to include at least two (2) Non-Industry Directors, bringing the total minimum size of the board to four (4) directors.

*B. Member Representative Director Vacancies*

A Member Representative Director is defined in relevant part in Article I of the Current By-Laws as a Director ''elected by the stockholders after having been nominated by the Member Nominating Committee[8] or by an Exchange Member pursuant to these By-Laws.'' Article III, Section 4 of the Current By-Laws in turn specifies the precise process the Member Nominating

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69541 (May 8, 2013), 78 FR 28695 (May 15, 2013) (''Notice'').

[4] The Exchange noted that because the number of Member Representative Directors must be at least twenty percent (20%) of the board, it is required under the Current By-Laws and the New By-Laws that if twenty percent (20%) of the directors then serving on the board is not a whole number, such number of Member Representative Directors must be rounded up to the next whole number.

[5] *See* Article III, Section 2(b) of the Current By-Laws.

[6] *See id.*

[7] *See id.*

[8] *See* Article VI, Section 3 of the Current By-Laws for a detailed description of the Member Nominating Committee and its responsibilities.

Committee is required to follow with the respect to the election and nomination of Member Representative Directors.[9]

As distinguished from the nomination and election of directors as part of the Exchange's annual stockholders meeting, Article III, Section 6 of the Current By-Laws specifies the procedures for filling vacancies on the board when a director position becomes vacant prior to the election of a successor at the end of such director's term, whether because of death, disability, disqualification, removal, or resignation. Under these circumstances, the Nominating Committee [10] must nominate, and the stockholders must elect, a person satisfying the classification for the directorship in compliance with the board compositional requirements of Article III, Section 2(b) of the Current By-Laws to fill such vacancy; provided, however, that if the remaining term of office of a Member Representative Director at the time of such director's termination is not more than six (6) months, during the period of vacancy the board is not deemed to be in violation of the board compositional requirements because of such vacancy.

The Exchange has proposed, in Article III, Section 6(a) of the New By-Laws, to clarify that the procedures therein for filling director vacancies would apply only to non-Member Representative Director positions. The Exchange also has proposed in new Section 6(b) of the New By-Laws to clarify separate procedures for filling Member Representative Director vacancies on the board, which procedures would require that the Member Nominating Committee shall either (i) recommend an individual to the stockholders to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the stockholders from which the stockholders shall elect the individual to fill such vacancy.

In addition, the Exchange has proposed, in Article III, Section 6(a) and (b) of the New By-Laws, to add the requirement that the process for filling vacancies described therein would be followed in the circumstance where such vacancy is created as a result of an increase in the size of the board. Under the New By-Laws, in the case of a director filling a vacancy not resulting from a newly-created directorship, the new director would serve until the expiration of the remaining term. However, in the case of a director filling a vacancy resulting from a newly-created directorship, the new director would serve until the expiration of such person's designated term. In all cases, however, if the remaining term of office of a director at the time of such director's vacancy is not more than six (6) months, during the period of vacancy the board would not be deemed to be in violation of Article III, Section 2(b) because of such vacancy. Under the Current By-Laws, this six-month grace period applies only to Member Representative Director vacancies. Under the New By-Laws, this six-month grace period would be expanded to apply to any director vacancy, which the Exchange notes is consistent with precedent from other exchanges.[11]

## III. Comment Letter and the Exchange's Response

The Commission received no comment letters on the proposed rule change.

## IV. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] which requires, among other things, that an exchange be so organized and have the capacity to carry out the purposes of the Act and to comply, and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Commission notes that the proposed rule change would provide a minimum number of directors for the Board of Directors of the Exchange, rather than a fixed number of directors. As such, the Exchange has noted that the New By-Laws would provide the board with the flexibility to increase or decrease the size of the board by resolution, rather than amending the by-laws each time the board seeks to increase or decrease the size of the board.[14] The Commission notes that the Exchange has represented that it is not proposing to amend any of the compositional requirements of the board, which are set forth in in Article III, Section 2(b) of the Current By-Laws and the New By-Laws.[15]

The proposed rule change would clarify that the Current By-Laws' existing procedures for filling director positions on its Board of Directors apply only to non-Member Representative Director positions and would clarify a specific process for filling vacancies for Member Representative Director positions. The Exchange has represented that the lack of such a specific process in the Current By-Laws for filling a Member Representative Director position that becomes vacant prior to the election of a successor at the end of such director's term has led to some confusion regarding the exact process to follow.[16] In particular, the Exchange has noted that the Current By-Laws would appear to require that a Member Representative Director vacancy be filled by the Nominating Committee; however, the Exchange has stated that such a requirement would conflict with the Current By-Laws' definition of a Member Representative Director, which requires in all cases that such person be nominated by the Member Nominating Committee or by an Exchange Member. The Exchange has represented that it intended that its Current By-Laws would require that the Member Nominating Committee nominate one or more candidates to fill Member Representative Director vacancies, which is consistent with precedent from other exchanges.[17] The Commission notes that the proposed rule change would make such intended process for filling vacancies for Member Representative Director positions explicit in the New By-Laws.

The proposed rule change would also clarify that the procedures for filling any vacancies would also apply to vacancies created as a result of an increase in the size of the board. The Exchange has represented that generally, if the board has determined to increase the size of the board, it is creating the new directorship seat(s) because it has identified a qualified candidate(s) who would improve the overall quality of the board.[18] The Exchange has stated that, under these circumstances, time is of the essence and waiting to elect a director(s) to fill a newly created

[9] *See* Article III Section 4(c) of the Current By-Laws for detailed provisions relating to the Member Representative Director nomination and election process.

[10] *See* Article VI, Section 2 of the Current By-Laws for a detailed description of the Nominating Committee and its responsibilities.

[11] *See* Notice *supra* note 3, 78 FR at 28697 n. 7.

[12] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(1).

[14] *See* Notice *supra* note 3, 78 FR at 28696.

[15] *See id.*

[16] *See* Notice *supra* note 3, 78 FR at 28697.

[17] *See id.*

[18] *Id.*

directorship seat(s) at the next scheduled annual stockholder meeting is not in the best interests of the Exchange or its stockholders. Consequently, the Exchange has stated that it is necessary that the New By-Laws provide a more streamlined process to fill a vacancy created by increasing the size of the board.[19] The Commission notes that Exchange has represented that any vacancies filled pursuant to the New By-Laws would be required to continue to comply with its existing compositional requirements.

Finally, the proposed rule change would also provide that if the remaining term of office of any director at the time of the director's vacancy is not more than six months, during the period of such vacancy the board will not be deemed to be in violation of the compositional requirements of Article III, Section 2(b) because of such vacancy. The Exchange notes that applying the six month grace period to any director vacancy, rather than just a Member Representative Director vacancy, is consistent with precedent from other exchanges. Further, the Exchange notes that this would be less disruptive to the director election process by permitting any vacancy to be filled at the next scheduled annual stockholder meeting, rather than through an earlier-held special stockholder meeting.

For the reasons stated above, the Commission believes that the proposal is consistent with the requirements of the Act and is designed to enable the Exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply with, and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–BYX–2013–013) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15936 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[19] *Id.*

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69876; File No. SR–EDGA–2013–17]**

## Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.5(c), NBBO Offset Peg Order

June 27, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 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 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 Rule 11.5(c), which describes the manner in which the NBBO Offset Peg Order operates. 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,* 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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 11.5(c)(15), the NBBO Offset Peg Order, to state that the order type will: (1) Only be eligible for execution once the Market Maker quoting obligations under Rule 11.21(d) are triggered; (2) not be repriced when it would establish the National Best Bid or Offer (''NBBO''); and (3) delay the implementation date of the order type [sic] from April 15, 2013 to no later than October 31, 2013.

On September 25, 2012, the Exchange filed for immediate effectiveness a proposed rule change to adopt the NBBO Offset Peg Order.[3] The NBBO Offset Peg Order will enable Users [4] to submit buy and sell orders to the Exchange that are pegged to a designated percentage away from the NBB and NBO, respectively, while providing them full control over order origination and order marking.[5] This retention of control, in turn, is designed to allow Market Makers [6] to comply independently with the requirements of Regulation SHO [7] under the Act and Rule 15c3–5 [8] under the Act (the ''Market Access Rule''). The Exchange subsequently amended the text of Rule 11.5(c)(15) to remove the ability of Users to cancel or reject NBBO Offset Peg Orders under certain circumstances.[9]

When is a NBBO offset peg order eligible for execution?

First, the Exchange proposes that the NBBO Offset Peg Order will only be eligible for execution once the Market Maker quoting obligations under Rule 11.21(d) are triggered. Currently, Rule 11.5(c)(15) allows Users to submit NBBO Offset Peg Orders at the beginning of the Pre-Opening Session,[10] but states that the order is not executable or automatically priced until the beginning of Regular Trading Hours.[11] However, a Market Maker's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67960 (October 2, 2012), 77 FR 61463 (October 9, 2012) (SR–EDGA–2012–44) (notice of filing and immediate effectiveness of the proposal to adopt the NBBO Offset Peg Order) (''EDGA Adopting Release'').

[4] ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' EDGA Rule 1.5(ee).

[5] *See* EDGA Rule 11.5(c)(15).

[6] ''Market Maker'' is defined as ''a Member that acts as a Market Maker pursuant to Chapter XI.'' EDGA Rule 1.5(l).

[7] 17 CFR 242.200 through 242.204.

[8] 17 CFR 242.15c3–5.

[9] *See* Securities Exchange Act Release No. 68595 (January 7, 2013), 78 FR 2475 (January 11, 2013) (SR–EDGA–2012–47) (notice of filing and immediate effectiveness).

[10] ''Pre-Opening Session'' is defined as ''the time between 8:00 a.m. and 9:30 a.m. Eastern Time.'' EDGA Rule 1.5(s).

[11] ''Regular Trading Hours'' is defined as ''the time between 9:30 a.m. and 4:00 p.m. Eastern Time.'' EDGA Rule 1.5(y).

quoting obligations under Rule 11.21(d) do not commence during any trading day until after the first regular way transaction on the primary listing market in the security as reported by the responsible single plan processor.[12] Such a transaction may not occur until after the start of Regular Trading Hours. Therefore, the Exchange proposes to amend the text of Rule 11.5(c)(15) to state that an NBBO Offset Peg Order is not executable until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, rather than the beginning of Regular Trading Hours. Accordingly, the amended text would read as follows:

> Users may submit NBBO Offset Peg Orders to the Exchange starting at the beginning of the Pre-Opening Session, but the order is not executable or automatically priced until *after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor* and expires at the end of Regular Trading Hours (emphasis added).

The Exchange believes that the proposed amendment is necessary because it clarifies that the NBBO Offset Peg Order would only be eligible for execution once the quoting obligations for Market Makers apply. While use of the NBBO Offset Peg Order would not be limited to Market Makers, the Exchange believes that Market Makers would likely be the predominant, if not exclusive, users of the order type. Thus, the NBBO Offset Peg Order is designed such that its price would be automatically set and adjusted, both upon entry and at any time thereafter, in order to comply with the Exchange's Market Maker quotation requirements.[13]

Repricing When NBBO Offset Peg Order Establishes NBBO

Second, the Exchange proposes to amend Rule 11.5(c)(15) to make clear that a NBBO Offset Peg Order will not use its own pegged price as the basis for adjusting the order's price. Where there is no NBBO and a NBBO Offset Peg Order, whether upon entry or already on the EDGA Book,[14] is pegged to the last reported sale from the single plan processor, the NBBO Offset Peg Order will be reported to the responsible securities information processors and will be disseminated to the Exchange as the NBBO. The Exchange proposes that if after entry, the NBBO Offset Peg Order is priced based on the consolidated last sale and such NBBO Offset Peg Order establishes the NBBO, the NBBO Offset Peg Order will not be subsequently adjusted in accordance with the proposed rule until either there is a new consolidated last sale, or a new NBB or NBO is established by a national securities exchange. The Exchange believes that not adjusting the price in this instance is consistent with the intent of the NBBO Offset Peg Order (i.e., keeping the order a certain percentage away from the inside market) while also avoiding a situation where the order would use its own pegged price as a basis for adjusting the price of the order. The Exchange notes that the proposal amends the functionality of the NBBO Offset Peg Order to more closely resemble analogous order types offered by The NASDAQ Stock Market LLC (''Nasdaq''),[15] BATS Exchange, Inc. (''BATS''),[16] and BATS Y-Exchange, Inc. (''BYX'').[17]

Implementation Date Delay

The Exchange originally proposed to implement the NBBO Offset Peg Order on or about November 19, 2012 [18] and later delayed the implementation date to on or about April 15, 2013.[19] The Exchange now proposes to further delay the implementation date to no later than October 31, 2013. The Exchange anticipates uniform industry-wide amendments to the market making quoting requirements' Designated Percentages [20] and Defined Limits [21] to realign the percentages based on the Appendix A Percentage Parameters of the National Market System Plan to Address Extraordinary Market Volatility (the ''Limit-Up/Limit-Down Plan'').[22] This additional time will enable the Exchange to make the necessary system changes to implement the NBBO Offset Peg Order to accommodate those amendments.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [23] and furthers the objectives of Section 6(b)(5) of the Act,[24] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposing that the order type will only be eligible for execution once the Market Maker quoting obligations under Rule 11.21(d) are triggered makes the order type consistent with when market making obligations begin [25] and therefore,

[12] Under Exchange Rule 11.21(d)(2), the pricing obligations for Market Makers ''(i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.'' Securities Exchange Act Release No. 65964 (December 15, 2011), 76 FR 79254 (December 21, 2011) (order approving SR–EDGA–2011–29).

[13] Exchange Rule 11.21 describes the obligations of Members registered with the Exchange as Market Makers. Among other things, Market Makers are required to maintain continuous, two-sided quotations consistent with the requirements of paragraph (d) of Rule 11.21, which generally states that such quotations must be priced within a designated percentage of the NBB for buy quotations, and the NBO for sell quotations.

[14] ''EDGA Book'' is defined as ''the System's electronic file of orders.'' EDGA Rule 1.5(d).

[15] *See* NASDAQ Rule 4751(f)(15). *See also* Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR–NASDAQ–2012–066) (order approving Nasdaq's Market Maker Peg Order available for exchange market makers) (''Nasdaq Approval Order'').

[16] *See* BATS Rule 11.9(c)(16). *See also* Securities Exchange Act Release No. 67756 (August 29, 2012), 77 FR 54633 (September 5, 2012) (SR–BATS–2012–026) (order approving BATS's Market Maker Peg Order available for exchange market makers) (''BATS Approval Order''); *and* Securities Exchange Release No. 69310 (April 4, 2013), 78 FR 21447 (April 10, 2013) (SR–BATS–2013–022) (notice of filing and immediate effectiveness to amend BATS' Market Maker Peg Order).

[17] *See* BYX Rule 11.9(c)(16). *See also* Securities Exchange Act Release No. 67755 (August 29, 2012), 77 FR 54630 (September 5, 2012) (SR–BYX–2012–012) (order approving BYX's Market Maker Peg Order available for exchange market makers) (''BYX Approval Order''); *and* Securities Exchange Act Release No. 69309 (April 4, 2013), 78 FR 21455 (April 10, 2013) (SR–BYX–2013–011) (notice of filing and immediate effectiveness to amend the BYX Market Maker Peg Order).

[18] *See* EDGA Adopting Release, *supra* note 3.

[19] *See* Securities Exchange Act Release No. 68595, *supra* note 9.

[20] ''Designated Percentage'' is defined as ''8% with respect to securities included in the S&P 500® Index and the Russell 1000® Index, as well as a pilot list of Exchange Traded Products for securities subject to an individual stock pause trigger under the applicable rules of a primary listing market (''Original Circuit Breaker Securities''). For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market, the Designated Percentage shall be 20% for Original Circuit Breaker Securities.'' EDGA Rule 11.21(d)(2)(D).

[21] ''Defined Limit'' is defined as ''9.5% for Original Circuit Breaker Securities. For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market, the Defined Limit shall be 21.5% for Original Circuit Breaker Securities.'' EDGA Rule 11.21(d)(2)(F).

[22] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (approving the Limit-Up/Limit-Down Plan on a pilot basis).

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] The Exchange notes while use of the NBBO Offset Peg Order would not be limited to Market Makers that Market Makers would likely be the predominant, if not exclusive, users of the order type.

simplifies its functionality. While use of the NBBO Offset Peg Order would not be limited to Market Makers, the Exchange believes that Market Makers would likely be the predominant, if not exclusive, users of the order type. Thus, the NBBO Offset Peg Order is designed such that its price would be automatically set and adjusted, both upon entry and at any time thereafter, in order to comply with the Exchange's Market Maker quotation requirements.[26] Therefore, the Exchange believes the proposed rule change is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange also believes that the proposed amendment removes impediments to and perfects the mechanisms of a free and open market and a national market system because it clarifies that a NBBO Offset Peg Order will not use its own pegged price as the basis for adjusting the order's price. The Exchange notes that the proposed clarification is substantially similar to that for similar order types (Market Maker Peg Orders) on Nasdaq, BATS, and BYX.[27] Further, clarifying when a NBBO Offset Peg Order would not be re-priced to align with the functionality of similar order types on other exchanges fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and removes impediments to a free and open market and a national market system because it will result in a continuing benefit to market participants by simplifying the functionality of the order type and its complexity of implementation.

Lastly, the Exchange believes that the delay of the implementation date is also consistent with Section 6(b)(5) of the Act[28] because it is designed to coordinate the implementation of the NBBO Offset Peg Order with anticipated changes to market making quoting requirements in response to the Limit-Up/Limit-Down Plan. Thus, the Exchange believes that the proposed rule change promotes the efficient execution of investor transactions, and thus investor confidence, over the long term.

*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 proposed rule change would increase intermarket competition among the exchanges because the NBBO Offset Peg Order will directly compete with similar existing order types offered by Nasdaq, BATS and BYX.[29] Amending Rule 11.5(c)(15), to clarify that the NBBO Offset Peg Order will not use its own pegged price as the basis for adjusting the order's price is similar to the functionality of the Market Maker Peg Order on Nasdaq, BATS, and BYX;[30] and, therefore, reduces the potential for confusion amongst market participants. In addition, the Exchange believes proposing that the NBBO Offset Order will only be eligible for execution once its Market Maker quoting obligations under Rule 11.21(d) are triggered simplifies the functionality and corresponding complexity of implementation. The proposed rule change would not burden intramarket competition because the NBBO Offset Peg Order would be available to all Members[31] on a uniform basis.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[32] and Rule 19b–4(f)(6)[33] thereunder.

At any time within sixty (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 under Section 19(b)(2)(B)[34] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGA–2013–17 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–2013–17. 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

[26] EDGA Rule 11.21(d)(2).

[27] Nasdaq Rule 4751(f)(15); BATS Rule 11.9(c)(16); BYX Rule 11.9(c)(16). The Exchange has previously noted that such Market Maker Peg Orders are similar in functionality to the NBBO Offset Peg Order. *See* EDGA Adopting Release, *supra* note 3.

[28] 15 U.S.C. 78f(b)(5).

[29] Nasdaq Rule 4751(f)(15); BATS Rule 11.9(c)(16); BYX Rule 11.9(c)(16).

[30] *Id.*

[31] ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' EDGA Rule 1.5(n).

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give 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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 15 U.S.C. 78s(b)(2)(B).

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–2013–17 and should be submitted on or before July 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15911 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69878; File No. SR–NYSE–2013–33]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Proposing To: (i) Delete the Sections in the Listed Company Manual (the ''Manual'') Containing the Listing Application Materials (Including the Listing Application and the Listing Agreement) and Adopt Updated Listing Application Materials That Will Be Posted on the Exchange's Web Site; and (ii) Adopt as New Rules Certain Provisions That Are Currently Included in the Various Forms of Agreements That Are in the Manual, as Well as Some Additional New Rules That Make Explicit Existing Exchange Policies With Respect to Initial Listings

June 27, 2013.

On April 30, 2013, New York Stock Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to (i) delete the sections in the Manual containing the listing application materials (including the listing application and the listing agreement) and adopt updated listing application materials that will be posted on the Exchange's Web site; and (ii) adopt as new rules certain provisions that are currently included in the various forms of agreements that are in the Manual, as well as some additional new rules that make explicit existing Exchange policies with respect to initial listings. The proposed rule change was published for comment in the **Federal Register** on May 17, 2013.[3] The Commission received one comment letter on the proposal.[4]

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is July 1, 2013. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which would (i) delete the sections in the Manual containing the listing application materials (including the listing application and the listing agreement) and adopt updated listing application materials that will be posted on the Exchange's Web site; and (ii) adopt as new rules certain provisions that are currently included in the various forms of agreements that are in the Manual, as well as some additional new rules that make explicit existing Exchange policies with respect to initial listings, and the potential issues raised by this proposal.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates August 15, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2013–33).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–15913 Filed 7–2–13; 8:45 am]

**BILLING CODE 8011–01–P**

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69565 (May 13, 2013), 78 FR 29165.

[4] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Shinichi Yuhara, dated June 4, 2013.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

## DEPARTMENT OF STATE

**[Public Notice 8369]**

## International Joint Commission: Public Comment on a Proposal for Lake Ontario and St. Lawrence River Regulation

The International Joint Commission (IJC) is inviting the public to comment on a proposal for managing the water levels and flows in Lake Ontario and the St. Lawrence River that will continue to contribute to the economic health of communities throughout the basin while improving the long-term ecological health of Lake Ontario and the upper St. Lawrence River.

Since 1960, the IJC has managed the flow of water at the Moses-Saunders hydropower dam, located on the St Lawrence River between Cornwall, Ontario and Massena, New York. The management of water flows influences water levels on Lake Ontario and in the St Lawrence River as far downstream as Lake St. Pierre. Although water levels and flows are primarily determined by precipitation, snowpack and storms, water flow management has provided substantial benefits to the region. These include reducing flooding and erosion on the Lake Ontario shoreline, reducing flooding downstream, and providing more favorable conditions on the lake and river for water intakes, recreational boating, commercial navigation and hydroelectric power production.

The IJC is proposing to manage water levels with fewer negative environmental impacts on Lake Ontario and the upper St. Lawrence River. Extensive research shows the policies developed in the 1950s have restricted water levels to the extent of degrading coastal wetlands on Lake Ontario and the upper St. Lawrence River. This degradation impacts the health of native plants, birds, fish and other animals. While continuing to reduce extreme high and low water levels, the water management proposal would allow more natural water level patterns on Lake Ontario while retaining benefits downstream. This is expected to

improve wetland health on Lake Ontario and the upper St. Lawrence River on a scale larger than any restoration actions taken to date.

Commissioners invite the public to attend and present comments at public hearings that will be held the following dates and locations:

PUBLIC HEARING SCHEDULE—JULY, 2013

| Sunday 14 6:00pm–9:00 pm | Monday 15 6:00 pm–9:00 pm | Tuesday 16 6:00 pm–9:00 pm | Wednesday 17 6:00 pm–9:00 pm | Thursday 18 6:00 pm–9:00 pm | Friday 19 1:00 pm–3:00 pm |
|---|---|---|---|---|---|
| Lockport, NY, Cornell Cooperative Extension, 4–H Training Center 4487 Lake Avenue. | Jordan, ON, Ramada Beacon Harbourside Hotel & Suites, Harbour Sanderson Rm, 2793 Beacon Blvd. | Williamson, NY, Williamson Central High School, Auditorium, 5891 Route 21. | Alexandria Bay, NY, Bonnie Castle, 31 Holland St. | Montreal, QC, Best Western Plus Hotel Europa, Mont Blanc Room, 1240 Drummond St. | Cornwall, ON, Ramada Inn, St. Lawrence West Room, 805 Brookdale Ave. |

People attending the public hearings who wish to provide oral comments will need to register to speak at the hearing. Registration will be available on-site starting 30 minutes before the start time of each hearing. Speakers are asked to limit prepared comments to three minutes so as many as possible have an opportunity to speak.

Commissioners are also holding technical hearings. Participation is by invitation of the Commission. Members of the public may attend the technical hearings as observers.

TECHNICAL HEARING SCHEDULE—JULY 2013

| Monday 15, 12:30 pm–3:00 pm | Tuesday 16, 10:00 am–3:00 pm | Wednesday 17, 10:00 am–12:30 pm | Thursday 18, 1:00 pm–4:00 pm | Friday 19, 10:00 am–11:30 am |
|---|---|---|---|---|
| Toronto, ON, Courtyard Marriott, 475 Yong Street. | Rochester, NY, Hyatt Regency, Ballroom AB, 125 E. Main St. | Oswego, NY, Lake Ontario Event and Conference Center, 70 East 1st Street. | Montreal, QC, Best Western Plus Hotel Europa, Mont Blanc Room, 1240 Drummond St. | Cornwall Island, Tri-District Elders Lodge, Main Hall, 12 Community Centre Rd. |

Written comments and other documents may be submitted at the public information sessions, through the Comments section of *ijc.org/en_/losl* or by regular mail to either of the following addresses:

International Joint Commission Secretary, U.S. Section, 2000 L Street NW., Suite #615, Washington, DC 20440

International Joint Commission Secretary, Canadian Section, 234 Laurier Avenue W., 22nd Floor, Ottawa, ON K1P 6K6

Comments received by August 30, 2013 will be included in the record of public comment. The International Joint Commission was established under the Boundary Waters Treaty of 1909 to help the United States and Canada prevent and resolve disputes over the use of the waters the two countries share. Its responsibilities include considering applications for projects that affect the natural levels and flows of boundary waters. For more information, visit the Commission's Web site at *www.ijc.org*.

Dated: June 28, 2013.

**Charles A. Lawson,**

*Secretary, U.S. Section, International Joint Commission, Department of State.*

[FR Doc. 2013–16022 Filed 7–2–13; 8:45 am]

BILLING CODE 4710–14–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 19, 2013, vol. 78, no. 76, pages 23627–23628. Information is maintained by owners and operators of light-sport aircraft and is collected to be used by FAA safety inspectors in determining whether required maintenance actions have been accomplished on light-sport aircraft. The information is also used when investigating accidents.

**DATES:** Written comments should be submitted by August 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0730.

*Title:* Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft.

*Form Numbers:* There are no FAA forms associated with this collection.

*Type of Review:* Renewal of an information collection.

*Background:* 14 CFR 91.417 requires the owners and operators of light-sport aircraft to maintain a record of the current status of applicable safety directives and transfer that information at the time of sale of the aircraft. The information is used by FAA safety inspectors in determining whether required maintenance actions have been accomplished on aircraft. The information is also used when investigating accidents.

*Respondents:* Approximately 1,000 owners/operators of light-sport aircraft.

*Frequency:* Information is maintained and reported to the FAA as needed.

*Estimated Average Burden per Response:* 2 hours.

*Estimated Total Annual Burden:* 2,133 hours.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on June 25, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–16058 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Noise Certification Documents for International Operations

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 19, 2013, vol. 78, no. 76, page 23628. This collection ensures that U.S. operators have proper noise certification information when they fly outside the U.S., in compliance with ICAO, Annex 16, Volume 1, Amendment 8.

**DATES:** Written comments should be submitted by August 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0737.

*Title:* Aircraft Noise Certification Documents for International Operations.

*Form Numbers:* There are no FAA forms associated with this collection.

*Type of Review:* Renewal of an information collection.

*Background:* 14 CFR part 91 requires operators of U.S. registered civil aircraft flying outside the United States to carry aircraft noise certification information on board. This rule is needed to ensure consistent compliance with the ICAO, Annex 16, Volume 1, Amendment 8 that requires certain noise information be carried on board the aircraft. The rule requires that this information be easily accessible to the flight crew and presentable upon request to the appropriate foreign officials.

*Respondents:* Approximately 73 operators of aircraft currently registered to U.S. mainline air carriers.

*Frequency:* One-time initial response per aircraft subject to the rule, for the information to be recorded and maintained.

*Estimated Average Burden per Response:* 25 minutes.

*Estimated Total Annual Burden:* 31 hours.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on June 25, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–16055 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Fractional Aircraft Ownership Programs

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 19, 2013, vol. 78, no. 76, page 23627. Fractional Ownership is a program that offers increased flexibility in aircraft ownership. Owners purchase shares of an aircraft and agree to share their aircraft with others having an ownership share in that same aircraft. Owners agree to put their aircraft into a ''pool'' of other shared aircraft and to lease their aircraft to another owner in that pool.

**DATES:** Written comments should be submitted by August 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0684.

*Title:* Fractional Aircraft Ownership Programs.

*Form Numbers:* There are no FAA forms associated with this collection.

*Type of Review:* Renewal of an information collection.

*Background:* Each fractional ownership program manager and each fractional owner must comply with the requirements of 14 CFR part 91, subpart K. Information is used to determine if these entities are operating in accordance with the minimum safety

standards of these regulations. The FAA will use the information it reviews and collects to evaluate the effectiveness of the program and make improvements as needed, and ensure compliance and adherence to regulations.

*Respondents:* 11 fractional aircraft program managers/operators.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 46 minutes.

*Estimated Total Annual Burden:* 19,609 hours.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on June 25, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–16062 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Automatic Dependent Surveillance—Broadcast (ADS–B) Out Performance Requirements to Support Air Traffic Control (ATC) Service

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 19, 2013, vol. 78, no. 76, page 23626. The rule ''Automatic Dependent Surveillance—Broadcast (ADS–B) Equipage Mandate To Support Air Traffic Control Service'' (75 FR 30160) contains performance requirements for certain equipment on aircraft operating in specified classes of airspace in the U.S. National Airspace System.

**DATES:** Written comments should be submitted by August 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0728

*Title:* Automatic Dependent Surveillance—Broadcast (ADS–B) Out Performance Requirements to Support Air Traffic Control (ATC) Service

*Form Numbers:* There are no FAA forms associated with this collection.

*Type of Review:* Renewal of an information collection.

*Background:* 14 CFR part 91 includes requirements for certain avionics equipment on aircraft operating in specified airspace within the United States National Airspace System (NAS). This collection supports the needs of the FAA by requiring avionics equipment that continuously transmits aircraft information to be received by the FAA, via automation, for use in providing air traffic surveillance services.

*Respondents:* Approximately 64,339 aircraft operators will install ADS–B Out equipment.

*Frequency:* Information is collected automatically via the ADS–B Out equipment.

*Estimated Average Burden per Response:* 1 hour (placeholder for automated collection).

*Estimated Total Annual Burden:* 1 hour (placeholder for automated collection).

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 25, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–16061 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aging Aircraft Program (Widespread Fatigue Damage)

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The ''Aging Aircraft Program (Widespread Fatigue Damage)'' final rule (75 FR 69745) amended FAA regulations pertaining to certification and operation of transport category airplanes to preclude widespread fatigue damage in those airplanes.

**DATES:** Written comments should be submitted by September 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0743.

*Title:* Aging Aircraft Program (Widespread Fatigue Damage).

*Form Numbers:* There are no FAA forms associated with this collection of information.

*Type of Review:* Renewal of an information collection.

*Background:* The rule requires that type certificate and supplemental type certificate holders use documentation to demonstrate to their FAA Oversight Office that they have complied with the rule by establishing limits of validity of the engineering data that supports the maintenance program (LOVs). Operators would submit the LOV to their Principal Maintenance Inspectors to demonstrate that they are compliant with the rule.

*Respondents:* Approximately 30 type certificate holders, supplemental type certificate holders, and operators.

*Frequency:* Information is collected annually.

*Estimated Average Burden per Response:* 20 hours.

*Estimated Total Annual Burden:* 167 hours.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on June 25, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–16063 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Bird/Other Wildlife Strike Report

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 19, 2013, vol. 78, no. 76, pages 23628–23629. Wildlife strike data are collected to develop standards and monitor hazards to aviation.

**DATES:** Written comments should be submitted by August 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0045

*Title:* Bird/Other Wildlife Strike Report

*Form Numbers:* FAA Form 5200–7.

*Type of Review:* Renewal of an information collection.

*Background:* 14 CFR 139.337—Wildlife Hazard Management requires that wildlife strike data is collected to develop standards and monitor hazards to aviation. Data identify wildlife strike control requirements and provide in service data on aircraft component failure. The FAA form 5200–7, Bird/Other Wildlife Strike Report, is most often completed by the pilot-in-charge of an aircraft involved in a wildlife collision or by Air Traffic Control Tower personnel, or other airline or airport personnel who have knowledge of the incident.

*Respondents:* Approximately 7,666 pilots, air traffic control personnel, or other airline or airport personnel.

*Frequency:* Information is collected as needed.

*Estimated Average Burden per Response:* 5 minutes.

*Estimated Total Annual Burden:* 613 hours.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on June 25, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–16057 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### First Meeting: RTCA Tactical Operations Committee (TOC)

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

**ACTION:** Second Meeting Notice of RTCA Tactical Operations Committee.

**SUMMARY:** The FAA is issuing this notice to advise the public of the second meeting of the RTCA Tactical Operations Committee.

**DATES:** The meeting will be held July 23, 2013 from 10:00 a.m.–3:00 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC, 20036.

**FOR FURTHER INFORMATION CONTACT:** The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* Andy Cebula, NAC Secretary can also be contacted at *acebula@rtca.org* or 202–330–0652.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) (2) of the Federal

Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

**July 23, 2013**

- Welcome & Introductions
- Official Statement of Designated Federal Official—Elizabeth Ray, FAA ATO, Vice President, Mission Support
- Approval of April 8, 2013 Meeting Summary
- Notice to Airmen (NOTAM)
- Background briefing
- Discussion of Tasking, Work Group Leadership, Deliverables, Schedule
- Consideration for approval: Terms of Reference
- VHF Omni-directional Range (VOR) Minimum Operating Network
- Discussion of Tasking, Work Group Leadership, Deliverables, Schedule
- Consideration for approval: Terms of Reference
- Regional Task Groups (RTGs)
- Consideration for approval: Terms of Reference—Structure, Scope, Leadership
- Anticipated Issues for TOC consideration and action at the next meeting.
- Any Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 25, 2013.

**Paige Williams,**

*Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.*

[FR Doc. 2013–16042 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Action on Proposed Bridge Replacement in Massachusetts

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitations on Claims for Judicial Review of Action by FHWA and the United States Army Corps of Engineers (USACE).

**SUMMARY:** This notice announces action taken by the FHWA and the United States Army Corps of Engineers (USACE) that is final within the meaning of 23 U.S.C. Sec. 139(l)(1). The actions relate to the proposed Mitchell River Bridge (Bridge Street over the Mitchell River) Replacement Project in Chatham-Barnstable County, Massachusetts. The action grants an approval for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the bridge project will be barred unless the claim is filed on or before November 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Mr. Michael Chong, FHWA Massachusetts Division Office, 55 Broadway, 10th Floor, Cambridge, MA 02142, 617–494–3275, *michael.chong@dot.gov.* For Massachusetts Department of Transportation (MassDOT) Highway Division: Michael Bastoni, Project Manager, MassDOT Highway Division, 10 Park Plaza, Room 6500, Boston, MA 02116, 9:00 a.m. to 5:00 p.m., 857–368–8789, *michael.bastoni@state.ma.us.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and USACE have taken final agency action subject to 23 U.S.C. 139(l)(1) by issuing approval for the following bridge project in the Commonwealth of Massachusetts. The project consists of replacing the existing Mitchell River Bridge with a new bridge that will consist generally of an all timber superstructure (including the wearing surface, structural deck, beams, sidewalks, and railings) with the exception of the bascule leaf frame. The superstructure would be supported on pile bent substructure units constructed with concrete-filled steel piles and concrete caps. The bascule span superstructure consists of a timber roadway deck and sidewalks on steel open grid flooring panels on the concrete bascule pier substructure. Additional improvements include transitioning and resurfacing of the approach roadways. The navigable channel will also be shifted 5 feet to the west and widened to provide 25 feet of horizontal clearance, fender to fender. The actions by the Federal agencies, and the laws under which the actions were taken, are described in the Environmental Assessment (EA), for which a Finding of No Significant Impact (FONSI) was issued on May 30, 2013. Notice is hereby given that the USACE has taken final agency actions within the meaning of 23 U.S.C. § 139(l)(1) by issuing permits and approvals for this bridge replacement project. The actions by the USACE, related final actions by other Federal agencies, and the laws under which such actions were taken, are described in the USACE decision and its administrative record for the project, referenced as USACE Permit Number NAE–2012–02157. The EA, FONSI and other project records are available by contacting MassDOT at the address provided above. Information about the project is also available from the FHWA at the address provided above.

This notice applies to all FHWA and USACE and other Federal agency final actions taken after the issuance date of the FHWA **Federal Register** notice described above. The laws under which actions were taken include, but are not limited to:

1. National Environmental Policy Act of 1969, and
2. Section 404 of the Clean Water Act of 1972

**Authority:** 23 U.S.C. 139(l)(1).

Issued on: June 24, 2013.

**Pamela S. Stephenson,**

*Division Administrator, Cambridge.*

[FR Doc. 2013–15755 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2013 0077]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel HMS–DISCOVERY; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before August 2, 2013.

**ADDRESSES:** Comments should refer to docket number MARAD–2013–0077. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE.,

Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel HMS–DISCOVERY is:

*Intended Commercial Use of Vessel:* ''Sight Seeing Tours''.

*Geographic Region:* ''Florida''.

The complete application is given in DOT docket MARAD–2013–0077 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: June 20, 2013.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2013–15460 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Agency Information Collection Activity Under OMB Review; Reports, Forms and Recordkeeping Requirements

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 17, 2013 and comments were due by June 17, 2013.

No comments were received.

**DATES:** Comments should be submitted on or before August 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dr. Shashi Kumar, U.S. Merchant Marine Academy, Kings Point, NY 11024. Telephone: 516–726–5833; or E-Mail: *kumars@usmma.edu*. Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* United States Merchant Marine Academy (USMMA) Alumni Survey.

*OMB Control Number:* 2133–0542.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Graduates of the U.S. Merchant Marine Academy.

*Form Numbers:* KP2–66–DK1, KP2–67–DK2, KP3–68–DK3, KP2–69–ENG1, KP2–70–ENG2, KP2–71–ENG3.

*Abstract:* 46 U.S.C. 51309 authorizes the Academy to confer academic degrees. To maintain the appropriate academic standards, the program must be accredited by the appropriate accreditation body. The survey is part of USMMA's academic accreditation process.

*Annual Estimated Burden Hours:* 125 hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: MARAD Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov*.

*Comments Are Invited On:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

**Authority:** 49 CFR 1.93.

Dated: June 25, 2013.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2013–15886 Filed 7–2–13; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 35280 (Sub-No. 1)]**

### Wisconsin Central Ltd.—Amended Trackage Rights Exemption—Grand Trunk Western Railroad Company

Grand Trunk Western Railroad Company (GTW) has agreed to amend the existing nonexclusive trackage rights previously granted to Wisconsin Central Ltd. (WCL). The existing trackage rights extend over 12.9 miles of GTW's Elsdon Subdivision between GTW's connection with Illinois Central Railroad Company at or near milepost 23.2 (CN Junction) at Harvey, Ill., and the east side of the interlocking plant for GTW's connection with Elgin, Joliet & Eastern Railway Company (EJ&E), at or near milepost 36.1 (Griffith), at Griffith, Ind.[1] WCL states that, pursuant to an amended trackage rights agreement dated May 24, 2013, GTW has agreed to extend the existing nonexclusive trackage rights 7.2

[1] *See Wis. Cent. Ltd.—Trackage Rights Exemption—Grand Trunk W. R.R.,* FD 35280 (STB served Aug. 17, 2009). EJ&E subsequently was merged into WCL. *Wis. Cent. Ltd.—Intra-Corporate Family Merger Exemption—Elgin, Joliet & E. Ry.,* FD 35630 (STB served June 8, 2012).

miles over GTW's South Bend Subdivision between GTW's connection with WCL (formerly EJ&E) at or near milepost 36.1 in Griffith and milepost 43.3 in Spring Lake, Ind.

The purpose of the trackage rights is to enable WCL to perform rail movements east of the GTW–WCL connection beyond Griffith to the nearest location where a typical train can be held without blocking local grade crossings.

The transaction is scheduled to be consummated on July 17, 2013, the effective date of the exemption (30 days after the exemption is filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by July 10, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35280 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: June 28, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Derrick A. Gardner,**

*Clearance Clerk.*

[FR Doc. 2013–15984 Filed 7–2–13; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 35268 (Sub-No. 1)]**

### Illinois Central Railroad Company—Amended Trackage Rights Exemption—Grand Trunk Western Railroad Company

Grand Trunk Western Railroad Company (GTW) has agreed to amend the existing nonexclusive trackage rights previously granted to Illinois Central Railroad Company (IC). The existing trackage rights extend over approximately 29.2 miles of GTW's Elsdon Subdivision between the east side of the interlocking plant with GTW's connection with the Elgin, Joliet & Eastern Railway Company (EJ&E) at or near milepost 36.1, at Griffith, Ind., and GTW's Railport Yard at or near milepost 6.9 in Chicago, Ill.[1] IC states that, pursuant to an amended trackage rights agreement dated May 24, 2013, GTW has agreed to extend the existing nonexclusive trackage rights approximately 7.2 miles over GTW's South Bend Subdivision between GTW's connection with WCL (formerly EJ&E) at or near milepost 36.1 in Griffith and milepost 43.3 in Spring Lake, Ind.

The purpose of the trackage rights is to enable IC to perform rail movements east of the GTW–WCL connection beyond Griffith to the nearest location where a typical train can be held without blocking local grade crossings.

The transaction is scheduled to be consummated on July 17, 2013, the effective date of the exemption (30 days after the exemption is filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by July 10, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35268 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: June 28, 2013.

By the Board.

**Rachel D. Campbell,**

*Director, Office of Proceedings.*

[FR Doc. 2013–16166 Filed 7–2–13; 8:45 am]

**BILLING CODE 4915–01–P**

[1] *See Ill. Cent. R.R.—Trackage Rights Exemption—Grand Trunk W. R.R.,* FD 35268 (STB served Aug. 17, 2009). EJ&E subsequently was merged into Wisconsin Central Ltd. (WCL). *Wis. Cent. Ltd.—Intra-Corporate Family Merger Exemption—Elgin, Joliet & E. Ry.,* FD 35630 (STB served June 8, 2012).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 35278 (Sub-No. 1)]**

### Chicago, Central & Pacific Railroad Company—Amended Trackage Rights Exemption—Grand Trunk Western Railroad Company

Grand Trunk Western Railroad Company (GTW) has agreed to amend the existing nonexclusive trackage rights previously granted to Chicago, Central & Pacific Railroad Company (CCP). The existing trackage rights extend over approximately 29.2 miles of GTW's Elsdon Subdivision between the east side of the interlocking plant with GTW's connection with the Elgin, Joliet & Eastern Railway Company (EJ&E) at or near milepost 36.1, at Griffith, Ind., and GTW's Railport Yard at or near milepost 6.9 in Chicago, Ill.[1] CCP states that, pursuant to an amended trackage rights agreement dated May 24, 2013, GTW has agreed to extend the existing nonexclusive trackage rights approximately 7.2 miles over GTW's South Bend Subdivision between GTW's connection with WCL (formerly EJ&E) at or near milepost 36.1 in Griffith and milepost 43.3 in Spring Lake, Ind.

The purpose of the trackage rights is to enable CCP to perform rail movements east of the GTW–WCL connection beyond Griffith to the nearest location where a typical train can be held without blocking local grade crossings.

[1] *See Chi., Cent. & Pac. R.R.—Trackage Rights Exemption—Grand Trunk W. R.R.,* FD 35278 (STB served Aug. 17, 2009). EJ&E subsequently was merged into Wisconsin Central Ltd. (WCL). *Wis. Cent. Ltd.—Intra-Corporate Family Merger Exemption—Elgin, Joliet & E. Ry.,* FD 35630 (STB served June 8, 2012).

The transaction is scheduled to be consummated on July 17, 2013, the effective date of the exemption (30 days after the exemption is filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by July 10, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35278 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: June 28, 2013.

By the Board.

**Rachel D. Campbell,**

*Director, Office of Proceedings.*

[FR Doc. 2013–16167 Filed 7–2–13; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 35747]**

### Norfolk Southern Railway Company—Lease Exemption—BNSF Railway Company

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of exemption; request for comments.

**SUMMARY:** On June 26, 2013, Norfolk Southern Railway Company (NSR) filed a petition under 49 U.S.C. 10502 and 49 CFR Part 1121 for exemption from the provisions of 49 U.S.C. 11323(a)(2) to lease from BNSF Railway Company (BNSF), and upgrade and maintain, approximately 797 feet of rail line, known as the Lumber Lead, including certain underlying and adjacent land and improvements, in Chicago, Ill. (the Line), pursuant to an agreement (the Agreement) with BNSF.

**DATES:** Written comments must be filed with the Board by July 10, 2013.[1]

**ADDRESSES:** Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. FD 35747, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of any comments to: Maquiling B. Parkerson, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

**FOR FURTHER INFORMATION CONTACT:** Marc Lerner at 202–245–0390. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On June 26, 2013, NSR filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 11323(a)(2) to lease the Line from BNSF pursuant to the Agreement. Under the Agreement, NSR will lease, upgrade, and maintain the Line and its connection to NSR's No. 3 CJ main line as part of its undertakings that in turn are part of the Chicago Region Environmental and Transportation Efficiency (CREATE) Program.[2] NSR will replace the Line's hand-thrown turnouts with power turnouts. The new turnouts will be controlled by NSR through a new remote controlled interlocker with BNSF supervisory control on BNSF-owned track. The CREATE project, according to NSR, is intended to result in more fluid and efficient train operations over the numerous connections between major freight yards and main line tracks in the Chicago area, reducing congestion and delays and adding critical capacity to local rail freight infrastructure. NSR states that the Agreement is for an initial five-year term and that it contains no provisions that would limit its ability to interchange with third-party rail carriers as a result of entering into the proposed transaction. NSR also asserts that the proposed transaction meets the statutory requirements of 10502 and therefore warrants an individual exemption.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). NSR has requested that a final decision be issued and effective by July 15, 2013. The Board will attempt to accommodate that request, subject to the consideration of any comments that may be filed.

Decided: June 28, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Derrick A. Gardner,**

*Clearance Clerk.*

[FR Doc. 2013–16023 Filed 7–2–13; 8:45 am]

**BILLING CODE 4915–01–P**

[1] NSR has requested expedited handling, asserting that the proposed lease and upgrade of the Line and the other related improvements (*see infra* note 2 and related text) are scheduled to start during the Summer and early Fall of 2013. NSR states that it must be able to consummate the lease by July 15, 2013, to ensure that it can commence work on the Line timely in connection with the other related improvements. The Board will attempt to accommodate the request for expedition, and, accordingly, is providing an abbreviated comment period.

[2] The CREATE program is a public-private partnership between the Chicago Department of Transportation, the Illinois Department of Transportation, and the American Association of Railroads, including Metra and the freight railroads operating in Chicago, to increase efficiency of the region's rail infrastructure, and to enhance the quality of life for Chicago area residents.

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. MCF 21053]**

### Conway's Bus Service, Inc.—Sale Of Certain Assets—Academy Express, L.L.C.

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice Tentatively Approving and Authorizing Finance Transaction.

**SUMMARY:** On June 4, 2013, Conway's Bus Service, Inc. (CBS), and Academy Express, L.L.C. (Academy) (collectively, Applicants), motor carriers of passengers, filed an application under 49 U.S.C. 14303 for approval of the purchase of certain assets of CBS's Charter Division by Academy.[1] The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.[2] Persons wishing to oppose the

[1] Although the application was filed by CBS, it is being accepted as jointly filed because Academy's manager, Francis Tedesco, filed a supporting verification with the application. Under 49 U.S.C. 14303(a)(2), Board approval is required for transactions that involve ''[a] purchase, lease, or contract to operate property of another carrier by any number of carriers.''

[2] Applicants simultaneously filed a motion to dismiss the application contending that, because of its size and nature, the transaction does not fall

application must follow the rules set forth at 49 CFR 1182.5 and 1182.8.

**DATES:** Comments must be filed by August 19, 2013. Applicants may file a reply by September 3, 2013. If no comments are filed by August 19, 2013, the notice shall be effective on that date.

**ADDRESSES:** Send an original and 10 copies of any comments referring to Docket No. MCF 21053 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of comments to Applicants' representative: Stephen Brusini, 144 Wayland Avenue, Providence, RI 02906.

**FOR FURTHER INFORMATION CONTACT:** Marc Lerner, (202) 245–0390. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** Academy, a limited liability company established under the laws of New Jersey, holds authority from the Federal Motor Carrier Safety Administration (FMCSA) as a motor carrier providing interstate charter passenger services to the public (MC–413682).[3] Academy is indirectly controlled by the Tedesco Family ESB Trust, which also indirectly controls Academy Lines, L.L.C., a motor carrier of passengers principally rendering commuter operations, and No. 22 Hillside, L.L.C., a motor carrier of passengers rendering a variety of services. CBS, a corporation established under Rhode Island law, also holds a FMCSA license (MC–115676).[4]

Academy proposes to purchase the assets of CBS's Charter Division, which handles the transportation of passengers for hire between two or more geographic locations in intrastate and interstate commerce. Specifically, Academy would purchase the Charter Division's: (1) Logos, trademarks, and patents; (2) transferable permits, licenses, franchises, approvals, certificates, consents, waivers, concessions, exemptions, orders, registrations, notices, or other authorizations of any government authority; (3) pending customer contracts and associated deposits; (4) customer lists; and (5) the trade name, ''Conway's Bus Service.''

According to Applicants, CBS has two other separate and distinct operating divisions: a motor coach equipment division that owns motor coaches and related equipment, and a tour and travel service division that provides multi-day packaging of hotel accommodations, meals, and transport by private tour groups. The transaction, however, does not involve the transfer of CBS's assets, facilities, or customers outside of the Charter Division and does not involve the transfer of CBS's FMSCA certificate of operating authority. CBS intends to cease operating its Charter Division and will, if the application is approved: (1) Voluntarily surrender its certificates of authority to operate as an interstate and intrastate motor carrier; (2) sell its Charter Division assets to Academy; (3) continue to operate its Tour Division; and (4) liquidate the assets of its motor coach equipment division.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) The effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Applicants have submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b) and a statement that the combined 12-month aggregate gross operating revenues of CBS's Charter Division and of Academy exceeded $2 million. *See* 49 U.S.C. 14303(g).

Applicants assert that the proposed transaction would: (1) Promote safe and efficient transportation because Academy's motor coaches are newer and more modern than those being used by CBS's Charter Division; (2) promote the efficient use of natural resources and energy because Academy's newer motor coaches are more fuel and energy efficient; (3) promote and encourage other motor carrier providers to establish competitive rates because of Academy's far-reaching presence in the motor carrier industry; and (4) enhance service and price options for customers. Applicants further state that the proposed transaction would have no effect on total fixed charges. Finally, Applicants state that the transaction would have no adverse effect on the Charter Division's employees as Academy will be offering similar employment opportunities to those current employees and does not anticipate any reduction in the work force or in compensation levels and benefits.

On the basis of the application, the Board finds that the proposed purchase is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

The application and Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective on August 19, 2013, unless opposing comments are timely filed.

4. A copy of this decision will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

**Derrick A. Gardner,**

*Clearance Clerk.*

[FR Doc. 2013–15973 Filed 7–2–13; 8:45 am]

BILLING CODE 4915–01–P

under the Board's jurisdiction. That motion is being denied in a separate decision being served simultaneously with this notice.

[3] Academy operates in the District of Columbia, and the states of Maryland, Virginia, New Jersey, New York, Connecticut, Pennsylvania, New Hampshire, Rhode Island, and Massachusetts.

[4] CBS's Charter Division operates in the state of Rhode Island and in Northern Connecticut and Southeastern Massachusetts.

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 27, 2013.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before August 2, 2013 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect

of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

**Financial Crimes Enforcement Network (FinCEN)**

*OMB Number:* 1506–0009.

*Type of Review:* Revision of a currently approved collection.

*Title:* Financial Record-keeping and Reporting and Report of Foreign Bank and Financial Accounts.

*Form:* FinCEN Form 114.

*Abstract:* The Bank Secrecy Act authorizes Treasury to require financial institutions and individuals to keep records and file reports that the Treasury determines have a high degree of usefulness in criminal, tax, or regulatory matters, or to protect against international terrorism. The information collected assist Federal, state and local law enforcement in the identification, investigation, and prosecution of individuals involved in money laundering, tax evasion, narcotics trafficking, organized crime, bank, securities, and tax fraud, embezzlement and other crimes. The information also assists in the conduct of financial supervision and other regulatory matters, and in tax collection and examination.

*Affected Public:* Private Sector: Businesses or other for-profits, Not-for-profit institutions; Individuals and households.

*Estimated Annual Burden Hours:* 685,000.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2013–15928 Filed 7–2–13; 8:45 am]

**BILLING CODE 4810–02–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

**[OCC Charter Number 702397]**

### Sunnyside Federal Savings and Loan Association of Irvington, Irvington, New York; Approval of Conversion Application

Notice is hereby given that on May 15, 2013, the Office of the Comptroller of the Currency (OCC) approved the application of Sunnyside Federal Savings and Loan Association of Irvington, Irvington, New York, to convert to the stock form of organization. Copies of the application are available for inspection on the OCC Web site at the FOIA Reading Room *https://foia-pal.occ.gov/palMain.aspx* under Mutual to Stock Conversion Applications. If you have any questions, please call OCC Licensing Activities at (202) 649–6260.

Dated: June 24, 2013.

By the Office of the Comptroller of the Currency.

**Stephen A. Lybarger,**

*Deputy Comptroller for Licensing.*

[FR Doc. 2013–15901 Filed 7–2–13; 8:45 am]

**BILLING CODE 4810–33–P**

# FEDERAL REGISTER

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Part II

## Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 431

Medicare and Medicaid Programs; Home Health Prospective Payment System Rate Update for CY 2014, Home Health Quality Reporting Requirements, and Cost Allocation of Home Health Survey Expenses; Proposed Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 431**

**[CMS–1450–P]**

**RIN 0938–AR52**

# Medicare and Medicaid Programs; Home Health Prospective Payment System Rate Update for CY 2014, Home Health Quality Reporting Requirements, and Cost Allocation of Home Health Survey Expenses

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would update the Home Health Prospective Payment System (HH PPS) rates, including the national, standardized 60-day episode payment rates, the national per-visit rates, the low-utilization payment adjustment (LUPA) add-on, the nonroutine medical supplies (NRS) conversion factor, and outlier payments under the Medicare prospective payment system for home health agencies (HHAs), effective January 1, 2014. As required by the Affordable Care Act, this rule also proposes rebasing adjustments, with a 4-year phase-in, to the national, standardized 60-day episode payment rates; the national per-visit rates; and the NRS conversion factor. Finally, the proposed rule would also establish home health quality reporting requirements for CY 2014 payment and subsequent years and would clarify that a state Medicaid program must provide that, in certifying home health agencies, the state's designated survey agency must carry out certain other responsibilities that already apply to surveys of nursing facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF–IID), including sharing in the cost of HHA surveys. For that portion of costs attributable to Medicare and Medicaid, we would assign 50 percent to Medicare and 50 percent to Medicaid, the standard method that CMS and states use in the allocation of expenses related to surveys of SNF/NF nursing homes.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 26, 2013.

**ADDRESSES:** In commenting, please refer to file code CMS–1450–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1450–P, P.O. Box 8016, Baltimore, MD 21244–8016.

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

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1450–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—
Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—
Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Kristine Chu, (410) 786–8953, for information about rebasing and the HH payment reform study and report. Jenny Filipovits, (410) 786–8141, for information about cost allocation of survey expenses. Mollie Knight, (410) 786–7948, for information about the HH market basket. Hillary Loeffler, (410) 786–0456, for general information about the HH PPS. Joan Proctor, (410) 786–0949, for information about the HH PPS Grouper and ICD–10 Conversion. Kim Roche, (410) 786–3524, for information about the HH quality reporting program. Lori Teichman, (410) 786–6684, for information about HH CAHPS®.

**SUPPLEMENTARY INFORMATION:** *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

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## Acronyms

In addition, because of the many terms to which we refer by abbreviation in this proposed rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ACA The Affordable Care Act.
ACH LOS Acute care hospital length of stay.
ADL Activities of daily living.
AHRQ Agency for Healthcare Research and Quality.
APU Annual payment update.
BBA Balanced Budget Act of 1997 (Pub. L. 105–33, enacted August 5, 1997).
BBRA Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Pub. L. 106–113, enacted November 29, 1999).
CAD Coronary artery disease.
CAH Critical access hospital.
CAHPS® Consumer assessment of healthcare providers and systems.
CBSA Core-based statistical area.
CASPER Certification and survey provider enhanced reports.
CHF Congestive heart failure.
CMI Case-mix index.
CMP Civil monetary penalties.
CMS Centers for Medicare & Medicaid Services.
CoPs Conditions of participation.
COPD Chronic obstructive pulmonary disease.
CVD Cardiovascular disease.
CY Calendar year.
DG Diagnostic group.
DHHS Department of Health and Human Services.
DM Diabetes mellitus.
DME Durable medical equipment.
DRA Deficit Reduction Act of 2005 (Pub. L. 109–171, enacted February 8, 2006).
FDL Fixed dollar loss.
FFP Federal financial participation.
FI Fiscal intermediaries.
FR Federal Register
FY Fiscal year.
GEM General equivalency mapping.
HAVEN Home assessment validation and entry system.
HCC Hierarchical condition categories.
HCIS Health care information system.
HH Home health.
HHABN Home health advance beneficiary notice.
HHAs Home health agencies.
HHCAHPS® Home Health Care Consumer Assessment of Healthcare Providers and Systems Survey.
HH PPS Home health prospective payment system.
HHQRP Home Health Quality Reporting Program.
HHRG Home health resource group.
HIPAA Health Insurance Portability Accountability Act of 1996 (Pub. L. 104–191, enacted August 21, 1996).
HIPPS Health insurance prospective payment system.
ICD–9 International Classification of Diseases, 9th Edition.
ICD–9–CM International Classification of Diseases, 9th Edition, Clinical Modification.
ICD–10 International Classification of Diseases, 10th Edition.
ICD–10–CM International Classification of Diseases, 10th Edition, Clinical Modification.
ICF–IID Intermediate care facilities for individuals with intellectual disabilities.
IH Inpatient hospitalization.
IPPS Acute Inpatient Prospective Payment System.
IRF Inpatient rehabilitation facility.
LTCH Long-term care hospital.
LUPA Low-utilization payment adjustment.
MAC Medicare Administrative Contractor.
MAP Measure applications partnership.
MedPAC Medicare Payment Advisory Commission.
MEPS Medical Expenditures Panel Survey.
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, enacted December 8, 2003).
MSA Metropolitan statistical areas.
MSS Medical Social Services.
NF Nursing facility.
NQF National Quality Forum.
NRS Non-routine supplies.
OASIS Outcome & Assessment Information Set.
OBRA Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–2–3, enacted December 22, 1987).
OCESAA Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, enacted October 21, 1998).
OES Occupational employment statistics.
OIG Office of Inspector General.
OT Occupational therapy.
OMB Office of Management and Budget.
P4R Pay-for-reporting.
PAC–PRD Post-Acute Care Payment Reform Demonstration.
PEP Partial episode payment [Adjustment].
POC Plan of care.
PRRB Provider Reimbursement Review Board.
PT Physical therapy.
QAP Quality assurance plan.
QIES CMS Health Care Quality Improvement System.
PRRB Provider Reimbursement Review Board.
RAP Request for anticipated payment.
RF Renal failure.
RFA Regulatory Flexibility Act (Pub. L. 96–354, enacted on September 19, 1980).
RHHIs Regional home health intermediaries.
RIA Regulatory impact analysis.
SCHIP State Children's Health Insurance Program.
SLP Speech-language pathology.
SN Skilled nursing.
SNF Skilled nursing facility.
TEP Technical Expert Panel.
UMRA Unfunded Mandates Reform Act of 1995 (Pub. L. 104–04, enacted on March 22, 1995).

## I. Executive Summary

### *A. Purpose*

This rule proposes updates to the payment rates for home health agencies (HHAs) for calendar year (CY) 2014, as required under section 1895(b) of the Social Security Act (the Act), including the rebasing adjustments to the national, standardized 60-day episode payment rate, the national per-visit rates, the non-routine supplies (NRS) conversion factor, required under section 3131(a) of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to as the ''Affordable Care Act''). This proposed rule would also address: International Classification of Diseases, 9th Edition (ICD–9) grouper refinements; implementation of the International Classification of Diseases, 10th Edition (ICD–10); an adjustment to the case-mix weights; updates to the payment rates by the HH payment update percentage (market basket); adjustments for geographic differences in wage levels; outlier payments; the submission of quality data; and additional payments for services

provided in rural areas. This proposed rule would also clarify state Medicaid program requirements related to the cost of HHA surveys.

*B. Summary of the Major Provisions*

We recently completed a thorough review of the ICD–9–CM codes included in our home health prospective payment system (HH PPS) Grouper as part of our work transitioning from the ICD–9–CM to ICD–10–CM code set. As a result of that review, we identified two categories of codes, made up of 170 ICD–9–CM diagnosis codes, which we are proposing to remove from the HH PPS Grouper, effective January 1, 2014. In addition, we are proposing to implement, on October 1, 2014, the use of ICD–10–CM codes within our HH PPS Grouper.

Section 3131(a) of the Affordable Care Act requires that, starting in CY 2014, we apply an adjustment to the national, standardized 60-day episode payment rate and other applicable payment amounts to reflect factors such as changes in the number of visits in an episode, the mix of services in an episode, the level of intensity of services in an episode, the average cost of providing care per episode, and other relevant factors. In addition, we must phase-in any adjustment over a 4-year period in equal increments, not to exceed 3.5 percent of the amount (or amounts) in any given year, and be fully implemented by CY 2017. As such, we are proposing rebasing adjustments to the national, standardized 60-day episode payment rate, the national per-visit rates, the NRS conversion factor, and an update to the LUPA add-on amount.

Section 3131(d) of the Affordable Care Act also requires us to report on whether a home health care access problem exists for patients with high severity of illness, low income patients, and/or patients in medically underserved areas and assess the costs associated with providing access to care for these populations. It also gives us the authority to analyze other areas of concern in the HH PPS and allows for demonstration authority to test the PPS changes. Finally, it requires us to recommend HH PPS improvements, if needed, based on the study findings and/or necessary additional analysis, in a Report to Congress due in March 2014. Our contractor held a Technical Expert Panel (TEP) meeting and a special Open Door Forum to gather input from the industry on the three vulnerable populations. We are currently conducting surveys of HHAs and physicians on access to care, and performing analyses of cost report and claims data to determine whether patient characteristics/types may be under-reimbursed. We will continue to collaborate with stakeholders, soliciting them for their thoughts, and provide updates on our progress.

We also propose to continue to use Outcome & Assessment Information Set (OASIS) data, claims data, and patient experience of care data, as forms of quality data to meet the requirement that HHAs submit data appropriate for the measurement of HH care quality for annual payment update (APU) 2014 and each subsequent year thereafter until further notice. Additionally, we propose two claims-based measures of HH patients who were recently hospitalized, as these patients are at an increased risk of additional acute care hospital use. We also propose to reduce the number of HH quality measures currently reported to HHAs. Lastly, we propose to review each state's allocation of costs for HHA surveys for compliance with OMB Circular A–87 principles and the statutes in 2014 with the goal of ensuring full compliance no later than July 2014. This proposed rule would clarify that a state Medicaid program must provide that, in certifying HHAs, the state's designated survey agency must carry out certain other responsibilities that already apply to surveys of nursing facilities (NF) and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF–IID), including sharing in the cost of HHA surveys. For that portion of costs attributable to Medicare and Medicaid, we would assign 50 percent to Medicare and 50 percent to Medicaid. This is the standard method that CMS and states use in the allocation of expenses related to surveys of skilled nursing facility (SNF)/NF nursing homes.

*C. Summary of Costs and Benefits*

| Provision description | Total costs | Total benefits | Transfers |
|---|---|---|---|
| CY 2014 HH PPS Payment Rate Update. | N/A | The benefits of this proposed rule include paying more accurately for the delivery of home health services. | The overall economic impact of this proposed rule is an estimated $290 million in decreased payments to HHAs. |
| Cost Allocation of HHA Survey Expenses. | N/A | The benefits of this rule include clarifying that state Medicaid programs must share in the cost of HHA surveys. For that portion of costs attributable to Medicare and Medicaid, we would assign 50 percent to Medicare and 50 percent to Medicaid. | If implemented in the beginning of FY 2014 we project that aggregate Medicare and Medicaid home health survey costs in FY 2014 would be approximately $37.2 million. As these costs would be assigned 50 percent to Medicare and 50 percent to Medicaid for each state, the anticipated national state Medicaid share would amount to $18.6 million. The cost of surveys is treated as a Medicaid administrative cost, reimbursable at the professional staff rate of 75 percent. At this rate the maximum net state costs for Medicaid matching funds incurred in FY 2014 would be approximately $4.65 million, spread out across all states and 2 territories. However, the proposed adherence date of July FY 2014 would reduce the Medicaid aggregate share to $4.65 million and the state Medicaid share to approximately $1.16 million. Some state Medicaid programs may currently pay for HHA surveys to some extent, but the amount is unknown. |

## II. Background

### *A. Statutory Background*

Home Health PPS

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33, enacted August 5, 1997), significantly changed the way Medicare pays for Medicare HH services. Section 4603 of the BBA mandated the development of the HH PPS. Until the implementation of a HH PPS on October 1, 2000, HHAs received payment under a retrospective reimbursement system.

Section 4603(a) of the BBA mandated the development of a HH PPS for all Medicare-covered HH services provided under a plan of care (POC) that were paid on a reasonable cost basis by adding section 1895 of the Act, entitled ''Prospective Payment For Home Health Services.'' Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of HH services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires the following: (1) the computation of a standard prospective payment amount that includes all costs for HH services that would have been covered and paid for on a reasonable cost basis had the HH PPS not been in effect and that such amounts be initially based on the most recent audited cost report data available to the Secretary; and (2) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the HH applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix change adjustment factor for significant variation in costs among different units of services.

Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to HH services furnished in a geographic area compared to the applicable national average level. Under section 1895(b)(4)(C) of the Act, the wage-adjustment factors used by the Secretary may be the factors used under section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to make additions or adjustments to the payment amount otherwise paid in the case of outliers due to unusual variations in the type or amount of medically necessary care. Section 3131(b)(2) of the Affordable Care Act revised section 1895(b)(5) of the Act so that total outlier payments in a given year would not exceed 2.5 percent of total payments projected or estimated. The provision also made permanent a 10 percent agency-level outlier payment cap.

In accordance with the statute, as amended by the BBA, we published a final rule in the July 3, 2000 **Federal Register** (65 FR 41128) to implement the HH PPS legislation. The July 2000 final rule established requirements for the new HH PPS for HH services as required by section 4603 of the BBA, as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for Fiscal Year 1999, (Pub. L. 105–277, enacted October 21, 1998); and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999, (Pub. L. 106–113, enacted November 29, 1999). The requirements include the implementation of a HH PPS for HH services, consolidated billing requirements, and a number of other related changes. The HH PPS described in that rule replaced the retrospective reasonable cost-based system that was used by Medicare for the payment of HH services under Part A and Part B. For a complete and full description of the HH PPS as required by the BBA, see the July 2000 HH PPS final rule (65 FR 41128 through 41214).

Section 5201(c) of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171, enacted February 8, 2006) added new section 1895(b)(3)(B)(v) to the Act, requiring HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase. This data submission requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the HH market basket percentage increase is reduced 2 percentage points. In the CY 2007 HH PPS final rule (71 FR 65884, 65935), we implemented the pay-for-reporting requirement of the DRA, which was codified at § 484.225(h) and (i). The pay-for-reporting requirement was implemented on January 1, 2007.

The Affordable Care Act made additional changes to the HH PPS. One of the changes in section 3131(c) of the Affordable Care Act is the amendment to section 421(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003) as amended by section 5201(b) of the DRA. The amended section 421(a) of the MMA now requires, for HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) for episodes and visits ending on or after April 1, 2010, and before January 1, 2016, that the Secretary increase, by 3 percent, the payment amount otherwise made under section 1895 of the Act.

Section 3131(a) of the Affordable Care Act mandates that, starting in CY 2014, the Secretary must apply an adjustment to the national, standardized 60-day episode payment rate and other amounts applicable under section 1895(b)(3)(A)(i)(III) of the Act to reflect factors such as changes in the number of visits in an episode, the mix of services in an episode, the level of intensity of services in an episode, the average cost of providing care per episode, and other relevant factors. In addition, section 3131(a) of the Affordable Care Act mandates that this rebasing must be phased-in over a 4-year period in equal increments, not to exceed 3.5 percent of the amount (or amounts) in any given year applicable under section 1895(b)(3)(A)(i)(III) of the Act and be fully implemented in CY 2017.

### *B. System for Payment of Home Health Services*

Generally, Medicare makes payment under the HH PPS on the basis of a national, standardized 60-day episode payment rate that is adjusted for the applicable case-mix and wage index. The national, standardized 60-day episode rate includes the six HH disciplines (skilled nursing, HH aide, physical therapy (PT), speech-language pathology (SLP), occupational therapy (OT), and medical social services (MSS)). Payment for NRS is no longer part of the national, standardized 60-day episode rate and is computed by multiplying the relative weight for a particular NRS severity level by the NRS conversion factor (See section II.D.4.e. of this proposed rule). Payment for durable medical equipment (DME) covered under the HH benefit is made outside the HH PPS payment system. To adjust for case-mix, the HH PPS uses a 153-category case-mix classification system to assign patients to a home health resource group (HHRG). The clinical severity level, functional severity level, and service utilization are computed from responses to selected data elements in the OASIS assessment

instrument and are used to place the patient in a particular HHRG. Each HHRG has an associated case-mix weight which is used in calculating the payment for an episode. Specifically, the 60-day episode base rate is multiplied by the case-mix weight when determining the payment for an episode.

For episodes with four or fewer visits, Medicare pays national per-visit rates based on the discipline(s) providing the services. An episode consisting of four or fewer visits within a 60-day period receives what is referred to as a LUPA. Medicare also adjusts the national, standardized 60-day episode payment rate for certain intervening events that are subject to a partial episode payment adjustment (PEP adjustment). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

*C. Updates to the HH PPS*

As required by section 1895(b)(3)(B) of the Act, we have historically updated the HH PPS rates annually in the **Federal Register**. The August 29, 2007 final rule with comment period set forth an update to the 60-day national episode rates and the national per-visit rates under the Medicare prospective payment system for HHAs for CY 2008. The CY 2008 rule included an analysis performed on CY 2005 HH claims data, which indicated a 12.78 percent increase in the observed case-mix since 2000. Case-mix represents the variations in conditions of the patient population served by the HHAs. Subsequently, a more detailed analysis was performed on the 2005 case-mix data to evaluate if any portion of the 12.78 percent increase was associated with a change in the actual clinical condition of HH patients. We examined data on demographics, family severity, and non-HH Part A Medicare expenditures to predict the average case-mix weight for 2005. We identified 8.03 percent of the total case-mix change as real, and therefore, decreased the 12.78 percent of total case-mix change by 8.03 percent to get a final nominal case-mix increase measure of 11.75 percent (0.1278 * (1 − 0.0803) = 0.1175).

To account for the changes in case-mix that were not related to an underlying change in patient health status, we implemented a reduction over 4 years in the national, standardized 60-day episode payment rates. That reduction was to be 2.75 percent per year for 3 years beginning in CY 2008 and 2.71 percent for the fourth year in CY 2011. In the CY 2011 HH PPS final rule (76 FR 68532), we updated our analyses of case-mix change and finalized a reduction of 3.79 percent, instead of 2.71 percent, for CY 2011 and deferred finalizing a payment reduction for CY 2012 until further study of the case-mix change data and methodology was completed.

In the CY 2012 HH PPS final rule (76 FR 68526), we updated the 60-day national episode rates and the national per-visit rates. In addition, as discussed in the CY 2012 HH PPS final rule (76 FR 68528), our analysis indicated that there was a 22.59 percent increase in overall case-mix from 2000 to 2009 and that only 15.76 percent of that overall observed case-mix percentage increase was due to real case-mix change. As a result of our analysis, we identified a 19.03 percent nominal increase in case-mix. To fully account for the 19.03 percent nominal case-mix growth which was identified from 2000 to 2009, we finalized a 3.79 percent payment reduction in CY 2012.

In the CY 2013 HH PPS final rule (77 FR 67078), we implemented a 1.32 percent reduction to the payment rates for CY 2013 to account for nominal case-mix growth through 2010. When taking into account the total measure of case-mix change (23.90 percent) and the 15.97 percent of total case-mix change estimated as real from 2000 to 2010, we obtained a final nominal case-mix change measure of 20.08 percent from 2000 to 2010 (0.2390 * (1 − 0.1597) = 0.2008). To fully account for the remainder of the 20.08 percent increase in nominal case-mix beyond that which was accounted for in previous payment reductions, we estimated that the percentage reduction to the national, standardized 60-day episode rates for nominal case-mix change would be 2.18 percent. We considered proposing a 2.18 percent reduction to account for the remaining increase in measured nominal case-mix; however, we moved forward with the 1.32 percent payment reduction to the national, standardized 60-day episode rates in the CY 2012 HH PPS final rule (76 FR 68532).

## III. Provisions of the Proposed Rule

*A. Proposed ICD–9–CM Grouper Refinements, Effective January 1, 2014*

CMS clinical staff (along with clinical and coding staff from Abt Associates (our support contractor) and 3M (our HH PPS grouper maintenance contractor), recently completed a thorough review of the ICD–9–CM codes included in our HH PPS Grouper. The HH PPS Grouper, which is used by the CMS OASIS submission system, is the official grouping software of the HH PPS. As a result of that review, we identified two categories of codes, made up of 170 ICD–9–CM diagnosis codes, which we are proposing to remove from the HH PPS Grouper, effective January 1, 2014. The first category (Category 1 in Table 2) includes codes that we propose to remove from the HH PPS grouper based upon clinical judgment that the ICD–9–CM code is ''too acute'', meaning that this condition could not be appropriately cared for in a HH setting. These codes likely reflect conditions the patient had prior to the HH admission (for example, while being treated in a hospital setting). It is anticipated that the condition progressed to a less acute state, or is completely resolved for the patient to be cared for in the home setting (and that often times another diagnosis code would have been a more accurate reflection of the patient's condition in the home). The second category (Category 2 in Table 2) includes codes that we propose to remove from the HH PPS Grouper based upon clinical judgment that the condition would not require HH intervention, would not impact the HH plan of care (POC), or would not result in additional resource use when providing HH services to the patient. Table 2 comprises ICD–9–CM codes that we propose to remove from the HH PPS grouper, effective January 1, 2014, along with the category classification.

TABLE 2—ICD–9–CM CODES REMOVED FROM THE HH PPS GROUPER AS OF JANUARY 1, 2014

| ICD–9–CM Code | ICD–9–CM Long description | Category |
|---|---|---|
| 003.1 | Salmonella septicemia | 1 |
| 250.20 | Diabetes with hyperosmolarity, type II or unspecified type, not stated as uncontrolled | 1 |
| 250.21 | Diabetes with hyperosmolarity, type I [juvenile type], not stated as uncontrolled | 1 |
| 250.22 | Diabetes with hyperosmolarity, type II or unspecified type, uncontrolled | 1 |
| 250.23 | Diabetes with hyperosmolarity, type I [juvenile type], uncontrolled | 1 |
| 250.30 | Diabetes with other coma, type II or unspecified type, not stated as uncontrolled | 1 |

TABLE 2—ICD–9–CM CODES REMOVED FROM THE HH PPS GROUPER AS OF JANUARY 1, 2014—Continued

| ICD–9–CM Code | ICD–9–CM Long description | Category |
|---|---|---|
| 250.31 | Diabetes with other coma, type I [juvenile type], not stated as uncontrolled | 1 |
| 250.32 | Diabetes with other coma, type II or unspecified type, uncontrolled | 1 |
| 250.33 | Diabetes with other coma, type I [juvenile type], uncontrolled | 1 |
| 282.42 | Sickle-cell thalassemia with crisis | 1 |
| 282.5 | Sickle-cell trait | 2 |
| 282.62 | Hb-SS disease with crisis | 1 |
| 282.64 | Sickle-cell/Hb-C disease with crisis | 1 |
| 282.69 | Other sickle-cell disease with crisis | 1 |
| 285.1 | Acute posthemorrhagic anemia | 1 |
| 289.52 | Splenic sequestration | 1 |
| 333.81 | Blepharospasm | 2 |
| 333.84 | Organic writers' cramp | 2 |
| 333.93 | Benign shuddering attacks | 2 |
| 333.94 | Restless legs syndrome | 2 |
| 348.5 | Cerebral edema | 1 |
| 401.0 | Malignant essential hypertension | 1 |
| 414.12 | Dissection of coronary artery | 1 |
| 447.2 | Rupture of artery | 1 |
| 493.21 | Chronic obstructive asthma with status asthmaticus | 1 |
| 530.21 | Ulcer of esophagus with bleeding | 1 |
| 530.4 | Perforation of esophagus | 1 |
| 530.7 | Gastroesophageal laceration-hemorrhage syndrome | 1 |
| 530.81 | Esophageal reflux | 2 |
| 530.82 | Esophageal hemorrhage | 1 |
| 531.00 | Acute gastric ulcer with hemorrhage, without mention of obstruction | 1 |
| 531.01 | Acute gastric ulcer with hemorrhage, with obstruction | 1 |
| 531.10 | Acute gastric ulcer with perforation, without mention of obstruction | 1 |
| 531.11 | Acute gastric ulcer with perforation, with obstruction | 1 |
| 531.20 | Acute gastric ulcer with hemorrhage and perforation, without mention of obstruction | 1 |
| 531.21 | Acute gastric ulcer with hemorrhage and perforation, with obstruction | 1 |
| 531.31 | Acute gastric ulcer without mention of hemorrhage or perforation, with obstruction | 1 |
| 531.40 | Chronic or unspecified gastric ulcer with hemorrhage, without mention of obstruction | 1 |
| 531.41 | Chronic or unspecified gastric ulcer with hemorrhage, with obstruction | 1 |
| 531.50 | Chronic or unspecified gastric ulcer with perforation, without mention of obstruction | 1 |
| 531.51 | Chronic or unspecified gastric ulcer with perforation, with obstruction | 1 |
| 531.60 | Chronic or unspecified gastric ulcer with hemorrhage and perforation, without mention of obstruction | 1 |
| 531.61 | Chronic or unspecified gastric ulcer with hemorrhage and perforation, with obstruction | 1 |
| 531.71 | Chronic gastric ulcer without mention of hemorrhage or perforation, with obstruction | 1 |
| 531.91 | Gastric ulcer, unspecified as acute or chronic, without mention of hemorrhage or perforation, with obstruction. | 1 |
| 532.00 | Acute duodenal ulcer with hemorrhage, without mention of obstruction | 1 |
| 532.01 | Acute duodenal ulcer with hemorrhage, with obstruction | 1 |
| 532.10 | Acute duodenal ulcer with perforation, without mention of obstruction | 1 |
| 532.11 | Acute duodenal ulcer with perforation, with obstruction | 1 |
| 532.20 | Acute duodenal ulcer with hemorrhage and perforation, without mention of obstruction | 1 |
| 532.21 | Acute duodenal ulcer with hemorrhage and perforation, with obstruction | 1 |
| 532.31 | Acute duodenal ulcer without mention of hemorrhage or perforation, with obstruction | 1 |
| 532.40 | Chronic or unspecified duodenal ulcer with hemorrhage, without mention of obstruction | 1 |
| 532.41 | Chronic or unspecified duodenal ulcer with hemorrhage, with obstruction | 1 |
| 532.50 | Chronic or unspecified duodenal ulcer with perforation, without mention of obstruction | 1 |
| 532.51 | Chronic or unspecified duodenal ulcer with perforation, with obstruction | 1 |
| 532.60 | Chronic or unspecified duodenal ulcer with hemorrhage and perforation, without mention of obstruction. | 1 |
| 532.61 | Chronic or unspecified duodenal ulcer with hemorrhage and perforation, with obstruction | 1 |
| 532.71 | Chronic duodenal ulcer without mention of hemorrhage or perforation, with obstruction | 1 |
| 532.91 | Duodenal ulcer, unspecified as acute or chronic, without mention of hemorrhage or perforation, with obstruction. | 1 |
| 533.00 | Acute peptic ulcer of unspecified site with hemorrhage, without mention of obstruction | 1 |
| 533.01 | Acute peptic ulcer of unspecified site with hemorrhage, with obstruction | 1 |
| 533.10 | Acute peptic ulcer of unspecified site with perforation, without mention of obstruction | 1 |
| 533.11 | Acute peptic ulcer of unspecified site with perforation, with obstruction | 1 |
| 533.20 | Acute peptic ulcer of unspecified site with hemorrhage and perforation, without mention of obstruction. | 1 |
| 533.21 | Acute peptic ulcer of unspecified site with hemorrhage and perforation, with obstruction | 1 |
| 533.31 | Acute peptic ulcer of unspecified site without mention of hemorrhage and perforation, with obstruction. | 1 |
| 533.40 | Chronic or unspecified peptic ulcer of unspecified site with hemorrhage, without mention of obstruction. | 1 |
| 533.41 | Chronic or unspecified peptic ulcer of unspecified site with hemorrhage, with obstruction | 1 |
| 533.50 | Chronic or unspecified peptic ulcer of unspecified site with perforation, without mention of obstruction. | 1 |

TABLE 2—ICD–9–CM CODES REMOVED FROM THE HH PPS GROUPER AS OF JANUARY 1, 2014—Continued

| ICD–9–CM Code | ICD–9–CM Long description | Category |
|---|---|---|
| 533.51 | Chronic or unspecified peptic ulcer of unspecified site with perforation, with obstruction | 1 |
| 533.60 | Chronic or unspecified peptic ulcer of unspecified site with hemorrhage and perforation, without mention of obstruction. | 1 |
| 533.61 | Chronic or unspecified peptic ulcer of unspecified site with hemorrhage and perforation, with obstruction. | 1 |
| 533.71 | Chronic peptic ulcer of unspecified site without mention of hemorrhage or perforation, with obstruction. | 1 |
| 533.91 | Peptic ulcer of unspecified site, unspecified as acute or chronic, without mention of hemorrhage or perforation, with obstruction. | 1 |
| 534.00 | Acute gastrojejunal ulcer with hemorrhage, without mention of obstruction | 1 |
| 534.01 | Acute gastrojejunal ulcer, with hemorrhage, with obstruction | 1 |
| 534.10 | Acute gastrojejunal ulcer with perforation, without mention of obstruction | 1 |
| 534.11 | Acute gastrojejunal ulcer with perforation, with obstruction | 1 |
| 534.20 | Acute gastrojejunal ulcer with hemorrhage and perforation, without mention of obstruction | 1 |
| 534.21 | Acute gastrojejunal ulcer with hemorrhage and perforation, with obstruction | 1 |
| 534.31 | Acute gastrojejunal ulcer without mention of hemorrhage or perforation, with obstruction | 1 |
| 534.40 | Chronic or unspecified gastrojejunal ulcer with hemorrhage, without mention of obstruction | 1 |
| 534.41 | Chronic or unspecified gastrojejunal ulcer, with hemorrhage, with obstruction | 1 |
| 534.50 | Chronic or unspecified gastrojejunal ulcer with perforation, without mention of obstruction | 1 |
| 534.51 | Chronic or unspecified gastrojejunal ulcer with perforation, with obstruction | 1 |
| 534.60 | Chronic or unspecified gastrojejunal ulcer with hemorrhage and perforation, without mention of obstruction. | 1 |
| 534.61 | Chronic or unspecified gastrojejunal ulcer with hemorrhage and perforation, with obstruction | 1 |
| 534.71 | Chronic gastrojejunal ulcer without mention of hemorrhage or perforation, with obstruction | 1 |
| 534.91 | Gastrojejunal ulcer, unspecified as acute or chronic, without mention of hemorrhage or perforation, with obstruction. | 1 |
| 535.01 | Acute gastritis, with hemorrhage | 1 |
| 535.11 | Atrophic gastritis, with hemorrhage | 1 |
| 535.21 | Gastric mucosal hypertrophy, with hemorrhage | 1 |
| 535.31 | Alcoholic gastritis, with hemorrhage | 1 |
| 535.41 | Other specified gastritis, with hemorrhage | 1 |
| 535.51 | Unspecified gastritis and gastroduodenitis, with hemorrhage | 1 |
| 535.61 | Duodenitis, with hemorrhage | 1 |
| 535.71 | Eosinophilic gastritis, with hemorrhage | 1 |
| 536.1 | Acute dilatation of stomach | 1 |
| 537.3 | Other obstruction of duodenum | 1 |
| 537.4 | Fistula of stomach or duodenum | 1 |
| 537.6 | Hourglass stricture or stenosis of stomach | 1 |
| 537.83 | Angiodysplasia of stomach and duodenum with hemorrhage | 1 |
| 537.84 | Dielulafoy lesion (hemorrhagic) of stomach and duodenum | 1 |
| 540.0 | Acute appendicitis with generalized peritonitis | 1 |
| 540.1 | Acute appendicitis with peritoneal abscess | 1 |
| 540.9 | Acute appendicitis without mention of peritonitis | 1 |
| 541 | Appendicitis, unqualified | 1 |
| 542 | Other appendicitis | 1 |
| 543.0 | Hyperplasia of appendix (lymphoid) | 1 |
| 557.0 | Acute vascular insufficiency of intestine | 1 |
| 560.0 | Intussusception | 1 |
| 560.1 | Paralytic ileus | 1 |
| 560.2 | Volvulus | 1 |
| 560.81 | Intestinal or peritoneal adhesions with obstruction (postoperative) (postinfection) | 1 |
| 560.89 | Other specified intestinal obstruction | 1 |
| 560.9 | Unspecified intestinal obstruction | 1 |
| 562.02 | Diverticulosis of small intestine with hemorrhage | 1 |
| 562.03 | Diverticulitis of small intestine with hemorrhage | 1 |
| 562.12 | Diverticulosis of colon with hemorrhage | 1 |
| 562.13 | Diverticulitis of colon with hemorrhage | 1 |
| 567.0 | Peritonitis in infectious diseases classified elsewhere | 1 |
| 567.1 | Pneumococcal peritonitis | 1 |
| 567.21 | Peritonitis (acute) generalized | 1 |
| 567.22 | Peritoneal abscess | 1 |
| 567.23 | Spontaneous bacterial peritonitis | 1 |
| 567.29 | Other suppurative peritonitis | 1 |
| 567.31 | Psoas muscle abscess | 1 |
| 567.38 | Other retroperitoneal abscess | 1 |
| 567.81 | Choleperitonitis | 1 |
| 567.82 | Sclerosing mesenteritis | 1 |
| 567.89 | Other specified peritonitis | 1 |
| 567.9 | Unspecified peritonitis | 1 |
| 568.81 | Hemoperitoneum (nontraumatic) | 1 |
| 569.3 | Hemorrhage of rectum and anus | 1 |

TABLE 2—ICD–9–CM CODES REMOVED FROM THE HH PPS GROUPER AS OF JANUARY 1, 2014—Continued

| ICD–9–CM Code | ICD–9–CM Long description | Category |
|---|---|---|
| 569.43 | Anal sphincter tear-old | 2 |
| 569.83 | Perforation of intestine | 1 |
| 569.85 | Angiodysplasia of intestine with hemorrhage | 1 |
| 569.86 | Dieulafoy lesion (hemorrhagic) of intestine | 1 |
| 572.0 | Abscess of liver | 1 |
| 572.1 | Portal pyemia | 1 |
| 574.00 | Calculus of gallbladder with acute cholecystitis, without mention of obstruction | 1 |
| 574.01 | Calculus of gallbladder with acute cholecystitis, with obstruction | 1 |
| 574.10 | Calculus of gallbladder with other cholecystitis, without mention of obstruction | 1 |
| 574.11 | Calculus of gallbladder with other cholecystitis, with obstruction | 1 |
| 574.21 | Calculus of gallbladder without mention of cholecystitis, with obstruction | 1 |
| 574.30 | Calculus of bile duct with acute cholecystitis, without mention of obstruction | 1 |
| 574.31 | Calculus of bile duct with acute cholecystitis, with obstruction | 1 |
| 574.41 | Calculus of bile duct with other cholecystitis, with obstruction | 1 |
| 574.51 | Calculus of bile duct without mention of cholecystitis, with obstruction | 1 |
| 574.60 | Calculus of gallbladder and bile duct with acute cholecystitis, without mention of obstruction | 1 |
| 574.61 | Calculus of gallbladder and bile duct with acute cholecystitis, with obstruction | 1 |
| 574.71 | Calculus of gallbladder and bile duct with other cholecystitis, with obstruction | 1 |
| 574.80 | Calculus of gallbladder and bile duct with acute and chronic cholecystitis, without mention of obstruction. | 1 |
| 574.81 | Calculus of gallbladder and bile duct with acute and chronic cholecystitis, with obstruction | 1 |
| 574.91 | Calculus of gallbladder and bile duct without cholecystitis, with obstruction | 1 |
| 575.0 | Acute cholecystitis | 1 |
| 575.2 | Obstruction of gallbladder | 1 |
| 575.3 | Hydrops of gallbladder | 1 |
| 575.4 | Perforation of gallbladder | 1 |
| 576.1 | Cholangitis | 1 |
| 576.2 | Obstruction of bile duct | 1 |
| 576.3 | Perforation of bile duct | 1 |
| 577.0 | Acute pancreatitis | 1 |
| 578.0 | Hematemesis | 1 |
| 578.9 | Hemorrhage of gastrointestinal tract, unspecified | 1 |
| 873.63 | Broken tooth-uncomplic | 2 |
| 998.11 | Hemorrhage complicating a procedure | 1 |
| 998.12 | Hematoma complicating a procedure | 1 |
| 998.2 | Accidental puncture or laceration during a procedure, not elsewhere classified | 1 |

Analysis of CY 2012 claims data shows that the average case-mix weight before the removal of the codes in Table 2 was 1.3517. It is estimated that the proposed removal of the 170 codes in Table 2 results in an average case-mix weight for CY 2012 of 1.3417. As described above, clinical judgment is that these codes are ''too acute,'' meaning that this condition could not be appropriately cared for in a HH setting (Category 1) or would not impact the HH POC or result in additional resource use (Category 2). Therefore, the inclusion of these diagnosis codes in the grouper was producing inaccurate overpayments.

*B. International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM) Conversion and Diagnosis Reporting on Home Health Claims*

1. International Classification of Diseases, 10th Revision, Clinical Modification (ICD–10–CM) Conversion

The Compliance date for adoption of the ICD–10–CM and ICD–10–PCS Medical Data Code Set is October 1, 2014, as announced in September 5, 2012 final rule, ''Administrative Simplification: Adoption of a Standard for a Unique Health Plan Identifier; Addition to the National Provider Identifier Requirements; and a Change to the Compliance Date for the International Classification of Diseases, 10th Edition (ICD–10–CM and ICD–10–PCS) Medical Data Code Sets'' (77 FR 54664). Under that final rule, the transition to ICD–10–CM is required for entities covered by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191, enacted on August 21, 1996). CMS, along with our support contractors, Abt Associates and 3M, spent the last 2 years implementing a process for the transition from the use of ICD–9–CM diagnosis codes to ICD–10–CM diagnosis codes within the HH PPS Grouper. As we outlined in the section above, we began this process with a review of the ICD–9–CM codes included in our HH PPS Grouper and identified certain codes that should be removed, and thus will not be included in our translation list of ICD–9–CM to ICD–10–CM codes.

3M produced a translation list using the General Equivalency Mappings (GEMs) tool. That translation list, produced by the GEMs tool, was then reviewed and revised to ensure the included codes are appropriate for use in the HH setting, based upon ICD–10–CM coding guidance. Modifications included:

• *Elimination of codes with ''initial encounter'' extensions listed in the GEMs translation.* ICD–10–CM codes that begin with S and T are used for reporting traumatic injuries, such as fractures and burns. These codes have a 7th character that indicates whether the treatment is for an initial encounter, subsequent encounter or a sequela (a residual effect (condition produced) after the acute phase of an illness or injury has terminated). The GEMs translation mapped ICD–9–CM traumatic injury codes to ICD–10–CM codes with the 7th character for an initial encounter. This extension is intended to be used when the patient is receiving active treatment such as

surgical treatment, an emergency department encounter, or evaluation and treatment by a new physician. These initial encounter extension codes are not appropriate for care in the HH setting and were deleted. Code extensions D, E, F, G, H, J, K, M, N, P, Q and R indicate the patient is being treated for a subsequent encounter (care for the injury during the healing or recovery phase) were included in the translation list in place of the initial encounter extensions. For example, S72.024A ''Nondisplaced fracture of epiphysis (separation) (upper) of right femur, initial encounter for closed fracture'' was deleted and S72.024D, S72.024E, S72.024F, S72.024G, S72.024H, S72.024J, S72.024K, S72.024M, S72.024N, S72.024P, S27.024Q, and S72.024R were retained for the reporting of aftercare provided by the HHA.

• *Elimination of codes for non-specific conditions when the clinician should be able to identify a more specific diagnosis based on clinical assessment.* The initial GEMs translation included non-specific codes, for example, ICD–10–CM code L02.519 ''cutaneous abscess of unspecified hand''. These have been deleted from the translation list whenever a more specific diagnosis could be identified by the clinician performing the initial assessment. The example code above (L02.519) was deleted because the clinician should be able to identify which hand had the abscess, and therefore, would report the injury using the code that specifies the right or left hand.

• *The diagnostic group (DG) assignment of ICD–10–CM codes in the translation replicates the ICD–9–CM assignment whenever possible.* Since ICD–9–CM to ICD–10–CM translation is not a 1-to-1 mapping process, there were cases where the DG assignment was ambiguous. When there was a conflict (such as 2 ICD–9–CM codes being translated to a single ICD–10–CM code that covered both conditions), DG assignment was based on clinical appropriateness and comparisons of relative resource use data (when available), such that the code was assigned to single DG that included other codes with similar resource use.

A draft list of ICD–10–CM codes to be included in the HH PPS Grouper has been developed based upon the process outlined above and 3M, our HH PPS Grouper maintenance contractor, has begun building and testing a Grouper version for use starting October 1, 2014, when OASIS–C1, the new version of the OASIS assessment which will use ICD–10–CM diagnosis codes, will be implemented. The draft translation list is available on the CMS HHA Center Web site at *http://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html.* We plan to participate in any ICD–10–CM provider outreach sessions that are scheduled and to provide updates, such as notifying HHAs of the draft translation list's availability during the HH, Hospice, and DME Open Door Forums and through list-serve announcements.

We plan to post a draft ICD–10–CM HH PPS Grouper via the CMS Web site on or before July 1, 2014. We also plan to share the draft ICD–10–CM HH PPS Grouper with those vendors that have registered as beta-testers in advance of posting the draft ICD–10 HH PPS Grouper on the CMS Web site. The purpose of early release to the beta testers is to identify any significant issues early in the process. Providers who are interested in enrolling as a beta site can obtain more information on the HH PPS Grouper Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/CaseMixGrouperSoftware.html.*

2. Diagnosis Reporting on Home Health Claims

Adherence to coding guidelines when assigning diagnosis codes is required under HIPAA. 3M conducted analysis of OASIS records and claims from CY 2011 and found that some HHAs were not complying with coding guidelines. Section 1.A.6 in the 2012 ICD–9–CM Coding Guidelines require that the underlying condition be sequenced first followed by the manifestation. Wherever such a combination exists, there is a ''use additional code'' note at the etiology code, and a ''code first'' note at the manifestation code. These instructional notes indicate the proper sequencing order of the codes, etiology followed by manifestation. In most cases, the title of these manifestation codes will include ''in diseases classified elsewhere'' or ''in conditions classified elsewhere.'' Codes with these phrases in the title are generally manifestation codes. ''In diseases classified elsewhere'' or ''in conditions classified elsewhere'' codes are never permitted to be used as first listed or principal diagnosis codes and they must be listed following the underlying condition. In ICD–10–CM, the same coding convention applies and can be found in section 1.A.13 of the ICD–10–CM guidance. Note, however, that there are also other manifestation codes that do not have ''in diseases classified elsewhere'' or ''in conditions classified elsewhere'' in their title. For such codes a ''use additional code'' note would still be present, and the rules for coding sequencing still apply. It should be noted that several dementia codes, which are not allowable as principal diagnoses per ICD–9–CM coding guidelines, are under the classification of ''Mental, Behavioral and Neurodevelopmental Disorders''. According to section 1.A6 of the ICD–9–CM coding guidelines for ''Mental, Behavioral and Neurodevelopmental Disorders'', dementias that fall under this category are ''most commonly a secondary manifestation of an underlying causal condition.'' To ensure additional compliance with ICD–10–CM Coding Guidelines, we will be adopting additional claims processing edits for all HH claims effective October 1, 2014. HH claims containing inappropriate principal or secondary diagnosis codes will be returned to the provider and will have to be corrected and resubmitted to be processed and paid. Additional details describing the specific edits that will be applied will be announced through a change request, an accompanying Medicare Learning Network article, and other CMS communication channels, such as the HH, Hospice, and DME Open Door Forum.

Finally, effective October 1, 2014, with the implementation of ICD–10–CM diagnosis code reporting, we anticipate that HHAs will be able to report all of the conditions included in the HH PPS Grouper as a primary or secondary diagnosis. There will no longer be a need for any conditions to be reported in the payment diagnosis field because all of the ICD–10–CM codes included in our HH PPS Grouper will be appropriate for reporting as a primary or secondary condition. As such, we are retiring Appendix D of OASIS (also referred to as Attachment D), effective October 1, 2014. All necessary guidance for providers is provided in the ICD–10–CM Coding Guidelines.

*C. Proposed Adjustment to the HH PPS Case-Mix Weights*

In the November 4, 2011 CY 2012 HH PPS final rule (76 FR 68543), we recalibrated the HH PPS case-mix weights to address incentives that existed in the HH PPS to provide unnecessary therapy services. In that final rule, we described that our review of HH PPS utilization data showed an increase in the share of episodes with very high numbers of therapy visits. This shift was first observed in 2008 and it continued in 2009. As described in the CY 2012 HH PPS final rule, we observed an increase of 25 percent in the share of episodes with 14 or more therapy visits from 2007 to 2008. In the

2009 sample, the share with 14 or more therapy visits continued to increase while the share of episodes with no therapy visits continued to decrease. The frequencies also indicated that the share of episodes with 20 or more therapy visits was 6 percent in 2009. This was a 50 percent increase from the share of episodes in 2007, when episodes with at least 20 therapy visits accounted for only 4 percent of episodes (76 FR 41003). Furthermore, in the CY 2012 HH PPS final rule, we described that in their 2010 and 2011 Reports to Congress, the Medicare Payment Advisory Commission (MedPAC) suggested that the HH PPS contains incentives which likely result in agencies providing more therapy than is needed. Moreover, in its 2011 Report to Congress, MedPAC suggested that the HH PPS may ''overvalue therapy services and undervalue nontherapy services.'' Our analysis of cost report data showed that in 2009, the average amount that payment exceeded cost for a normal (non-LUPA, non-PEP, non-outlier) episode with 14–19 therapy visits was more than $1,100 and the average amount that payment exceeded costs for a normal episode with 20 or more therapy visits was more than $1,500. In contrast, we noted that the average amount that payment exceeded costs for a normal episode with 1 to 5 therapy visits was around $300 (76 FR 68556). Therefore, we lowered the case-mix weights for high therapy episodes and increased the weights for episodes with little or no therapy. We then increased the average case-mix weights to 1.3440 to achieve budget neutrality to the most current, complete data available at the time, which was 2009. We stated that we believed the revision to the payment weights would result in more accurate HH PPS payments for targeted case-mix groups while addressing MedPAC's concerns that our reimbursement for therapy episodes was too high and our reimbursement for non-therapy episodes was too low. Also, we stated that we believed our revision of the payment weights will discourage the provision of unnecessary therapy services and will slow the growth of nominal case-mix (76 FR 68545).

As described in section III.D. of this proposed rule, we are proposing to rebase the national, standardized 60-day episode payment rate. One view of the goal for rebasing is to reset the payments under the HH PPS. When the HH PPS was created, we expected that the average case-mix weight would be around 1.00, but analysis has shown that it has consistently been above 1.00 since the start of the HH PPS. Therefore, as part of rebasing, for CY 2014, we propose to reset the average case-mix weight to 1.00. Specifically, we propose to use the 2012 revised case-mix weights, but lower them to an average case-mix weight of 1.00. We plan to implement the weight reduction by applying the same reduction factor to each weight, thereby maintaining the relative values in the weight set. Preliminary CY 2012 claims data shows that the average case-mix weight for non-LUPA episodes in 2012 is 1.3517. For CY 2014, we propose to reduce the average case-mix weight for 2012 from 1.3517 to 1.0000. We obtain the CY 2014 proposed weights shown in Table 3 by dividing the CY 2013 weights (which are the same weights as those finalized in CY 2012 rulemaking) by 1.3517. To offset the effect of resetting the case-mix weights such that the average is 1.00, we inflate the national, standardized 60-day episode payment rate by the same factor (1.3517) used to decrease the weights. The result will be the starting point from which rebasing adjustments are implemented. We note that the average case-mix weight for 2012 of 1.3517 is based on non-LUPA episodes starting from January 1, 2012 to May 31, 2012. As more 2012 data become available, we plan to update the estimated average case-mix weight for CY 2012 and adjust the case-mix weights and budget neutrality factor accordingly. Therefore, the weight reduction factor in the CY 2014 HH PPS final rule may be different from the one used to produce the proposed weights in this proposed rule. Please see the proposed weights in the Table 3.

TABLE 3—PROPOSED CY 2014 CASE-MIX WEIGHTS

| Payment group | Description | Clinical, functional, and service levels | 2013 HH PPS case-mix weights | 2014 Proposed HH PPS case-mix weights |
|---|---|---|---|---|
| 10111 | 1st and 2nd Episodes, 0 to 5 Therapy Visits | C1F1S1 | 0.8186 | 0.6056 |
| 10112 | 1st and 2nd Episodes, 6 Therapy Visits | C1F1S2 | 0.9793 | 0.7245 |
| 10113 | 1st and 2nd Episodes, 7 to 9 Therapy Visits | C1F1S3 | 1.1401 | 0.8435 |
| 10114 | 1st and 2nd Episodes, 10 Therapy Visits | C1F1S4 | 1.3008 | 0.9623 |
| 10115 | 1st and 2nd Episodes, 11 to 13 Therapy Visits | C1F1S5 | 1.4616 | 1.0813 |
| 10121 | 1st and 2nd Episodes, 0 to 5 Therapy Visits | C1F2S1 | 1.0275 | 0.7602 |
| 10122 | 1st and 2nd Episodes, 6 Therapy Visits | C1F2S2 | 1.1657 | 0.8624 |
| 10123 | 1st and 2nd Episodes, 7 to 9 Therapy Visits | C1F2S3 | 1.3039 | 0.9646 |
| 10124 | 1st and 2nd Episodes, 10 Therapy Visits | C1F2S4 | 1.4421 | 1.0669 |
| 10125 | 1st and 2nd Episodes, 11 to 13 Therapy Visits | C1F2S5 | 1.5804 | 1.1692 |
| 10131 | 1st and 2nd Episodes, 0 to 5 Therapy Visits | C1F3S1 | 1.1233 | 0.8310 |
| 10132 | 1st and 2nd Episodes, 6 Therapy Visits | C1F3S2 | 1.2520 | 0.9262 |
| 10133 | 1st and 2nd Episodes, 7 to 9 Therapy Visits | C1F3S3 | 1.3807 | 1.0215 |
| 10134 | 1st and 2nd Episodes, 10 Therapy Visits | C1F3S4 | 1.5094 | 1.1167 |
| 10135 | 1st and 2nd Episodes, 11 to 13 Therapy Visits | C1F3S5 | 1.6381 | 1.2119 |
| 10211 | 1st and 2nd Episodes, 0 to 5 Therapy Visits | C2F1S1 | 0.8340 | 0.6170 |
| 10212 | 1st and 2nd Episodes, 6 Therapy Visits | C2F1S2 | 1.0302 | 0.7622 |
| 10213 | 1st and 2nd Episodes, 7 to 9 Therapy Visits | C2F1S3 | 1.2265 | 0.9074 |
| 10214 | 1st and 2nd Episodes, 10 Therapy Visits | C2F1S4 | 1.4228 | 1.0526 |
| 10215 | 1st and 2nd Episodes, 11 to 13 Therapy Visits | C2F1S5 | 1.6190 | 1.1978 |
| 10221 | 1st and 2nd Episodes, 0 to 5 Therapy Visits | C2F2S1 | 1.0429 | 0.7715 |
| 10222 | 1st and 2nd Episodes, 6 Therapy Visits | C2F2S2 | 1.2166 | 0.9001 |
| 10223 | 1st and 2nd Episodes, 7 to 9 Therapy Visits | C2F2S3 | 1.3903 | 1.0286 |
| 10224 | 1st and 2nd Episodes, 10 Therapy Visits | C2F2S4 | 1.5641 | 1.1571 |
| 10225 | 1st and 2nd Episodes, 11 to 13 Therapy Visits | C2F2S5 | 1.7378 | 1.2856 |
| 10231 | 1st and 2nd Episodes, 0 to 5 Therapy Visits | C2F3S1 | 1.1387 | 0.8424 |
| 10232 | 1st and 2nd Episodes, 6 Therapy Visits | C2F3S2 | 1.3029 | 0.9639 |

TABLE 3—PROPOSED CY 2014 CASE-MIX WEIGHTS—Continued

| Payment group | Description | Clinical, functional, and service levels | 2013 HH PPS case-mix weights | 2014 Proposed HH PPS case-mix weights |
|---|---|---|---|---|
| 10233 | 1st and 2nd Episodes, 7 to 9 Therapy Visits | C2F3S3 | 1.4671 | 1.0854 |
| 10234 | 1st and 2nd Episodes, 10 Therapy Visits | C2F3S4 | 1.6313 | 1.2069 |
| 10235 | 1st and 2nd Episodes, 11 to 13 Therapy Visits | C2F3S5 | 1.7956 | 1.3284 |
| 10311 | 1st and 2nd Episodes, 0 to 5 Therapy Visits | C3F1S1 | 0.9071 | 0.6711 |
| 10312 | 1st and 2nd Episodes, 6 Therapy Visits | C3F1S2 | 1.1348 | 0.8395 |
| 10313 | 1st and 2nd Episodes, 7 to 9 Therapy Visits | C3F1S3 | 1.3624 | 1.0079 |
| 10314 | 1st and 2nd Episodes, 10 Therapy Visits | C3F1S4 | 1.5900 | 1.1763 |
| 10315 | 1st and 2nd Episodes, 11 to 13 Therapy Visits | C3F1S5 | 1.8177 | 1.3448 |
| 10321 | 1st and 2nd Episodes, 0 to 5 Therapy Visits | C3F2S1 | 1.1160 | 0.8256 |
| 10322 | 1st and 2nd Episodes, 6 Therapy Visits | C3F2S2 | 1.3211 | 0.9774 |
| 10323 | 1st and 2nd Episodes, 7 to 9 Therapy Visits | C3F2S3 | 1.5262 | 1.1291 |
| 10324 | 1st and 2nd Episodes, 10 Therapy Visits | C3F2S4 | 1.7313 | 1.2808 |
| 10325 | 1st and 2nd Episodes, 11 to 13 Therapy Visits | C3F2S5 | 1.9364 | 1.4326 |
| 10331 | 1st and 2nd Episodes, 0 to 5 Therapy Visits | C3F3S1 | 1.2118 | 0.8965 |
| 10332 | 1st and 2nd Episodes, 6 Therapy Visits | C3F3S2 | 1.4074 | 1.0412 |
| 10333 | 1st and 2nd Episodes, 7 to 9 Therapy Visits | C3F3S3 | 1.6030 | 1.1859 |
| 10334 | 1st and 2nd Episodes, 10 Therapy Visits | C3F3S4 | 1.7986 | 1.3306 |
| 10335 | 1st and 2nd Episodes, 11 to 13 Therapy Visits | C3F3S5 | 1.9942 | 1.4753 |
| 21111 | 1st and 2nd Episodes, 14 to 15 Therapy Visits | C1F1S1 | 1.6223 | 1.2002 |
| 21112 | 1st and 2nd Episodes, 16 to 17 Therapy Visits | C1F1S2 | 1.8331 | 1.3561 |
| 21113 | 1st and 2nd Episodes, 18 to 19 Therapy Visits | C1F1S3 | 2.0438 | 1.5120 |
| 21121 | 1st and 2nd Episodes, 14 to 15 Therapy Visits | C1F2S1 | 1.7186 | 1.2714 |
| 21122 | 1st and 2nd Episodes, 16 to 17 Therapy Visits | C1F2S2 | 1.9496 | 1.4423 |
| 21123 | 1st and 2nd Episodes, 18 to 19 Therapy Visits | C1F2S3 | 2.1807 | 1.6133 |
| 21131 | 1st and 2nd Episodes, 14 to 15 Therapy Visits | C1F3S1 | 1.7668 | 1.3071 |
| 21132 | 1st and 2nd Episodes, 16 to 17 Therapy Visits | C1F3S2 | 2.0252 | 1.4983 |
| 21133 | 1st and 2nd Episodes, 18 to 19 Therapy Visits | C1F3S3 | 2.2836 | 1.6894 |
| 21211 | 1st and 2nd Episodes, 14 to 15 Therapy Visits | C2F1S1 | 1.8153 | 1.3430 |
| 21212 | 1st and 2nd Episodes, 16 to 17 Therapy Visits | C2F1S2 | 2.0224 | 1.4962 |
| 21213 | 1st and 2nd Episodes, 18 to 19 Therapy Visits | C2F1S3 | 2.2294 | 1.6493 |
| 21221 | 1st and 2nd Episodes, 14 to 15 Therapy Visits | C2F2S1 | 1.9116 | 1.4142 |
| 21222 | 1st and 2nd Episodes, 16 to 17 Therapy Visits | C2F2S2 | 2.1389 | 1.5824 |
| 21223 | 1st and 2nd Episodes, 18 to 19 Therapy Visits | C2F2S3 | 2.3663 | 1.7506 |
| 21231 | 1st and 2nd Episodes, 14 to 15 Therapy Visits | C2F3S1 | 1.9598 | 1.4499 |
| 21232 | 1st and 2nd Episodes, 16 to 17 Therapy Visits | C2F3S2 | 2.2145 | 1.6383 |
| 21233 | 1st and 2nd Episodes, 18 to 19 Therapy Visits | C2F3S3 | 2.4691 | 1.8267 |
| 21311 | 1st and 2nd Episodes, 14 to 15 Therapy Visits | C3F1S1 | 2.0453 | 1.5131 |
| 21312 | 1st and 2nd Episodes, 16 to 17 Therapy Visits | C3F1S2 | 2.2682 | 1.6780 |
| 21313 | 1st and 2nd Episodes, 18 to 19 Therapy Visits | C3F1S3 | 2.4911 | 1.8429 |
| 21321 | 1st and 2nd Episodes, 14 to 15 Therapy Visits | C3F2S1 | 2.1415 | 1.5843 |
| 21322 | 1st and 2nd Episodes, 16 to 17 Therapy Visits | C3F2S2 | 2.3848 | 1.7643 |
| 21323 | 1st and 2nd Episodes, 18 to 19 Therapy Visits | C3F2S3 | 2.6280 | 1.9442 |
| 21331 | 1st and 2nd Episodes, 14 to 15 Therapy Visits | C3F3S1 | 2.1897 | 1.6200 |
| 21332 | 1st and 2nd Episodes, 16 to 17 Therapy Visits | C3F3S2 | 2.4603 | 1.8202 |
| 21333 | 1st and 2nd Episodes, 18 to 19 Therapy Visits | C3F3S3 | 2.7309 | 2.0203 |
| 22111 | 3rd+ Episodes, 14 to 15 Therapy Visits | C1F1S1 | 1.6822 | 1.2445 |
| 22112 | 3rd+ Episodes, 16 to 17 Therapy Visits | C1F1S2 | 1.8730 | 1.3857 |
| 22113 | 3rd+ Episodes, 18 to 19 Therapy Visits | C1F1S3 | 2.0638 | 1.5268 |
| 22121 | 3rd+ Episodes, 14 to 15 Therapy Visits | C1F2S1 | 1.7628 | 1.3041 |
| 22122 | 3rd+ Episodes, 16 to 17 Therapy Visits | C1F2S2 | 1.9791 | 1.4642 |
| 22123 | 3rd+ Episodes, 18 to 19 Therapy Visits | C1F2S3 | 2.1954 | 1.6242 |
| 22131 | 3rd+ Episodes, 14 to 15 Therapy Visits | C1F3S1 | 1.9247 | 1.4239 |
| 22132 | 3rd+ Episodes, 16 to 17 Therapy Visits | C1F3S2 | 2.1305 | 1.5762 |
| 22133 | 3rd+ Episodes, 18 to 19 Therapy Visits | C1F3S3 | 2.3362 | 1.7283 |
| 22211 | 3rd+ Episodes, 14 to 15 Therapy Visits | C2F1S1 | 1.8508 | 1.3692 |
| 22212 | 3rd+ Episodes, 16 to 17 Therapy Visits | C2F1S2 | 2.0460 | 1.5136 |
| 22213 | 3rd+ Episodes, 18 to 19 Therapy Visits | C2F1S3 | 2.2412 | 1.6581 |
| 22221 | 3rd+ Episodes, 14 to 15 Therapy Visits | C2F2S1 | 1.9314 | 1.4289 |
| 22222 | 3rd+ Episodes, 16 to 17 Therapy Visits | C2F2S2 | 2.1521 | 1.5921 |
| 22223 | 3rd+ Episodes, 18 to 19 Therapy Visits | C2F2S3 | 2.3729 | 1.7555 |
| 22231 | 3rd+ Episodes, 14 to 15 Therapy Visits | C2F3S1 | 2.0933 | 1.5486 |
| 22232 | 3rd+ Episodes, 16 to 17 Therapy Visits | C2F3S2 | 2.3035 | 1.7042 |
| 22233 | 3rd+ Episodes, 18 to 19 Therapy Visits | C2F3S3 | 2.5136 | 1.8596 |
| 22311 | 3rd+ Episodes, 14 to 15 Therapy Visits | C3F1S1 | 2.0747 | 1.5349 |
| 22312 | 3rd+ Episodes, 16 to 17 Therapy Visits | C3F1S2 | 2.2878 | 1.6925 |
| 22313 | 3rd+ Episodes, 18 to 19 Therapy Visits | C3F1S3 | 2.5009 | 1.8502 |
| 22321 | 3rd+ Episodes, 14 to 15 Therapy Visits | C3F2S1 | 2.1553 | 1.5945 |
| 22322 | 3rd+ Episodes, 16 to 17 Therapy Visits | C3F2S2 | 2.3940 | 1.7711 |

TABLE 3—PROPOSED CY 2014 CASE-MIX WEIGHTS—Continued

| Payment group | Description | Clinical, functional, and service levels | 2013 HH PPS case-mix weights | 2014 Proposed HH PPS case-mix weights |
|---|---|---|---|---|
| 22323 | 3rd+ Episodes, 18 to 19 Therapy Visits | C3F2S3 | 2.6326 | 1.9476 |
| 22331 | 3rd+ Episodes, 14 to 15 Therapy Visits | C3F3S1 | 2.3172 | 1.7143 |
| 22332 | 3rd+ Episodes, 16 to 17 Therapy Visits | C3F3S2 | 2.5453 | 1.8830 |
| 22333 | 3rd+ Episodes, 18 to 19 Therapy Visits | C3F3S3 | 2.7734 | 2.0518 |
| 30111 | 3rd+ Episodes, 0 to 5 Therapy Visits | C1F1S1 | 0.6692 | 0.4951 |
| 30112 | 3rd+ Episodes, 6 Therapy Visits | C1F1S2 | 0.8718 | 0.6450 |
| 30113 | 3rd+ Episodes, 7 to 9 Therapy Visits | C1F1S3 | 1.0744 | 0.7949 |
| 30114 | 3rd+ Episodes, 10 Therapy Visits | C1F1S4 | 1.2770 | 0.9447 |
| 30115 | 3rd+ Episodes, 11 to 13 Therapy Visits | C1F1S5 | 1.4796 | 1.0946 |
| 30121 | 3rd+ Episodes, 0 to 5 Therapy Visits | C1F2S1 | 0.8421 | 0.6230 |
| 30122 | 3rd+ Episodes, 6 Therapy Visits | C1F2S2 | 1.0263 | 0.7593 |
| 30123 | 3rd+ Episodes, 7 to 9 Therapy Visits | C1F2S3 | 1.2104 | 0.8955 |
| 30124 | 3rd+ Episodes, 10 Therapy Visits | C1F2S4 | 1.3945 | 1.0317 |
| 30125 | 3rd+ Episodes, 11 to 13 Therapy Visits | C1F2S5 | 1.5787 | 1.1679 |
| 30131 | 3rd+ Episodes, 0 to 5 Therapy Visits | C1F3S1 | 0.9352 | 0.6919 |
| 30132 | 3rd+ Episodes, 6 Therapy Visits | C1F3S2 | 1.1331 | 0.8383 |
| 30133 | 3rd+ Episodes, 7 to 9 Therapy Visits | C1F3S3 | 1.3310 | 0.9847 |
| 30134 | 3rd+ Episodes, 10 Therapy Visits | C1F3S4 | 1.5289 | 1.1311 |
| 30135 | 3rd+ Episodes, 11 to 13 Therapy Visits | C1F3S5 | 1.7268 | 1.2775 |
| 30211 | 3rd+ Episodes, 0 to 5 Therapy Visits | C2F1S1 | 0.7361 | 0.5446 |
| 30212 | 3rd+ Episodes, 6 Therapy Visits | C2F1S2 | 0.9591 | 0.7096 |
| 30213 | 3rd+ Episodes, 7 to 9 Therapy Visits | C2F1S3 | 1.1820 | 0.8745 |
| 30214 | 3rd+ Episodes, 10 Therapy Visits | C2F1S4 | 1.4049 | 1.0394 |
| 30215 | 3rd+ Episodes, 11 to 13 Therapy Visits | C2F1S5 | 1.6278 | 1.2043 |
| 30221 | 3rd+ Episodes, 0 to 5 Therapy Visits | C2F2S1 | 0.9091 | 0.6726 |
| 30222 | 3rd+ Episodes, 6 Therapy Visits | C2F2S2 | 1.1136 | 0.8239 |
| 30223 | 3rd+ Episodes, 7 to 9 Therapy Visits | C2F2S3 | 1.3180 | 0.9751 |
| 30224 | 3rd+ Episodes, 10 Therapy Visits | C2F2S4 | 1.5225 | 1.1264 |
| 30225 | 3rd+ Episodes, 11 to 13 Therapy Visits | C2F2S5 | 1.7269 | 1.2776 |
| 30231 | 3rd+ Episodes, 0 to 5 Therapy Visits | C2F3S1 | 1.0022 | 0.7414 |
| 30232 | 3rd+ Episodes, 6 Therapy Visits | C2F3S2 | 1.2204 | 0.9029 |
| 30233 | 3rd+ Episodes, 7 to 9 Therapy Visits | C2F3S3 | 1.4386 | 1.0643 |
| 30234 | 3rd+ Episodes, 10 Therapy Visits | C2F3S4 | 1.6568 | 1.2257 |
| 30235 | 3rd+ Episodes, 11 to 13 Therapy Visits | C2F3S5 | 1.8751 | 1.3872 |
| 30311 | 3rd+ Episodes, 0 to 5 Therapy Visits | C3F1S1 | 0.9324 | 0.6898 |
| 30312 | 3rd+ Episodes, 6 Therapy Visits | C3F1S2 | 1.1609 | 0.8588 |
| 30313 | 3rd+ Episodes, 7 to 9 Therapy Visits | C3F1S3 | 1.3893 | 1.0278 |
| 30314 | 3rd+ Episodes, 10 Therapy Visits | C3F1S4 | 1.6178 | 1.1969 |
| 30315 | 3rd+ Episodes, 11 to 13 Therapy Visits | C3F1S5 | 1.8463 | 1.3659 |
| 30321 | 3rd+ Episodes, 0 to 5 Therapy Visits | C3F2S1 | 1.1054 | 0.8178 |
| 30322 | 3rd+ Episodes, 6 Therapy Visits | C3F2S2 | 1.3154 | 0.9731 |
| 30323 | 3rd+ Episodes, 7 to 9 Therapy Visits | C3F2S3 | 1.5254 | 1.1285 |
| 30324 | 3rd+ Episodes, 10 Therapy Visits | C3F2S4 | 1.7353 | 1.2838 |
| 30325 | 3rd+ Episodes, 11 to 13 Therapy Visits | C3F2S5 | 1.9453 | 1.4392 |
| 30331 | 3rd+ Episodes, 0 to 5 Therapy Visits | C3F3S1 | 1.1985 | 0.8867 |
| 30332 | 3rd+ Episodes, 6 Therapy Visits | C3F3S2 | 1.4222 | 1.0522 |
| 30333 | 3rd+ Episodes, 7 to 9 Therapy Visits | C3F3S3 | 1.6460 | 1.2177 |
| 30334 | 3rd+ Episodes, 10 Therapy Visits | C3F3S4 | 1.8697 | 1.3832 |
| 30335 | 3rd+ Episodes, 11 to 13 Therapy Visits | C3F3S5 | 2.0935 | 1.5488 |
| 40111 | All Episodes, 20+ Therapy Visits | C1F1S1 | 2.2546 | 1.6680 |
| 40121 | All Episodes, 20+ Therapy Visits | C1F2S1 | 2.4117 | 1.7842 |
| 40131 | All Episodes, 20+ Therapy Visits | C1F3S1 | 2.5419 | 1.8805 |
| 40211 | All Episodes, 20+ Therapy Visits | C2F1S1 | 2.4364 | 1.8025 |
| 40221 | All Episodes, 20+ Therapy Visits | C2F2S1 | 2.5936 | 1.9188 |
| 40231 | All Episodes, 20+ Therapy Visits | C2F3S1 | 2.7238 | 2.0151 |
| 40311 | All Episodes, 20+ Therapy Visits | C3F1S1 | 2.7140 | 2.0078 |
| 40321 | All Episodes, 20+ Therapy Visits | C3F2S1 | 2.8712 | 2.1241 |
| 40331 | All Episodes, 20+ Therapy Visits | C3F3S1 | 3.0014 | 2.2205 |

We also note that we plan to continue to evaluate and potentially revise the case-mix weights relative to one another as more recent utilization and cost report data become available. Fully addressing MedPAC's concerns with the way the HH PPS factors therapy visits into the case-mix system is a complex process which will require more comprehensive analysis and potentially additional structural changes to the HH PPS. While we plan to address MedPAC's concerns in a more comprehensive way in future years, we propose that for the short term, we use the CY 2012 case-mix weights reset to an average case-mix of 1.0. We plan to continue to monitor case-mix growth

(both real and nominal case-mix growth), and address it accordingly in the future.

*D. Rebasing the National, Standardized 60-day Episode Payment Rate, LUPA Per-Visit Payment Amounts, and Nonroutine Medical Supply (NRS) Conversion Factor*

1. Rebasing the National, Standardized 60-Day Episode Payment Rate

Section 3131(a) of the Affordable Care Act mandates that starting in CY 2014, the Secretary must apply an adjustment to the national, standardized 60-day episode payment rate and other amounts applicable under section 1895(b)(3)(A)(i)(III) of the Act to reflect factors such as changes in the number of visits in an episode, the mix of services in an episode, the level of intensity of services in an episode, the average cost of providing care per episode, and other relevant factors. In addition, section 3131(a) of the Affordable Care Act mandates that this rebasing must be phased-in over a 4-year period in equal increments, not to exceed 3.5 percent of the amount (or amounts) in any given year applicable under section 1895(b)(3)(A)(i)(III) of the Act, and be fully implemented by CY 2017. To fulfill this mandate, we have performed extensive analysis of cost report and claims data. We used FY 2011 cost report data as of December 31, 2012; which was the latest, complete cost report data available at the time of the analysis.

a. Trimming Methodology

When examining data from all 10,327 Medicare cost reports from FY 2011, we found that a number of the cost reports had missing or questionable data and extreme values. These cost reports were often missing necessary information for calculating episode costs, reported significantly different data than data from prior cost reports for the same provider, or were markedly different than cost reports from the majority of HHAs during the same time period. Since these extreme values can significantly affect average estimated costs and are more indicative of misreporting rather than actual costs, we developed a trimming methodology to obtain a more robust estimate of costs.

The trimming methodology applied to the cost reports consisted of a two-tier process. First, providers' cost reports were compared longitudinally to identify large year-to-year discrepancies. Second, cost reports were compared cross-sectionally to cost reports from the same fiscal year. It should be noted that the trimming methodology was developed using FY 2000 through FY 2010 cost reports and then applied to the FY 2011 cost reports. The first step in the trimming methodology excluded all cost reports with missing provider numbers. In FY 2011, zero providers were excluded by this exclusion criterion. Next, cost reports that did not report the number of episodes were excluded from the FY 2011 sample. This restriction eliminated 2,348 of the FY 2011 cost reports. Of these 2,348 cost reports, 1,629 were also missing data on total costs or payments. The next step in the trimming methodology excluded cost reports that were significantly different from prior cost reports from the same provider. Specifically, we sorted the FY 2000 to FY 2011 cost reports by fiscal year for each provider and excluded a cost report if the number of episodes reported increased from the provider's previous cost report to the current cost report by: (1) More than a factor of ten and the new report of episodes is greater than 1,000; or (2) more than a factor of five and the new report of episodes is greater than or equal to 5,000. After dropping cost reports which met these exclusion criteria, the process was repeated for two additional iterations. This exclusion criterion resulted in the exclusion of 171 cost reports from the FY 2011 sample. The goal of this longitudinal exclusion criterion was to systematically eliminate misreporting of episodes.

Initially, we did not apply longitudinal trims; however, when looking at the cost reports from FY 2000 through FY 2011, we identified large drops in the average number of visits per episode across the years, which then resulted in a lower average cost per episode. Further examination of the cause of the drops in average visits per episode led to the identification of a number of providers who seemingly misreported the number of episodes on the cost report. The data showed that the number of episodes on the cost reports often outnumbered the number of episodes from the claims by factors of 10 or 20. Therefore, we developed the longitudinal trim to increase the accuracy of the data from the cost reports. After the longitudinal restriction was applied, there were 7,808 cost reports in the FY 2011 cost report sample.

After the longitudinal trims, we applied cross sectional trims to the sample, consisting of basic exclusions, some of which are similar to MedPAC's exclusion criteria. Specifically, cost reports were excluded if they met any of the following criteria:

- Cost report was not settled or tentatively settled (for freestanding facilities only).
- Time covered by the cost report was less than 10 months or greater than 14 months.
- The cost report was missing total payment or total cost information.
- Costs per episode were in the highest and lowest 1 percent across providers in the given year.
- The cost report had a negative value for the number of visits per episode for any discipline, as reported directly in the visit information.[1]
- The cost report showed an unreasonably high visit count (greater than 500,000,000) in any discipline. (*Note:* There were no cost reports with unreasonable high visit counts in FY 2011.)
- The cost report had negative average costs per visit in any discipline, derived from reported costs and visits on the cost report.
- The cost report had negative total costs.
- The provider reported fewer than 10 Medicare non-LUPA episodes on the FY cost report.
- The cost report was missing discipline-specific cost information where there was information on visits or vice versa.

In Table 4, we list information on the number of cost reports trimmed for each criterion. After applying the cross sectional trims, 6,252 cost reports were left in the 2011 sample. These cost reports were then used to estimate the average cost per visit and average cost per episode for 2011. We note that using the trimmed sample results in an estimated average cost per episode that was $1,000 more than the estimated cost per episode using the untrimmed, complete cost report sample.

[1] Visit information was taken from worksheet S3, column 5, rows 1–6 for freestanding providers and worksheet H6, column 4, rows 1–6 for hospital-based providers.

TABLE 4—COUNTS FOR EXCLUSION CRITERIA USED TO DEVELOP THE TRIMMED COST REPORT SAMPLE

| Restrictions in cost report sample | Number of cost reports |
|---|---|
| Untrimmed sample size | 10,327 |
| Longitudinal restrictions: | |
| Missing Provider Number | 0 |
| Missing Episode Count | 2348 |
| Significant Episode Change from year to year | 92 |
| 2nd iteration | 54 |
| 3rd iteration | 25 |
| Sample Size after Longitudinal Restrictions | 7808 |
| Cross Sectional Restrictions: | |
| Not Settled (freestanding only) | 874 |
| <10 or >14 months in report | 210 |
| Missing Payments or Costs | 11 |
| Top and Bottom 1% of costs/episode | 163 |
| Greater than 500,000,000 visits | 0 |
| Negative costs per visit | 5 |
| Negative visits per episode | 0 |
| Negative total costs | 0 |
| Less than ten episodes | 60 |
| Missing visits when costs are reported or vice versa | 375 |
| Number of Cost Reports excluded by Cross Sectional Restrictions | 1,556 |
| Trimmed Cost Report sample | 6,252 |

Note(s): The cross sectional restrictions are implemented simultaneously so cost reports may be counted in a number of the cross sectional restrictions (the numbers describing the cost reports for each of the cross sectional restrictions are not mutually exclusive). There were 1,556 cost reports excluded from the sample as a result of the cross sectional restrictions.

b. Cost Report Audits

To verify the integrity of the cost report data and to assess the validity of the trimming methodology, one of our Medicare Administrative Contractors (MAC) was tasked with performing audits of 100 HH cost reports. The cost reports were selected from a trimmed sample of FY 2010 cost reports, which was the latest data available at the time, and the audit sample was stratified across provider characteristics (such as agency size and ownership status) to ensure representation across provider types. Cost reports with 95 or fewer episodes were excluded from the audit sample so that we could focus the audits on providers that have a significant weight in the sample and that may have a substantial influence on the average costs per visit and the cost per episode estimates. In addition, we note that the audit sample was selected from a trimmed sample that had additionally been cross-referenced with claims data for accuracy.

The MAC conducted 98 audits. Two providers did not provide the information needed to complete the audit. The audit results showed that the majority of providers in the audit sample overstated their costs on the cost report by an average of about 8 percent. Commonly, providers reported non-allowable costs or lacked sufficient documentation to justify the allowable costs, which led to a decrease in the costs per visit. There were a small number of cases where the costs per visit either increased or were unchanged as a result of the audit. Of the 98 providers audited, eight providers were referred to the Zone Program Integrity Contractors for further fraud investigation as a result of the findings in their audits.

After obtaining the audit results, we applied weights to the data in the audit sample so that it would be representative of the trimmed sample and we could compare the costs per visit per discipline in the trimmed sample to the pre-audit sample and the post audit sample. The trimmed sample resulted in a slightly higher average cost per episode when compared to data in the pre-audit sample. When comparing the pre-audit sample data to the post-audit sample data, we observed an average reduction of 8 to 9 percent in the costs per visit across all disciplines, except medical social services which averaged a 5 percent reduction in the allowable costs per visit. These audited costs per visit across the disciplines reduced the average cost per episode by 7.8 percent when comparing the pre-audit data to the post-audit adjusted data. The results of the audits indicate that the trimmed sample used for this proposed rule likely over-estimates the average cost per visit and average cost per episode for providers.

c. Weighting the 2011 Trimmed Medicare Cost Report Sample and Computation of the 2011 Estimated Cost per Episode

After applying the trimming methodology to the 2011 Medicare cost reports, we computed the estimated mean cost per visit per discipline by dividing the total costs for a discipline by the total number of visits in our sample. We then applied weights to the sample to ensure that the costs per visit, per discipline used to calculate the average costs per episode were nationally representative. We calculated and applied weights based on three characteristics: provider type, provider size, and the providers' urban/rural status. We determined provider size by examining the number of episodes by provider on the 2011 claim. We determined provider type and urban/rural status by matching the trimmed cost report sample to the Provider of Services file. The Provider of Service file is data collected through the survey and certification process conducted for any institutional provider seeking inclusion in the Medicare and Medicaid programs. It contains information such as provider name, address, staffing, number of beds, ownership, and is used internally and by researchers to obtain certification information about the provider.

To weight the costs per visit per discipline in our sample to be nationally representative, we compared the number of visits in our sample in each

provider type-size-urban/rural combination to the number of visits in the provider type-size-urban/rural combination as taken from the national 2011 claims. The visits for a particular provider were weighted by the ratio of the number of visits in the type-size-urban/rural combination in the national claims over the number of visits in the type-size-urban/rural combination in our sample. That is, the total number of visits in the sample were weighted such that the total weights (weighted visits) in each of the type-size-urban/rural combination equaled the number of visits in the type-size-urban/rural combination as recorded on the claims, and the sum of weighted visits across all type-size-urban/rural combinations equals the total number of visits recorded on the claims. After reweighting the visits, the average costs per visit for each discipline for a provider was recalculated. We note that the weight each provider contributes to the average costs per visit is equal to the number of visits the provider reported on the cost report times the total number of visits for the provider's type-size-urban/rural combination in the national claims divided by the number of visits in the provider's type-size-urban/rural combination in our sample. As such, providers with a higher number of visits still receive more weight in calculating the mean, aside from the type-size-urban/rural representativeness adjustment. The estimated costs per visit per episode before and after weighting are shown in Table 5. The weighting results in higher average costs per visit for all disciplines as compared to the un-weighted average costs per visit. The CMS Home Health Agency (HHA) Center Web site (*http://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html?redirect=/center/hha.asp*) provides a file with the resulting weights, the provider number, provider type, provider size, and urban/rural status and average costs per visit by discipline that can be used to produce the weighted average costs per visit for all disciplines as presented in Table 5. Documentation describing the fields on the cost report we used in our calculations is also available at *http://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html?redirect=/center/hha.asp*.

TABLE 5—2011 ESTIMATED COSTS PER VISIT, UN-WEIGHTED AND WEIGHTED

| Discipline | 2011 Per-visit costs, unweighted | 2011 Per-visit costs, weighted |
|---|---|---|
| Skilled Nursing | $129.56 | $131.51 |
| Home Health Aide | 65.07 | 65.22 |
| Physical Therapy | 159.99 | 160.69 |
| Occupational Therapy | 158.96 | 159.55 |
| Speech-Language Pathology | 169.28 | 170.80 |
| Medical Social Services | 217.63 | 218.91 |

Source: CY 2011 Medicare claims data and FY 2011 Medicare cost report data as of December 31, 2012.
**Notes(s):** The costs per visit, per discipline for providers were weighted by provider type, provider size and urban/rural status to be nationally representative.

Using the nationally-weighted average costs per visit from the trimmed FY 2011 HH Medicare cost report sample and the visits per episode estimates for each discipline from 2011 national claims data, we estimated the 2011 average cost per episode. As shown in Table 6, we multiplied the average cost per visit by the average number of visits for each of the six disciplines and summed the results to generate an estimated 60-day episode cost for 2011 of $2,453.71. This methodology used to calculate the episode cost is consistent with the methodology used in setting the 60-day episode base rate for the HH PPS in 2000. We note that the 2011 estimated cost per episode includes normal, PEP, and outlier episodes.

TABLE 6—2011 AVERAGE COSTS PER VISIT AND AVERAGE NUMBER OF VISITS FOR A 60-DAY EPISODE

| Discipline | 2011 Average costs per visit | 2011 Average number of visits | 2011 60-Day episode costs |
|---|---|---|---|
| Skilled Nursing | $131.51 | 9.43 | $1,240.14 |
| Home Health Aide | 65.22 | 2.80 | 182.62 |
| Physical Therapy | 160.69 | 4.86 | 780.95 |
| Occupational Therapy | 159.55 | 1.15 | 183.48 |
| Speech- Language Pathology | 170.80 | 0.21 | 35.87 |
| Medical Social Services | 218.91 | 0.14 | 30.65 |
| Total | | | $2,453.71 |

Source: CY 2011 Medicare claims data and 2011 Medicare cost report data as of December 31, 2012.

d. Calculating the Estimated Average Cost per Episode

To determine the rebasing adjustment to the 60-day national, standardized episode payment rate, we compared the 2013 estimated average payment per episode to the 2013 estimated average cost per episode. To calculate the 2013 estimated average cost per episode, we first applied an adjustment to account for the visit distribution change observed in claims data from 2011 to 2012 (Table 7). We compared the 2011 estimated cost per episode using the 2011 visit distribution to the 2011 estimated cost per episode using the 2012 visit distribution. The 2011 estimated cost per episode is $2,453.71 when using the 2011 visit profile and the 2011 estimated cost per episode is $2,443.34 when using the 2012 visit profile. Using the two 2011 estimated costs per episode, we calculated an adjustment factor to account for the visit

difference between 2011 and 2012 claims (1 + (2443.34–2453.71)/2453.71 = 0.9958). We plan to update the 2012 visit distribution as more data become available, and therefore, the estimated cost per episode may change slightly for the final rule.

TABLE 7—COMPARISON OF THE 2011 AND 2012 VISIT DISTRIBUTION FROM CLAIMS DATA

| Discipline | 2011 Average number of visits per episode | 2012 Average number of visits per episode |
|---|---|---|
| Skilled Nursing | 9.43 | 9.39 |
| Home Health Aide | 2.80 | 2.62 |
| Physical Therapy | 4.86 | 4.88 |
| Occupational Therapy | 1.15 | 1.15 |
| Speech- Language Pathology | 0.21 | 0.23 |
| Medical Social Services | 0.14 | 0.14 |
| Total Number of Visits per Episode | 18.59 | 18.41 |

Source: CY 2011 Medicare claims data and CY 2012 Medicare claims data for episodes starting between January 1, 2012, and May 31, 2012.

After applying the adjustment to account for the visit distribution change between 2011 and 2012, we multiplied the estimated, average cost per episode by the HH market basket update for 2012 and by the HH market basket update for 2013. We note that when setting the 60-day episode base rate for the HH PPS in 2000, we also updated costs from cost reports by the market basket updates to reflect expected cost increases. This gives us an estimated, average cost per episode for CY 2013.

TABLE 8—2013 ESTIMATED COST PER EPISODE

| 2011 Estimated cost per episode | Factor for 2011–2012 visit distribution difference | 2012 Market basket update | 2013 Market basket update | 2013 Estimated cost per episode |
|---|---|---|---|---|
| $2,453.71 | × 0.9958 | × 1.024 | × 1.023 | = $2,559.59 |

e. Calculating the Estimated Average Payment per Episode

To develop the 2013 estimated average payment per episode, we started with the CY 2012 national, standardized 60-day episode payment rate and applied a number of factors. Since we are proposing to reset the average case-mix weight from 1.3517 to 1.0000 (see section III.C. of this proposed rule), we first increased the CY 2012 60-day episode payment rate by 1.3517. The 60-day episode payment rate in CY 2012 was $2,138.52. By inflating the CY 2012 60-day episode payment rate by the budget neutrality factor to account for the downward adjustment of the weights to an average case-mix of 1.0000, we obtain the average CY 2012 payment per episode. Then by applying the CY 2013 payment policy updates (1.3 percent HH payment update percentage and the 1.32 percent payment reduction for nominal case-mix growth), we obtain the estimated average CY 2013 payment per episode. We note that the Medicare cost reports do not differentiate between normal, PEP, and outlier episodes in the reporting of costs per discipline. Therefore, the CY 2013 estimated average cost per episode includes costs for normal, PEP, and outlier episodes. To compare the episode payment to the average cost of an episode, we add the dollars from the 2.5 percent outlier pool back into the payment per episode (Table 9). In our calculation of the proposed CY 2014 national, standardized 60-day episode payment rate, we remove the outlier dollars (see Tables 16 and 17 in section III.E.4.b. of this proposed rule).

TABLE 9—2013 ESTIMATED AVERAGE PAYMENT PER EPISODE

| 2012 National, standardized 60-day episode payment rate | Budget neutrality factor to account for case-mix weight adjustment to 1.00 | 2013 Payment reduction for nominal case-mix growth | 2013 HH Payment update percentage | Outlier adjustment | 2013 Estimated average payment per episode |
|---|---|---|---|---|---|
| $2,138.52 | × 1.3517 | × 0.9868 | × 1.013 | ÷ 0.975 | = $2,963.65 |

f. Calculating the Rebasing Adjustment to the National, Standardized 60-day Episode Payment Rate

Comparing the 2013 estimated average payment per episode to the 2013 estimated average cost per episode; we obtain a difference of −13.63 percent (($2,559.59–$2,963.65)/$2,963.65) (see Table 10).

TABLE 10—COMPARISON OF THE AVERAGE PAYMENT PER EPISODE TO THE AVERAGE COST PER EPISODE

| 2013 Payment per episode | 2013 Estimated cost per episode | Percent difference |
|---|---|---|
| $2,963.65 | $2,559.59 | −13.63 |

Phasing-in the −13.63 percent reduction over 4 years in equal increments would result in an annual reduction of 3.60 percent. Since the Affordable Care Act states that the reduction may be no more than 3.5 percent, we propose to reduce payments in each year from CY 2014 to CY 2017 by 3.5 percent.

2. Rebasing the Low Utilization Payment Adjustment (LUPA) Per-Visit Payment Amounts

For episodes with four or fewer visits, Medicare pays on the basis of a national per-visit amount by discipline, referred to as a LUPA.

a. Calculating the Rebasing Adjustment to the LUPA Per-Visit Amounts

To determine the rebasing adjustment for the per-visit payment rates, we compare the current per-visit, per-discipline payment rates to the estimated cost per visit, per discipline. The 2013 estimated per-visit costs per discipline are shown in Table 11. The 2011 per-visit costs per discipline are the same as those derived for the rebasing of the national, standardized 60-day episode payment rate (see Table 6). The average cost per-visit for NRS from the cost report sample is added to the 2011 estimated per-visit costs per discipline (see section III.D.3. of this proposed rule for more information on the calculation of the average NRS cost per visit). The per-visit costs are then increased by the HH market basket in 2012 and 2013 to obtain an estimate of the 2013 costs per visit, per discipline.

TABLE 11—2013 ESTIMATED AVERAGE COST PER-VISIT, PER-DISCIPLINE

| Discipline | 2011 Estimated average costs per visit | Average NRS cost per visit | 2012 Market basket update | 2013 Market basket update | 2013 Estimated average cost per visit |
|---|---|---|---|---|---|
| Skilled Nursing | $131.51 | + $2.26 | × 1.024 | × 1.023 | = $140.13 |
| Home Health Aide | 65.22 | + 2.26 | ×1.024 | × 1.023 | = 70.69 |
| Physical Therapy | 160.69 | + 2.26 | ×1.024 | × 1.023 | = 170.70 |
| Occupational Therapy | 159.55 | + 2.26 | × 1.024 | × 1.023 | = 169.50 |
| Speech-Language Pathology | 170.80 | + 2.26 | × 1.024 | × 1.023 | = 181.29 |
| Medical Social Services | 218.91 | + 2.26 | × 1.024 | × 1.023 | = 231.69 |

Similar to the methodology used to determine the rebasing adjustment to the national, standardized 60-day episode payment rate, we took the current 2013 per-visit payment rates and, for comparison purposes only, put the dollars from the 2.5 percent outlier pool back into the payment rates (see Table 12). This allows us to compare the CY 2013 cost per-visit, per-discipline on the Medicare cost reports (which includes normal and outlier episodes) to the CY 2013 payment per-visit, per discipline.

TABLE 12—2013 PER-VISIT PAYMENT RATES

| Discipline | 2013 Per-visit payment rates (excluding outliers) | Outlier adjustment | 2013 Per-visit payment rates (including outliers) |
|---|---|---|---|
| Skilled Nursing | $114.35 | ÷ 0.975 | = 117.28 |
| Home Health Aide | 51.79 | ÷ 0.975 | = 53.12 |
| Physical Therapy | 125.03 | ÷ 0.975 | = 128.24 |
| Occupational Therapy | 125.88 | ÷ 0.975 | = 129.11 |
| Speech-Language Pathology | 135.86 | ÷ 0.975 | = 139.34 |
| Medical Social Services | 183.31 | ÷ 0.975 | = 188.01 |

When comparing the payment per-visit, per discipline for LUPA episodes to the estimated average cost per-visit, per-discipline, we observe that costs per visit are higher than the 2013 per-visit payment rates (see Table 13) in the range of 19.5 percent to 33.1 percent. However, section 3131(a) of the Affordable Care Act mandates that we can only adjust the per-visit payment rates by 3.5 percent each year. Therefore, in this CY 2014 HH PPS propose rule, we propose to increase the per-visit payment rates by 3.5 percent every year from 2014 to 2017.

TABLE 13—DIFFERENCES BETWEEN THE CY 2013 PER VISIT PAYMENT RATES AND THE CY 2013 ESTIMATED AVERAGE COST PER VISIT

| Discipline | 2013 Per-visit payment rates | 2013 Estimated average cost per visit | Difference |
|---|---|---|---|
| Skilled Nursing | $117.28 | $140.13 | +19.48% |
| Home Health Aide | 53.12 | 70.69 | +33.08% |
| Physical Therapy | 128.24 | 170.70 | +33.11% |
| Occupational Therapy | 129.11 | 169.50 | +31.28% |
| Speech- Language Pathology | 139.34 | 181.29 | +30.11% |
| Medical Social Services | 188.01 | 231.69 | +23.23% |

3. Rebasing the Nonroutine Medical Supply (NRS) Conversion Factor

Payments for NRS are currently paid for by multiplying one of six severity levels by the NRS conversion factor. When the HH PPS was implemented on October 1, 2000, the national, standardized 60-day episode payment rate included an amount for NRS that was calculated based on costs from audited FY 1997 cost reports and the average cost of NRS unbundled and billed through Medicare part B (65 FR 41180). The NRS costs for all the providers in the audited cost report sample were weighted to represent the national population. That weighted total was divided by the number episodes for the providers in the audited cost report sample, to obtain an average cost per episode for NRS of $43.54. Added to this amount was $6.08 to account for the average cost of unbundled NRS billed through Medicare Part B, resulting in a total of $49.62 included in the national, standardized 60-day episode payment rate to account for NRS.

As stated in our CY 2008 HH PPS proposed rule, after the HH PPS went into effect, we received comments and correspondence expressing concern about the cost of supplies for certain patients with ''high'' supply costs (72 FR 25427, May 4, 2007). We acknowledged that, in general, NRS use is unevenly distributed across episodes of care. Therefore, we created an NRS conversion factor of $52.35 (the amount CMS originally included in the national, standardized 60-day episode payment rate of $49.62, updated by the market basket, and after an adjustment to account for nominal change in case-mix) that is further adjusted by one of six severity levels to ensure that the variation in NRS usage is more appropriately reflected in the HH PPS (72 FR 49852, August 29, 2007). Using additional variables from OASIS items and targeting certain conditions expected to be predictors of NRS use based on clinical considerations, a classification algorithm puts cases into one of the six severity levels and a regression model was used to develop the payment weights associated with each severity level. For more detail on how the final six NRS severity levels and associated payment weights were developed please see the CY 2008 HH PPS final rule (72 FR 49850, August 29, 2007). The 2008 NRS conversion factor has been updated by HH payment update percentages in years 2009 through 2013. The CY 2013 NRS conversion factor is $53.97 and CY 2013 NRS payments range from $14.56 for severity level 1 to $568.06 for severity level 6 (77 FR 67102).

a. Calculating the Rebasing Adjustment to the NRS Conversion Factor

In rebasing the NRS conversion factor, we used the trimmed sample of 6,252 cost reports from FY 2011, as described in section III.D.1. of this proposed rule, to calculate a visit-weighted estimate of NRS costs per visit. We additionally weight these estimates to be nationally representative based on the same factors described in section III.D.1. of this proposed rule (that is, facility type, urban/rural status, and facility size). The 2011 average NRS cost per visit was calculated to be $2.26.

To calculate, a 2011 estimated average NRS cost per episode we multiplied the average NRS costs per visit of $2.26 by the average number of visits per episode of 18.59 from 2011 claims data for a 2011 estimated average NRS cost per episode of $42.01. This amount was then adjusted to reflect the change in the average number of visits from 18.59, using 2011 claims data, to 18.41, using preliminary 2012 claims data ((1+((18.41–18.59)/18.59))= 0.9903). We inflated the result by the 2012 and 2013 HH market basket updates for a 2013 estimated average NRS cost per episode of $43.59 as shown in Table 14.

TABLE 14—2013 ESTIMATED AVERAGE NRS COST PER EPISODE

| 2011 Estimated average NRS cost per episode | Adjustment for change in average episode visits (2011 to 2012) | 2012 Market basket update (2.4%) | 2013 Market basket update (2.3%) | 2013 Estimated average NRS cost per episode |
|---|---|---|---|---|
| $42.01 | × 0.9903 | ×1.024 | × 1.023 | $43.58 |

To compare the 2013 estimated average NRS cost per episode to 2013 estimated average NRS payment per episode; we used preliminary 2012 claims data for non-LUPA episodes and the CY 2013 NRS conversion factor of $53.97 to determine the estimated 2013 average NRS payment per episode. The preliminary 2012 claims data shows that the distribution of episodes amongst the six severity levels differs from the distribution used when the NRS conversion factor and relative weights were established in CY 2008 as shown in Table 15.

TABLE 15—PERCENTAGE OF EPISODES BY NRS SEVERITY LEVEL

| Severity level | Relative weight | Percent of episodes, CY 2008 | Percent of episodes, CY 2012 (percent) |
|---|---|---|---|
| 1 | 0.2698 | 63.7 | 69.5 |
| 2 | 0.9742 | 20.6 | 16.8 |
| 3 | 2.6712 | 6.7 | 6.2 |
| 4 | 3.9686 | 5.4 | 4.3 |
| 5 | 6.1198 | 3.2 | 2.9 |
| 6 | 10.5254 | 0.3 | 0.3 |

Source: The CY 2008 HH PPS Final Rule (72 FR 49852, August 29, 2007) and CY 2012 Medicare claims data for non-LUPA HH episodes beginning on or before May, 31, 2012, as of December 31, 2012.

**Note(s):** The distribution of episodes used to establish the CY 2008 relative weights was based on CY 2004 and CY 2005 claims data and a sample consisting of all agencies whose total charges reported on their 2001 claims matched their total charges reported in their 2001 cost reports (72 FR 49852).

Using the distribution of 2012 claims by severity level (Table 15), the relative weights, and the CY 2013 conversion factor of $53.97, the CY 2013 estimated average NRS payment per episode is $48.38. Comparing the 2013 estimated average NRS cost per episode to the 2013 estimated average NRS payment per episode, we obtain a difference of −9.92 percent (($43.58 − $48.38)/$48.38). Phasing-in the −9.92 percent reduction over 4 years in equal increments would result in an annual reduction of 2.58 percent. Therefore, we propose to reduce the NRS conversion factor in each year from 2014 to 2017 by 2.58 percent. We note that during our analysis of NRS costs and payments, we found that a significant number of providers listed charges for NRS on the home health claim, but those same providers did not list any NRS costs on their cost reports. Specifically, out of the 6,252 cost reports from FY 2011, as described in section III.D.1. of this proposed rule, 1,756 cost reports (28.1 percent) reported NRS charges in their claims, but listed $0 NRS costs on their cost reports. Given the need for extensive trimming of the cost reports as well as the findings from the audits and our analysis of NRS payments and costs, we are exploring possible additional edits to the cost report and quality checks at the time of submission to improve future cost reporting accuracy. We plan to update the 2012 distribution of episodes amongst the six severity levels as more data become available, and therefore, the estimated NRS cost per episode may change slightly for the final rule. For more information on the rebasing analyses performed, refer to the technical report titled ''Analyses in Support of Rebasing & Updating the Medicare Home Health Payment Rates'' available on the CMS Home Health Agency (HHA) Center Web site at: *http://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html?redirect=/center/hha.asp.*

*E. Proposed CY 2014 Rate Update*

1. Proposed CY 2014 Home Health Market Basket Update

Section 1895(b)(3)(B) of the Act, as amended by section 3401(e) of the Affordable Care Act, adds new clause (vi) which states, ''After determining the home health market basket percentage increase . . . the Secretary shall reduce such percentage . . . for each of 2011, 2012, and 2013, by 1 percentage point. The application of this clause may result in the home health market basket percentage increase under clause (iii) being less than 0.0 for a year, and may result in payment rates under the system under this subsection for a year being less than such payment rates for the preceding year.'' Therefore, as mandated by the Affordable Care Act, for CYs 2011, 2012, and 2013, the HH market basket update was reduced by 1 percentage point. For CY 2014, there is no such percentage reduction. Therefore, the CY 2014 payment rates will be increased by the full HH market basket update.

Section 1895(b)(3)(B) of the Act requires that the standard prospective payment amounts for CY 2014 be increased by a factor equal to the applicable HH market basket update for those HHAs that submit quality data as required by the Secretary. The proposed HH PPS market basket update for CY 2014 is 2.4 percent. This is based on Global Insight Inc.'s second quarter 2013 forecast, utilizing historical data through the first quarter of 2013. The HH market basket was rebased and revised in CY 2013. A detailed description of how we derive the HHA market basket is available in the CY 2013 HH PPS final rule (77 FR 67080, 67090).

2. Home Health Quality Reporting Program (HHQRP)

a. General Considerations Used for Selection of Quality Measures for the HHQRP

The successful development of the HH Quality Reporting Program (HHQRP) that promotes the delivery of high quality healthcare services is our paramount concern. We seek to adopt measures for the HHQRP that promote efficient and safer care. Our measure selection activities for the HHQRP takes into consideration input we receive from the Measure Applications Partnership (MAP), convened by the National Quality Forum (NQF), as part of a pre-rulemaking process that we have established and are required to follow under section 1890A of the Act. The MAP is a public-private partnership comprised of multi-stakeholder groups convened by the NQF for the primary purpose of providing input to CMS on the selection of certain categories of quality and efficiency measures, as required by section 1890A(a)(3) of the Act. By February 1st of each year, the NQF must provide that input to CMS. Input from the MAP is located at *http://www.qualityforum.org/Setting_Priorities/Partnership/Measure_Applications_Partnership.aspx.* For more details about the pre-rulemaking process, see the FY 2013 IPPS/LTCH PPS final rule at 77 FR 53376 (August 31, 2012).

We also take into account national priorities, such as those established by the National Priorities Partnership at *http://www.qualityforum.org/npp/,* the HHS Strategic Plan *http://www.hhs.gov/secretary/about/priorities/priorities.html,* and the National Strategy for Quality Improvement in Healthcare located at *http://www.healthcare.gov/news/reports/nationalqualitystrategy032011.pdf.*

To the extent practicable, we have sought to adopt measures that have been

endorsed by the national consensus organization, under contract to endorse standardized healthcare quality measures pursuant to section 1890 of the Act, recommended by multi-stakeholder organizations, and developed with the input of providers, purchasers/payers, and other stakeholders.

b. Background and Quality Reporting Requirements

Section 1895(b)(3)(B)(v)(II) of the Act states that ''each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause.''

In addition, section 1895(b)(3)(B)(v)(I) of the Act states that ''for 2007 and each subsequent year, in the case of a HHA that does not submit data to the Secretary in accordance with subclause (II) with respect to such a year, the HH market basket percentage increase applicable under such clause for such year shall be reduced by 2 percentage points.'' This requirement has been codified in regulations at § 484.225(i). HHAs that meet the quality data reporting requirements are eligible for the full HH market basket percentage increase. HHAs that do not meet the reporting requirements are subject to a 2 percentage point reduction to the HH market basket increase.

Section 1895(b)(3)(B)(v)(III) of the Act further states that ''[t]he Secretary shall establish procedures for making data submitted under sub clause (II) available to the public. Such procedures shall ensure that a HHA has the opportunity to review the data that is to be made public with respect to the agency prior to such data being made public.''

As codified at § 484.250(a), we established that the quality reporting requirements could be met by the submission of OASIS assessments and HH Care Consumer Assessment of Healthcare Providers and Systems Survey (HHCAHPS®). CMS has provided quality measures to HHAs via the Certification and Survey Provider Enhanced Reports (CASPER) reports available on the CMS Health Care Quality Improvement System (QIES) since 2002. A subset of the HH quality measures has been publicly reported on the HH Compare Web site since 2003. The CY 2012 HH PPS final rule (76 FR 68576), identifies the current HH QRP measures. The selected measures that are made available to the public can be viewed on the HH Compare Web site located at *http://www.medicare.gov/HHCompare/Home.asp.*

As stated in the CY 2012 and CY 2013 HH PPS final rules (76 FR68575 and 77 FR67093, respectively), we finalized that we would also use measures derived from Medicare claims data to measure HH quality.

c. OASIS Data Submission and OASIS Data for Annual Payment Update

The HH conditions of participation (CoPs) at § 484.55(d) require that the comprehensive assessment must be updated and revised (including the administration of the OASIS) no less frequently than: (1) The last 5 days of every 60 days beginning with the start-of-care date, unless there is a beneficiary elected transfer, significant change in condition, or discharge and return to the same HHA during the 60-day episode; (2) within 48 hours of the patient's return to the home from a hospital admission of 24 hours or more for any reason other than diagnostic tests; and (3) at discharge.

It is important to note that to calculate quality measures from OASIS data, there must be a complete quality episode, which requires both a Start of Care (initial assessment) or Resumption of Care OASIS assessment and a Transfer or Discharge OASIS assessment. Failure to submit sufficient OASIS assessments to allow calculation of quality measures, including transfer and discharge assessments, is failure to comply with the CoPs.

HHAs do not need to submit OASIS data for those patients who are excluded from the OASIS submission requirements under the HH CoPs § 484.1 through § 484.265. As described in the December 23, 2005 Medicare and Medicaid Programs: Reporting Outcome and Assessment Information Set Data as Part of the Conditions of Participation for Home Health Agencies final rule (70 FR 76202), we define the exclusion as those patients:

- Receiving only nonskilled services;
- For whom neither Medicare nor Medicaid is paying for HH care (patients receiving care under a Medicare or Medicaid Managed Care Plan are not excluded from the OASIS reporting requirement);
- Receiving pre- or post-partum services; or
- Under the age of 18 years.

As set forth in the CY 2008 HH PPS final rule (72 FR 49863), HHAs that become Medicare-certified on or after May 31 of the preceding year are not subject to the OASIS quality reporting requirement nor any payment penalty for quality reporting purposes for the following year. For example, HHAs certified on or after May 31, 2013 are not subject to the 2 percentage point reduction to their market basket update for CY 2014. These exclusions only affect quality reporting requirements and do not affect the HHA's reporting responsibilities as announced in the December 23,2005 final rule, ''Medicare and Medicaid Programs; Reporting Outcome and Assessment Information Set Data as Part of the Conditions of Participation for Home Health Agencies'' (70 FR 76202).

d. Home Health Care Quality Reporting Program Requirements for CY 2014 Payment and Subsequent Years

(1) Submission of OASIS Data

For CY 2014, we propose to consider OASIS assessments submitted by HHAs to CMS in compliance with HH CoPs and Conditions for Payment for episodes beginning on or after July 1, 2012, and before July 1, 2013 as fulfilling one portion of the quality reporting requirement for CY 2014. This time period would allow for 12 full months of data collection and would provide us with the time necessary to analyze and make any necessary payment adjustments to the payment rates for CY 2014. We propose to continue this pattern for each subsequent year beyond CY 2014, considering OASIS assessments submitted in the time frame between July 1 of the calendar year 2 years prior to the calendar year of the Annual Payment Update (APU) effective date and July 1 of the calendar year 1 year prior to the calendar year of the APU effective date as fulfilling the OASIS portion of the quality reporting requirement for the subsequent APU.

(2) Home Health Rehospitalization and Emergency Department Use Without Readmission Claims-Based Measures

We propose to adopt two claims-based measures: (1) Rehospitalization during the first 30 days of HH; and (2) Emergency Department Use without Hospital Readmission during the first 30 days of HH. These measures were included on the Measures Under Consideration list reviewed by the MAP in December 2012 and the MAP supported the direction of both measures. The Rehospitalization during the first 30 days of HH measure estimates the risk-standardized rate of unplanned, all-cause hospital readmissions for cases in which patients who had an acute inpatient hospitalization in the 5 days before the start of their HH stay were admitted to an acute care hospital during the 30 days following the start of the HH stay.

The Emergency Department Use without Readmission measure estimates the risk-standardized rate of unplanned, all-cause hospital readmissions for cases in which patients who had an acute inpatient hospitalization in the 5 days before the start of a HH stay used an emergency department but were not admitted to an acute care hospital during the 30 days following the start of a HH stay.

We seek to develop a set of quality measures to report on HH patients who are recently hospitalized as these patients are at an increased risk of acute care hospital use, either through inpatient admission or emergency department use without inpatient admission. Addressing unplanned hospital readmissions is a high priority for HHS as our focus continues on promoting patient safety, eliminating healthcare associated infections, improving care transitions, and reducing the cost of healthcare. Readmissions are costly to the Medicare program and have been cited as sensitive to improvements in coordination of care and discharge planning for patients. Rates of rehospitalization remain substantial with 14.4 percent of HH patients experiencing an unplanned rehospitalization in the first 30 days of care. Currently, HHAs focus on measures of acute care hospitalization (applied to all HH patients) as a measure of their effectiveness. We will continue to publicly report the Acute Care Hospitalization and Emergency Department Use without Hospitalization measures, as these measures apply to all home health patients and will continue to be useful in selecting a home health agency. The proposed rehospitalization measures will allow HHAs to further target patients who entered HH after a hospitalization.

The proposed measures of acute care utilization by previously hospitalized patients are developed out of the NQF endorsed claims-based measures: (1) Acute Care Hospitalization (NQF #0171); and (2) Emergency Department Use without Hospitalization (NQF #0173) to better capture acute care hospitalizations and use of an emergency department for patients who are recently discharged from the hospital. These rehospitalization measures are harmonized with NQF-endorsed Hospital-Wide Risk-Adjusted All-Cause Unplanned Readmission Measure (NQF #1789) (see *http://www.qualityforum.org/Publications/2012/07/Patient_Outcomes_All-Cause_Readmissions_Expedited_Review_2011.aspx)* finalized for the Hospital IQR Program in the FY 2013 IPPS/LTCH PPS Final Rule (77 FR 53521 through 53528). Further, to the extent appropriate, the proposed HH rehospitalization measures are being harmonized with this measure and other measures of readmission rates developed for post-acute care (PAC) settings.

We intend to seek NQF endorsement of the: (1) Rehospitalization during the first 30 days of HH; and (2) Emergency Department Use without Readmission during the first 30 days of HH measures. We are proposing to begin reporting feedback to HHAs on performance on these measures in CY 2014. These measures will be added to Home Health Compare for public reporting in CY2015. Additional details pertaining to these measures, including technical specifications, can be found at the HH Quality Initiative Web page located at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIQualityMeasures.html.*

We seek public comment on our proposed quality measures: (1) Rehospitalization during the first 30 days of HH; and (2) Emergency Department Use without Hospital Readmission during the first 30 days of HH.

(3) Elimination of Stratification by Episode Length Process Measures

We are exploring ways to reduce the number of HH quality measures reported to HHAs on confidential CASPER reports. We propose to reduce the total number of measures on the CASPER reports by beginning to report only all-episodes measures for 9 process measures currently also stratified by episode length. We seek comments on this proposal to simplify reporting of process measures, which is based on the recommendation from the MAP to seek greater parsimony in these measures. Currently there are 97 quality measures included on the CASPER reports, of which 45 are process measures. This proposed reduction would decrease the total number of HH quality measures to 79 and reduce the number of process measures from 45 to 27. This change will enable HHAs to obtain the information they require for quality improvement activities related to the process measures in a less burdensome manner. Reducing the number of measures also facilitates the future development and implementation of other superior HH measures.

Nine measures currently stratified by episode length on CASPER reports include:

- Depression Interventions Implemented.
- Diabetic Foot Care and Patient/Caregiver Education Implemented.
- Heart Failure Symptoms Addressed.
- Pain Interventions Implemented.
- Treatment of Pressure Ulcers Based on Principles of Moist Wound Healing Implemented.
- Pressure Ulcer Prevention Implemented.
- Drug Education on All Medications Provided to Patient/Caregiver.
- Potential Medication Issues Identified and Timely Physician Contact.
- Falls Prevention Steps Implemented.

For each of these nine measures, three versions of each measure are currently included on CASPER reports. The three versions are: (1) Short term episodes of care; (2) long term episodes of care; and (3) all episodes of care. We propose to eliminate the stratification by episode length, so that these measures are reported only for ''all episodes of care''. Thus, we propose to eliminate the ''short term'' and ''long term episodes of care'' measures from CASPER reports. This would remove 18 process measures from the current CASPER reports. Of note, only the ''short term episodes of care'' measures are currently reported on HH Compare. These would be replaced with the analogous ''all episodes of care'' measures.

No data will be lost in the elimination of the ''short and long term episodes of care'' measures as the ''all episodes of care'' measures capture all care interventions, regardless of episode length. Using only the ''all episodes of care'' measures would substantially increase the number of HHAs eligible for public reporting of these measures.

To summarize, for the CY 2014 payment update and for subsequent annual payment updates, we propose to continue to use a HHA's submission of OASIS assessments between July 1, and June 30 as fulfilling one portion of the quality reporting requirement for each payment year. Medicare claims data and HHCAHPS® data will also be used to measure HH care quality. We propose to adopt two claims-based measures: (1) rehospitalization during the first 30 days of HH; and (2) Emergency Department Use without Hospital Readmission during the first 30 days of HH. We propose to reduce the number of process measures by eliminating the stratification by episode length, only reporting on the ''all episodes of care'' measures. By eliminating the stratification of the short and long term episodes of care measures, there will be a reduction in the number of HH quality measures reported to HHAs on confidential CASPER reports.

e. Home Health Care CAHPS® Survey (HHCAHPS) ®

In the CY 2013 HH PPS final rule (77 FR 67094), we stated that the HH quality measures reporting requirements for Medicare-certified agencies includes the CAHPS® HH Care (HHCAHPS®) Survey for the CY 2013 APU. In CY 2012, we moved forward with the HHCAHPS® linkage to the pay-for-reporting (P4R) requirements affecting the HH PPS rate update for CY 2012. We maintained the stated HHCAHPS data requirements for CY 2013 that were set out in the CY 2012 HH PPS final rule, and in the CY 2013 HH PPS final rule, for the continuous monthly data collection and quarterly data submission of HHCAHPS® data.

(1) Background and Description of HHCAHPS®

As part of the HHS' Transparency Initiative, we have implemented a process to measure and publicly report patient experiences with HH care, using a survey developed by the Agency for Healthcare Research and Quality's (AHRQ's) Consumer Assessment of Healthcare Providers and Systems (CAHPS®) program and endorsed by the NQF in March 2009 (NQF Number 0517). The HHCAHPS® survey is part of a family of CAHPS® surveys that asks patients to report on and rate their experiences with health care. The HH Care CAHPS® (HHCAHPS®) survey presents HH patients with a set of standardized questions about their HH care providers and about the quality of their HH care.

Prior to this survey, there was no national standard for collecting information about patient experiences that would enable valid comparisons across all HHAs. The history and development process for HHCAHPS® has been described in previous rules and it also available on the official HHCAHPS® Web site at *https://homehealthcahps.org* and in the annually-updated *HHCAHPS® Protocols and Guidelines Manual,* which is downloadable from *https://homehealthcahps.org.*

For public reporting purposes, we required HHAs to report five measures—three composite measures and two global ratings of care that are derived from the questions on the HHCAHPS® survey. The publicly reported data are adjusted for differences in patient mix across HHAs. We update the HHCAHPS® data on HH Compare on *www.medicare.gov* quarterly. Each HHCAHPS® composite measure consists of four or more individual survey items regarding one of the following related topics:

- Patient care (Q9, Q16, Q19, and Q24);
- Communications between providers and patients (Q2, Q15, Q17, Q18, Q22, and Q23); and
- Specific care issues on medications, home safety, and pain (Q3, Q4, Q5, Q10, Q12, Q13, and Q14).

The two global ratings are the overall rating of care given by the HHA's care providers (Q20), and the patient's willingness to recommend the HHA to family and friends (Q25).

The HHCAHPS® survey focuses on areas where the HH patient is the best or only source for the information. The developmental work for the HHCAHPS® survey began in mid-2006, and the first HHCAHPS® survey was field-tested (to validate the length and content of the survey) in 2008 by the AHRQ and the CAHPS® grantees, and the final HHCAHPS® survey was used in a national randomized mode experiment in 2009 through 2010.

The HHCAHPS® survey is currently available in English, Spanish, Chinese, Russian, and Vietnamese. The OMB Number on these surveys is the same (0938–1066). All of these surveys are on the Home Health Care CAHPS® Web site, *https://homehealthcahps.org.* We will continue to consider additional language translations of the HHCAHPS® in response to the needs of the HH patient population.

All of the requirements about HH patient eligibility for the HHCAHPS® survey and conversely, which HH patients are ineligible for the HHCAHPS® survey are delineated and detailed in the *HHCAHPS® Protocols and Guidelines Manual,* which is downloadable at *https://homehealthcahps.org.* HH patients are eligible for HHCAHPS® if they received at least two skilled HH visits in the past 2 months, which are paid for by Medicare or Medicaid.

HH patients are *ineligible* for inclusion in HHCAHPS® surveys if one of these conditions pertains to them:

- Are under the age of 18;
- Are deceased prior to the date the sample is pulled;
- Receive hospice care;
- Receive routine maternity care only;
- Are not considered survey eligible because the state in which the patient lives restricts release of patient information for a specific condition or illness that the patient has; or
- No Publicity patients, defined as patients who on their own initiative at their first encounter with the HHAs make it very clear that no one outside of the agencies can be advised of their patient status, and no one outside of the HHAs can contact them for any reason.

We stated in previous rules that Medicare-certified HHAs are required to contract with an approved HHCAHPS® survey vendor. Medicare-certified agencies also must provide on a monthly basis a list of their patients served to their respective HHCAHPS® survey vendors. Agencies are not allowed to influence at all how their patients respond to the HHCAHPS® survey.

HHCAHPS® survey vendors are required to attend introductory and all update trainings conducted by CMS and the HHCAHPS® Survey Coordination Team, as well as to pass a post-training certification test. We now have approximately 30 approved HHCAHPS® survey vendors. The list of approved HHCAHPS® survey vendors is available at *https://homehealthcahps.org.*

(2) HHCAHPS® Oversight Activities

We stated in prior final rules that all approved HHCAHPS survey vendors are required to participate in HHCAHPS® oversight activities to ensure compliance with HHCAHPS® protocols, guidelines, and survey requirements. The purpose of the oversight activities is to ensure that approved HHCAHPS® survey vendors follow the *HHCAHPS® Protocols and Guidelines Manual.* As stated previously in the CY 2010, CY 2011, CY 2012, and CY 2013 final rules, all approved survey vendors must develop a Quality Assurance Plan (QAP) for survey administration in accordance with the *HHCAHPS® Protocols and Guidelines Manual.* An HHCAHPS® survey vendor's first QAP must be submitted within 6 weeks of the data submission deadline date after the vendor's first quarterly data submission. The QAP must be updated and submitted annually thereafter and at any time that changes occur in staff or vendor capabilities or systems. A model QAP is included in the *HHCAHPS® Protocols and Guidelines Manual.* The QAP must include the following:

- Organizational Background and Staff Experience
- Work Plan
- Sampling Plan
- Survey Implementation Plan
- Data Security, Confidentiality and Privacy Plan
- Questionnaire Attachments

As part of the oversight activities, the HHCAHPS® Survey Coordination Team conducts on-site visits to all approved HHCAHPS® survey vendors. The purpose of the site visits is to allow the HHCAHPS® Coordination Team to observe the entire HH Care CAHPS® Survey implementation process, from

the sampling stage through file preparation and submission, as well as to assess data security and storage. The HHCAHPS® Survey Coordination Team reviews the HHCAHPS® survey vendor's survey systems, and assesses administration protocols based on the *HHCAHPS® Protocols and Guidelines Manual* posted at *https://homehealthcahps.org.* The systems and program site visit review includes, but is not limited to the following:

- Survey management and data systems;
- Printing and mailing materials and facilities;
- Telephone call center facilities;
- Data receipt, entry and storage facilities; and
- Written documentation of survey processes.

After the site visits, HHCAHPS® survey vendors are given a defined time period in which to correct any identified issues and provide follow-up documentation of corrections for review. HHCAHPS® survey vendors are subject to follow-up site visits on an as-needed basis.

In the CY 2013 HH PPS final rule (77 FR 67094), we codified the current guideline that all approved HHCAHPS® survey vendors fully comply with all HHCAHPS® oversight activities. We included this survey requirement at § 484.250(c).

(3) HHCAHPS® Requirements for the CY 2014 APU

In the CY 2013 HH PPS final rule (77 FR 67094), we stated that we would require continued monthly HHCAHPS® data collection and reporting for 4 quarters for the HHCAHPS® requirements for CY 2014 APU. The data collection period for the CY 2014 APU includes the second quarter 2012 through first quarter 2013 (the months of April 2012 through March 2013). HHAs were required to submit their HHCAHPS® data files to the HH CAHPS® Data Center for the second quarter 2012 by 11:59 p.m., Eastern daylight time (e.d.t.) on October 18, 2012; for the third quarter 2012 by 11:59 p.m., Eastern standard time (e.s.t.) on January 17, 2013; for the fourth quarter 2012 by 11:59 p.m., e.d.t. on April 18, 2013; and for the first quarter 2013 by 11:59 p.m., e.d.t. on July 18, 2013. These deadlines are firm; no exceptions are permitted.

We stated that we exempt HHAs receiving Medicare certification on or after April 1, 2012, from the full HHCAHPS® reporting requirement for the CY 2014 APU, because these HHAs were not Medicare-certified in the period of April 1, 2011, through March 31, 2012. These HHAs would not need to complete a HHCAHPS® Participation Exemption Request form for the CY 2014 APU. The Participation Exemption Form is discussed in the Collection of Information section of this rule. The form was used since CY 2012, and it was cited in the PRA package in 2010, but it did not have its own OMB number. We have submitted a revised PRA package about the HHCAHPS® survey (the package expires in March 2014) that also includes more information regarding the Participation Exemption Form.

As noted in the CY 2013 HH PPS final rule (77 FR 67094), HHAs that had fewer than 60 HHCAHPS®-eligible unduplicated or unique patients in the period of April 1, 2011, through March 31, 2012, are exempt from the HHCAHPS® data collection and submission requirements for the CY 2014 APU. Such HHAs were required to submit their patient counts for the period of April 1, 2011, through March 31, 2012, on the HHCAHPS® Participation Exemption Request form for the CY 2014 APU posted on *https://homehealthcahps.org* beginning April 1, 2012, by 11:59 p.m., e.d.t. on January 17, 2013. This deadline is firm, as are all of the quarterly data submission deadlines.

(4) HHCAHPS® Requirements for the CY 2015 APU

In the CY 2013 HH PPS final rule (77 FR 67094), we stated that for the CY 2015 APU, we would require continued monthly HHCAHPS® data collection and reporting for 4 quarters. The data collection period for CY 2015 APU includes the second quarter 2013 through the first quarter 2014 (the months of April 2013, through March 2014). HHAs are required to submit their HHCAHPS® data files to the HH CAHPS® Data Center for the second quarter 2013 by 11:59 p.m., e.d.t. on October 17, 2013; for the third quarter 2013 by 11:59 p.m., e.s.t. on January 16, 2014; for the fourth quarter 2013 by 11:59 p.m., e.d.t. on April 17, 2014; and for the first quarter 2014 by 11:59 p.m., e.d.t. on July 17, 2014. These deadlines are firm; no exceptions are permitted.

We will continue to exempt HHAs receiving Medicare certification on or after April 1, 2013, from the full HHCAHPS® reporting requirement for the CY 2015 APU because these HHAs would not have been Medicare-certified throughout the period of April 1, 2012 through March 31, 2013. These HHAs do not need to complete a HHCAHPS® Participation Exemption Request form for the CY 2015 APU.

We require that all HHAs that had fewer than 60 HHCAHPS®-eligible unduplicated or unique patients in the period of April 1, 2012, through March 31, 2013 are exempt from the HHCAHPS® data collection and submission requirements for the CY 2015 APU. Agencies with fewer than 60 HHCAHPS®-eligible, unduplicated or unique patients in the period of April 1, 2012, through March 31, 2013 are required to submit their patient counts on the HHCAHPS® Participation Exemption Request form for the CY 2015 APU, posted on *https://homehealthcahps.org* on April 1, 2013, by 11:59 p.m., e.d.t. on January 16, 2014. This deadline is firm, as is true of all quarterly data submission deadlines.

(5) HHCAHPS® Requirements for the CY 2016 APU

For the CY 2016 APU, we propose to require continued monthly HHCAHPS® data collection and reporting for 4 quarters. The data collection period for the CY 2016 APU is proposed to include the second quarter 2014 through the first quarter 2015 (the months of April 2014 through March 2015). We propose that HHAs would be required to submit their HHCAHPS® data files to the HH CAHPS® Data Center for the second quarter 2014 by 11:59 p.m., e.d.t. on October 16, 2014; for the third quarter 2014 by 11:59 p.m., e.s.t. on January 15, 2015; for the fourth quarter 2014 by 11:59 p.m., e.d.t. on April 16, 2015; and for the first quarter 2015 by 11:59 p.m., e.d.t. on July 16, 2015. We propose that these deadlines be firm; no exceptions would be permitted.

We propose to continue to exempt HHAs receiving Medicare certification after the period in which HHAs do their patient count (April 1, 2013 through March 31, 2014) on or after April 1, 2014, from the full HHCAHPS® reporting requirement for the CY 2016 APU, because these HHAs would not have been Medicare-certified throughout the period of April 1, 2013, through March 31, 2014. These HHAs would not need to complete a HHCAHPS® Participation Exemption Request form for the CY 2016 APU.

We propose to state that all HHAs that had fewer than 60 HHCAHPS®-eligible unduplicated or unique patients in the period of April 1, 2013, through March 31, 2014 would be exempt from the HHCAHPS® data collection and submission requirements for the CY 2016 APU. Agencies with fewer than 60 HHCAHPS-eligible, unduplicated or unique patients in the period of April 1, 2013, through March 31, 2014, would be required to submit their patient counts on the HHCAHPS® Participation

Exemption Request form for the CY 2016 APU posted on *https://homehealthcahps.org* on April 1, 2014, by 11:59 p.m., e.s.t. on January 15, 2015. This deadline would be firm, as would be all of the quarterly data submission deadlines.

(6) HHCAHPS® Reconsiderations and Appeals Process

HHAs should monitor their respective HHCAHPS® survey vendors to ensure that vendors submit their HHCAHPS data on time, by accessing their HHCAHPS® Data Submission Reports on *https://homehealthcahps.org.* This will help HHAs ensure that their data are submitted in the proper format for data processing to the HHCAHPS® Data Center.

We propose to continue the HHCAHPS® reconsiderations and appeals process that we have finalized and that we have used for the CY 2012 APU and for the CY 2013 APU. We have described the HHCAHPS® reconsiderations process requirements in the notification memorandum that the Regional Home Health Intermediaries (RHHI)/MACs send to the affected HHAs, on behalf of CMS. HHAs have 30 days to send their documentation to support their request for reconsideration to CMS. It is important that the affected HHAs send in comprehensive information in their reconsideration letter/package because CMS will not contact the affected HHAs to request additional information or to clarify incomplete or inconclusive information. If clear evidence to support a finding of compliance is not present, the 2 percent reduction in the APU will be upheld. If clear evidence of compliance is present, the 2 percent reduction for the APU will be reversed. We will notify affected HHAS by about mid-December. If we determine to uphold the 2 percent reduction, the HHA may further appeal the 2 percent reduction via the Provider Reimbursement Review Board (PRRB) appeals process.

f. Summary of Proposed Changes in CY 2014

We are not proposing any changes to the HHCAHPS® Survey in CY 2014.

g. For Further Information on the HHCAHPS® Survey

We strongly encourage HHAs to learn about the survey and view the HHCAHPS® Survey Web site at the official Web site for the HHCAHPS® at *https://homehealthcahps.org.* HHAs can also send an email to the HHCAHPS® Survey Coordination Team at *HHCAHPS@rti.org,* or telephone toll-free (1–866–354–0985) for more information about HHCAHPS®.

3. Home Health Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to provide appropriate adjustments to the proportion of the payment amount under the HH PPS that account for area wage differences, using adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of HH services. For CY 2014, as in previous years, we are proposing to base the wage index adjustment to the labor portion of the HH PPS rates on the most recent pre-floor and pre-reclassified hospital wage index. We would apply the appropriate wage index value to the labor portion of the HH PPS rates based on the site of service for the beneficiary (defined by section 1861(m) of the Act as the beneficiary's place of residence). Previously, we determined each HHA's labor market area based on definitions of metropolitan statistical areas (MSAs) issued by the OMB. We have consistently used the pre-floor, pre-reclassified hospital wage index data to adjust the labor portion of the HH PPS rates. We believe the use of the pre-floor, pre-reclassified hospital wage index data results in an appropriate adjustment to the labor portion of the costs, as required by statute.

In the CY 2006 HH PPS final rule for (70 FR 68132), we began adopting revised labor market area definitions as discussed in the OMB Bulletin No. 03–04 (June 6, 2003). This bulletin announced revised definitions for MSAs and the creation of micropolitan statistical areas and core-based statistical areas (CBSAs). The bulletin is available online at *www.whitehouse.gov/omb/bulletins/b03–04.html.* In addition, OMB published subsequent bulletins regarding CBSA changes, including changes in CBSA numbers and titles. The OMB bulletins are available at *http://www.whitehouse.gov/omb/bulletins/index.html.*

For CY 2014, as in previous years, we are proposing to use the most recent pre-floor, pre-reclassified hospital wage index as the base for the wage index adjustment to the labor portion of the HH PPS rates. However, the FY 2014 pre-floor, pre-reclassified hospital wage index does not reflect OMB's new area delineations, based on the 2010 Census (outlined in OMB Bulletin 13–01, released on February 28, 2013), as those changes were not published until the Hospital Inpatient Prospective Payment System (IPPS) proposed rule (78 FR 27553) was in advanced stages of development. We intend to propose changes to the FY 2015 hospital wage index based on the newest CBSA changes in the FY 2015 IPPS proposed rule. Therefore, if CMS incorporates OMB's new area delineations, based on the 2010 Census, in the FY 2015 hospital wage index, those changes would also be reflected in the FY 2015 HH wage index.

Finally, we would continue to use the methodology discussed in the CY 2007 HH PPS final rule (71 FR 65884) to address those geographic areas in which there were no IPPS hospitals, and thus, no hospital wage data on which to base the calculation of the HH PPS wage index. For rural areas that do not have IPPS hospitals, and therefore, lack hospital wage data on which to base a wage index, we would use the average wage index from all contiguous CBSAs as a reasonable proxy. For rural Puerto Rico, we do not apply this methodology due to the distinct economic circumstances that exist there, but instead continue using the most recent wage index previously available for that area (from CY 2005).

For urban areas without IPPS hospitals, we use the average wage index of all urban areas within the State as a reasonable proxy for the wage index for that CBSA. For CY 2012, the only urban area without IPPS hospital wage data is Hinesville-Fort Stewart, Georgia (CBSA 25980).

The wage index values are available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/Home-Health-Prospective-Payment-System-Regulations-and-Notices.html.*

4. Proposed CY 2014 Payment Update

a. National, Standardized 60-Day Episode Payment Rate

The Medicare HH PPS has been in effect since October 1, 2000. As set forth in the July 3, 2000 final rule (65 FR 41128), the base unit of payment under the Medicare HH PPS is a national, standardized 60-day episode payment rate. As set forth in § 484.220, we adjust the national, standardized 60-day episode payment rate by a case-mix relative weight and a wage index value based on the site of service for the beneficiary.

To provide appropriate adjustments to the proportion of the payment amount under the HH PPS to account for area wage difference, we apply the appropriate wage index value to the labor portion of the HH PPS rates. The labor-related share of the case-mix adjusted 60-day episode rate would continue to be 78.535 percent and the

non-labor-related share would continue to be 21.465 percent as set out in the CY 2013 HH PPS final rule (77 FR 67068). The proposed CY 2014 HH PPS rates use the same case-mix methodology as set forth in the CY 2008 HH PPS final rule with comment period (72 FR 49762) and adjusted as described in section III.C. of this proposed rule. The following are the steps we take to compute the case-mix and wage-adjusted 60-day episode rate:

(1) Multiply the national 60-day episode rate by the patient's applicable case-mix weight.

(2) Divide the case-mix adjusted amount into a labor (78.535 percent) and a non-labor portion (21.465 percent).

(3) Multiply the labor portion by the applicable wage index based on the site of service of the beneficiary.

(4) Add the wage-adjusted portion to the non-labor portion, yielding the case-mix and wage adjusted 60-day episode rate, subject to any additional applicable adjustments.

In accordance with section 1895(b)(3)(B) of the Act, this document constitutes the annual update of the HH PPS rates. Section 484.225 sets forth the specific annual percentage update methodology. In accordance with § 484.225(i), for a HHA that does not submit HH quality data, as specified by the Secretary, the unadjusted national prospective 60-day episode rate is equal to the rate for the previous calendar year increased by the applicable HH market basket index amount minus two percentage points. Any reduction of the percentage change will apply only to the calendar year involved and will not be considered in computing the prospective payment amount for a subsequent calendar year.

Medicare pays the national, standardized 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and § 484.205(b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment (RAP) and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines which calendar year rates Medicare would use to pay the claim.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A low utilization payment provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A partial episode payment adjustment as set forth in § 484.205(d) and § 484.235.
- An outlier payment as set forth in § 484.205(e) and § 484.240.

b. Proposed CY 2014 National, Standardized 60-Day Episode Payment Rate

The proposed CY 2014 national, standardized 60-day episode payment rate would be $2,862.99 as calculated in Table 16. To determine the CY 2014 proposed national, standardized 60-day episode payment rate, we start with the 2013 average payment per episode ($2,963.65) calculated in section III.D.1. of this proposed rule. We then apply the 3.50 percent rebasing reduction (1 − 0.0350 = 0.9650) and remove the 2.5 percent for outlier payments that we put back in the rates as described in section III.D.1. of this proposed rule. We subsequently apply a standardization factor (1.0017) to ensure budget neutrality in episode payments using the 2014 wage index. The application of a standardization factor was also done when setting the original national, standardized 60-day episode payment rate for the HH PPS in 2000 per section 1895(3)(A)(i) of the Act. The Act required that the 60-day episode base rate and other applicable amounts be standardized in a manner that eliminates the effects of variations in relative case mix and area wage adjustments among different home health agencies in a budget neutral manner. To calculate the standardization factor, we simulated total payments for non-LUPA episodes using the 2014 wage index and compared it to our simulation of total payments for non-LUPA episodes using the 2013 wage index. By dividing the total payments using the 2014 wage index by the total payments using the 2013 wage index, we obtain a standardization factor of 1.0017. We note that since we are implementing the adjustment to the case-mix weights in a budget neutral manner, there is no standardization factor needed to ensure budget neutrality in episode payments using the 2014 case-mix relative values. Lastly, we update payments by the CY 2014 market basket update (2.4 percent).

TABLE 16—CY 2014 PROPOSED 60-DAY NATIONAL, STANDARDIZED 60-DAY EPISODE PAYMENT AMOUNT

| 2013 Estimated average payment per episode | 2014rebasing adjustment | Outlier adjustment factor | Standardization factor | 2014 HH market basket | CY 2014 proposed national, standardized 60-day episode payment |
|---|---|---|---|---|---|
| $2,963.65 | × 0.9650 | × 0.975 | × 1.0017 | × 1.024 | = $2,860.20 |

The proposed CY 2014 national, standardized 60-day episode payment rate for an HHA that does not submit the required quality data is updated by the proposed CY 2014 HH market basket update (2.4 percent) minus 2 percentage points and is shown in Table 17.

TABLE 17—FOR HHAS THAT DO NOT SUBMIT THE QUALITY DATA—PROPOSED CY 2014 NATIONAL, STANDARDIZED 60-DAY EPISODE PAYMENT AMOUNT

| 2013 estimated average payment per episode | 2014 rebasing adjustment | Outlier adjustment factor | Standardization factor | 2014 HH market basket minus 2 percentage points | CY 2014 proposed national, standardized 60-day episode payment |
|---|---|---|---|---|---|
| $2,963.65 | × 0.9650 | × 0.975 | × 1.0017 | × 1.004 | = $2,804.34 |

c. National Per-Visit Rates

The national per-visit rates are used to pay LUPAs and are also used to compute imputed costs in outlier calculations. The per-visit rates are paid by type of visit or HH discipline. The six HH disciplines are as follows:

- Home health aide (HH aide);
- Medical Social Services (MSS);
- Occupational therapy (OT);
- Physical therapy (PT);
- Skilled nursing (SN); and
- Speech-language pathology (SLP).

To calculate the CY 2014 national per-visit rates, we used the 2013 national per-visit rates adjusted to include the dollars from the 2.5 percent outlier pool as described in section III.D.2. of this proposed rule. We then apply the 3.5 percent rebasing increase to the 2013 outlier adjusted per-visit rates (1 + 0.035 = 1.035), remove the outlier payment adjustment that we used to inflate the rates for comparison purposes (to compare the rates to the estimated per visit costs) in section III.D.2. of this proposed rule, and apply a wage index budget neutrality factor of 1.0003 to ensure budget neutrality for LUPA per-visit payments after applying the 2014 wage index. We calculated the wage index budget neutrality factor by simulating total payments for LUPA episodes using the 2014 wage index and comparing it to simulated total payments for LUPA episodes using the 2013 wage index. We note that the LUPA per-visit payments are not calculated using case-mix weights and therefore, there is no case-mix standardization factor needed to ensure budget neutrality in LUPA payments. The per-visit rates for each discipline are then updated by the proposed CY 2014 HH market basket update of 2.4 percent. The national per-visit rates are adjusted by the wage index based on the site of service of the beneficiary. The per-visit payment amounts for LUPAs are separate from the LUPA add-on payment amount, which is paid for episodes that occur as the only episode or initial episode in a sequence of adjacent episodes. The proposed CY 2014 national per-visit rates are shown in Tables 18 and 19.

TABLE 18—PROPOSED CY 2014 NATIONAL PER-VISIT PAYMENT AMOUNTS

| HH discipline type | CY 2013 per-visit rates including outliers | CY 2014 rebasing adjustment | Outlier adjustment | Wage index budget neutrality factor | 2014 HH market basket | Proposed CY 2014 per-visit rates |
|---|---|---|---|---|---|---|
| Home Health Aide | $53.12 | × 1.035 | × 0.975 | × 1.0003 | × 1.024 | $54.91 |
| Medical Social Services | 188.01 | × 1.035 | × 0.975 | × 1.0003 | × 1.024 | 194.34 |
| Occupational Therapy | 129.11 | × 1.035 | × 0.975 | × 1.0003 | × 1.024 | 133.46 |
| Physical Therapy | 128.24 | × 1.035 | × 0.975 | × 1.0003 | × 1.024 | 132.56 |
| Skilled Nursing | 117.28 | × 1.035 | × 0.975 | × 1.0003 | × 1.024 | 121.23 |
| Speech-Language Pathology | 139.34 | × 1.035 | × 0.975 | × 1.0003 | × 1.024 | 144.03 |

The proposed CY 2014 per-visit payment rates for an HHA that does not submit the required quality data is updated by the proposed CY 2014 HH market basket update (2.4 percent) minus 2 percentage points and is shown in Table 19.

TABLE 19—PROPOSED CY 2014 NATIONAL PER-VISIT PAYMENT AMOUNTS FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

| HH discipline type | CY 2013 per-visit rates including outliers | CY 2014 rebasing adjustment | Outlier adjustment | Wage index budget neutrality factor | 2014 HH market basket minus 2 percentage points | Proposed CY 2014 per-visit rates |
|---|---|---|---|---|---|---|
| Home Health Aide | $53.12 | × 1.035 | × 0.975 | × 1.0003 | × 1.004 | $53.84 |
| Medical Social Services | 188.01 | × 1.035 | × 0.975 | × 1.0003 | × 1.004 | 190.54 |
| Occupational Therapy | 129.11 | × 1.035 | × 0.975 | × 1.0003 | × 1.004 | 130.85 |
| Physical Therapy | 128.24 | × 1.035 | × 0.975 | × 1.0003 | × 1.004 | 129.97 |
| Skilled Nursing | 117.28 | × 1.035 | × 0.975 | × 1.0003 | × 1.004 | 118.86 |
| Speech-Language Pathology | 139.34 | × 1.035 | × 0.975 | × 1.0003 | × 1.004 | 141.22 |

d. Proposed Low-Utilization Payment Adjustment (LUPA) Add-On Factor

For episodes with four or fewer visits, Medicare pays on the basis of a national per-visit amount by discipline, referred to as a LUPA. As stated in our CY 2008 HH PPS proposed rule, after the HH PPS went into effect we received comments and correspondence suggesting that the LUPA payment rates do not adequately account for the front-loading of costs in an episode. Commenters suggested that because of the small number of visits in a LUPA episode, HHAs have little opportunity to spread the costs of lengthy initial visits over a full episode (72 FR 25424). In response to comments received, we conducted an initial descriptive analysis of visit log data from prior to the establishment of the HH PPS, showing that initial visits were 25 to 50 percent longer than subsequent visits in LUPA episodes that occur as the only or initial episode. These results indicated that payment for LUPA episodes may not offset the full cost of initial visits. Therefore, as specified in the CY 2008 HH PPS final rule, LUPA episodes that occur as the only episode or an initial episode in a sequence of adjacent episodes are adjusted by applying an additional amount to the LUPA payment before adjusting for area wage differences (72 FR 49849).

The CY 2008 LUPA add-on amount was calculated using a large representative sample of claims from 2005 (72 FR 49848). The analysis examined minute data for skilled nursing, physical therapy, and speech-language pathology (SLP) as, per the Medicare CoPs at § 484.55(a)(1) and (a)(2), only these three disciplines are allowed to conduct the initial assessment visit. The analysis showed that the average excess of minutes for the first visit in LUPA episodes that were the only episode or an initial LUPA in a sequence of adjacent episodes was 38.5 minutes for the first visit if SN, 25.1 minutes for the first visit if PT, and 22.6 minutes for the first visit if SLP. Those excess minutes were then expressed as a proportion of the average number of minutes for all non-first visits in non-LUPA episodes (42.5 minutes, 45.6 minutes, and 48.6 minutes for SN, PT, and SLP, respectively). These proportions (90.6 percent, 55.0 percent, and 46.5 percent for SN, PT, and SLP, respectively) were used to inflate the LUPA per-visit payment rates. Finally, using an appropriate set of weights representing the share of LUPA first visits for SN (77.8 percent), PT (21.7 percent) and SLP (0.5 percent), we calculated a LUPA add-on payment amount of $87.93 for LUPA episodes that occur as the only episode or an initial episode in a sequence of adjacent episodes (Table 20). When the LUPA add-on payment amount was implemented in CY 2008, to account for the additional payment to LUPA episodes and maintain budget neutrality, a reduction was made to the national, standardized 60-day episode payment rate (72 FR 49849).

TABLE 20—CALCULATION OF THE LUPA ADD-ON AMOUNT, CY 2008

| | Skilled nursing | Physical therapy | Speech-language pathology |
|---|---|---|---|
| (1) Proportional increase in minutes for an initial visit over non-initial visits | 90.59% | 55.04% | 46.50% |
| (2) CY 2008 Per-Visit Amounts | $104.91 | $114.71 | $124.54 |
| (3) Excess cost for initial visits (1*2) | $95.04 | $63.14 | $57.91 |
| (4) Percent of initial assessment visits provided by this discipline | 77.8% | 21.7% | 0.5% |
| (5) Add-on amount per discipline (3*4) | $73.94 | $13.70 | $0.29 |
| (6) Total LUPA add-on Amount (Sum of row 5) | **$87.93** | | |

For this proposed rule we are using the same methodology used to establish the LUPA add-on amount for CY 2008. Specifically, we updated the analysis using 100 percent of LUPA episodes and a 20 percent sample of non-LUPA first episodes from preliminary CY 2012 claims data for episodes starting on or before May 31, 2012. The analysis showed that the average excess of minutes for the first visit in LUPA episodes that were the only episode or an initial LUPA in a sequence of adjacent episodes was 38.88 minutes for the first visit if SN, 32.75 minutes for the first visit if PT, and 32.28 minutes for the first visit if SLP. The average minutes for all non-first visits in non-LUPA episodes was 44.62 minutes for SN, 47.88 minutes for PT, and 51.31 minutes for SLP. Those excess minutes expressed as a proportion of the average minutes for all non-first visits in non-LUPA episodes are 87.14 percent for SN, 68.40 percent for PT, and 62.91 percent for SLP. We used these proportions to inflate the proposed LUPA per-visit payment rates in Table 18 of $121.23 for SN, $132.56 for PT, and $144.03 for SLP. We then calculated a set of weights representing the share of LUPA first visits for SN (81.74 percent), PT (17.87 percent) and SLP (0.39 percent) and using these weights, we calculated a LUPA add-on payment amount of $102.91 for LUPA episodes that occur as the only episode or an initial episode in a sequence of adjacent episodes.

In lieu of a single LUPA add-on payment amount of $102.91, to ensure that the LUPA add-on amount equitably reflects the excess cost for an initial visit for each of the three disciplines (SN, PT, and SLP), we propose to multiply the per-visit payment amount for the first SN, PT, or SLP visit in LUPA episodes that occur as the only episode or an initial episode in a sequence of adjacent episodes by 1 + the proportional increase in minutes for an initial visit over non-initial visits. The proposed LUPA add-on factors are: 1.8714 for SN; 1.6841 for PT; and 1.6293 for SLP. For example, for LUPA episodes that occur as the only episode or an initial episode in a sequence of adjacent episodes, if the first skilled visit is SN, the payment for that visit would be $ $226.87 (1.8714 multiplied by $121.23). For more information on the analyses performed to update the LUPA add-on amount, please refer to the technical report titled ''Analyses in Support of Rebasing & Updating the Medicare Home Health Payment Rates'' available on the CMS Home Health Agency (HHA) Center Web site at: *http://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html?redirect=/center/hha.asp.*

e. Nonroutine Medical Supply Conversion Factor Update

Payments for NRS are computed by multiplying the relative weight for a particular severity level by the NRS conversion factor. To determine the CY 2014 proposed NRS conversion factor, we start with the 2013 NRS conversion factor ($53.97) and apply the 2.58

percent rebasing adjustment calculated in section II.D.3. of this proposed rule (1–0.0258 = 0.9742). We then update the conversion factor by the proposed CY 2014 HH market basket update (2.4 percent). We do not apply a standardization factor as the NRS payment amount calculated from the conversion factor is not wage or case-mix adjusted when the final claim payment amount is computed. The proposed NRS conversion factor for CY 2014 is $53.84, as shown in Table 21.

TABLE 21—PROPOSED CY 2014 NRS CONVERSION FACTOR

| CY 2013 NRS conversion factor | 2014 rebasing adjustment | 2014 HH market basket | Proposed CY 2014 NRS conversion factor |
|---|---|---|---|
| $53.97 | × 0.9742 | × 1.024 | = $53.84 |

Using the proposed CY 2014 NRS conversion factor ($53.84), the payment amounts for the six severity levels are shown in Table 22.

TABLE 22—PROPOSED CY 2014 NRS PAYMENT AMOUNTS FOR HHAS THAT DO SUBMIT THE REQUIRED QUALITY DATA

| Severity level | Points (scoring) | Relative weight | Proposed NRS payment amount |
|---|---|---|---|
| 1 | 0 | 0.2698 | $14.53 |
| 2 | 1 to 14 | 0.9742 | 52.45 |
| 3 | 15 to 27 | 2.6712 | 143.82 |
| 4 | 28 to 48 | 3.9686 | 213.67 |
| 5 | 49 to 98 | 6.1198 | 329.49 |
| 6 | 99+ | 10.5254 | 566.69 |

For HHAs that do not submit the required quality data, we again begin with the CY 2013 NRS conversion factor ($53.97) and apply the 2.58 percent rebasing adjustment calculated in section II.D.3. of this proposed rule (1 − 0.0258 = 0.9742). We then update the NRS conversion factor by the proposed CY 2014 HH market basket update of 2.4 percent, minus 2 percentage points. The CY 2014 NRS conversion factor for HHAs that do not submit quality data is shown in Table 23.

TABLE 23—PROPOSED CY 2014 NRS CONVERSION FACTOR FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

| CY 2013 NRS conversion factor | 2014 rebasing adjustment | CY 2014 HH market basket minus 2 percentage points | Proposed CY 2014 NRS conversion factor |
|---|---|---|---|
| $53.97 | × 0.9742 | × 1.004 | $52.79 |

The payment amounts for the various severity levels based on the updated conversion factor for HHAs that do not submit quality data are calculated in Table 24.

TABLE 24—PROPOSED CY 2014 NRS PAYMENT AMOUNTS FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

| Severity level | Points (scoring) | Relative weight | Proposed NRS payment amount |
|---|---|---|---|
| 1 | 0 | 0.2698 | $14.24 |
| 2 | 1 to 14 | 0.9742 | 51.43 |
| 3 | 15 to 27 | 2.6712 | 141.01 |
| 4 | 28 to 48 | 3.9686 | 209.50 |
| 5 | 49 to 98 | 6.1198 | 323.06 |
| 6 | 99+ | 10.5254 | 555.64 |

5. Rural Add-On

Section 421(a) of the MMA required, for HH services furnished in a rural areas (as defined in section 1886(d)(2)(D) of the Act), for episodes or visits ending on or after April 1, 2004, and before April 1, 2005, that the Secretary increase the payment amount that otherwise would have been made under section 1895 of the Act for the services by 5 percent.

Section 5201 of the DRA amended section 421(a) of the MMA. The amended section 421(a) of the MMA required, for HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), on or after January 1, 2006 and before January 1, 2007, that the Secretary increase the payment amount otherwise made under section 1895 of the Act for those services by 5 percent.

Section 3131(c) of the Affordable Care Act amended section 421(a) of the MMA to provide an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act for HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes and visits ending on or after April 1, 2010, and before January 1, 2016.

Section 421 of the MMA, as amended, waives budget neutrality related to this provision, as the statute specifically states that the Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Act applicable to HH services furnished during a period to offset the increase in payments resulting in the application of this section of the statute.

The 3 percent rural add-on is applied to the national, standardized 60-day episode payment rate, national per-visit rates, LUPA add-on payment, and NRS conversion factor when HH services are provided in rural (non-CBSA) areas. Refer to Tables 25 through 28 for these payment rates.

TABLE 25—PROPOSED CY 2014 PAYMENT AMOUNTS FOR 60-DAY EPISODES FOR SERVICES PROVIDED IN A RURAL AREA

| For HHAs that DO submit quality data | | | For HHAs that DO NOT submit quality data | | |
|---|---|---|---|---|---|
| Proposed national standardized 60-day episode payment rate | Multiply by the 3 percent rural add-on | Proposed rural national standardized 60-day episode payment rate | Proposed national standardized 60-day episode payment rate | Multiply by the 3 percent rural add-on | Proposed rural national standardized 60-day episode payment Rate |
| $2,860.20 | × 1.03 | $2,946.01 | $2,804.34 | × 1.03 | $2,888.47 |

TABLE 26—PROPOSED CY 2014 PER-VISIT AMOUNTS FOR SERVICES PROVIDED IN A RURAL AREA

| HH discipline type | For HHAs that DO submit quality data | | | For HHAs that DO NOT submit quality data | | |
|---|---|---|---|---|---|---|
| | Proposed per-visit rate | Multiply by the 3 percent rural add-on | Proposed rural per-visit rate | Proposed per-visit rate | Multiply by the 3 percent rural add-on | Proposed rural per-visit rate |
| HH Aide | $54.91 | × 1.03 | $56.56 | $53.84 | × 1.03 | $55.46 |
| MSS | 194.34 | × 1.03 | 200.17 | 190.54 | × 1.03 | 196.26 |
| OT | 133.46 | × 1.03 | 137.46 | 130.85 | × 1.03 | 134.78 |
| PT | 132.56 | × 1.03 | 136.54 | 129.97 | × 1.03 | 133.87 |
| SN | 121.23 | × 1.03 | 124.87 | 118.86 | × 1.03 | 122.43 |
| SLP | 144.03 | × 1.03 | 148.35 | 141.22 | × 1.03 | 145.46 |

TABLE 27—PROPOSED CY 2014 NRS CONVERSION FACTOR FOR SERVICES PROVIDED IN RURAL AREAS

| For HHAs that DO submit quality data | | | For HHAs that DO NOT submit quality data | | |
|---|---|---|---|---|---|
| Proposed conversion factor | Multiply by the 3 percent rural add-on | Proposed rural conversion factor | Proposed conversion factor | Multiply by the 3 percent rural add-on | Proposed rural conversion factor |
| $53.84 | × 1.03 | $55.46 | $52.79 | × 1.03 | $54.37 |

TABLE 28—PROPOSED CY 2014 NRS PAYMENT AMOUNTS FOR SERVICES PROVIDED IN RURAL AREAS

| Severity level | Points (scoring) | For HHAs that DO submit quality data (NRS conversion factor = $55.46) | | For HHAs that DO NOT submit quality data (NRS conversion factor = $54.37) | |
|---|---|---|---|---|---|
| | | Relative weight | Total NRS payment amount for rural areas | Relative weight | Total NRS payment amount for rural areas |
| 1 | 0 | 0.2698 | $14.96 | 0.2698 | $14.67 |
| 2 | 1 to 14 | 0.9742 | 54.03 | 0.9742 | 52.97 |
| 3 | 15 to 27 | 2.6712 | 148.14 | 2.6712 | 145.23 |
| 4 | 28 to 48 | 3.9686 | 220.10 | 3.9686 | 215.77 |
| 5 | 49 to 98 | 6.1198 | 339.40 | 6.1198 | 332.73 |
| 6 | 99+ | 10.5254 | 583.74 | 10.5254 | 572.27 |

*F. Outlier Policy*

1. Background

Section 1895(b)(5) of the Act allows for the provision of an addition or adjustment to the national, standardized 60-day case-mix and wage-adjusted episode payment amounts in the case of episodes that incur unusually high costs due to patient care needs. Prior to the enactment of the Affordable Care Act, section 1895(b)(5)of the Act stipulated that projected total outlier payments could not exceed 5 percent of total projected or estimated HH payments in a given year. In the Medicare Program; Prospective Payment System for Home Health Agencies final rule (65 FR 41188 through 41190), we described the method for determining outlier payments. Under this system, outlier payments are made for episodes whose estimated costs exceed a threshold amount for each HH Resource Group (HHRG). The episode's estimated cost is the sum of the national wage-adjusted per-visit payment amounts for all visits delivered during the episode. The outlier threshold for each case-mix group or PEP adjustment is defined as the 60-day episode payment or PEP adjustment for that group plus a fixed-dollar loss (FDL) amount. The outlier payment is defined to be a proportion of the wage-adjusted estimated cost beyond the wage-adjusted threshold. The threshold amount is the sum of the wage and case-mix adjusted PPS episode amount and wage-adjusted FDL amount. The proportion of additional costs over the outlier threshold amount paid as outlier payments is referred to as the loss-sharing ratio.

2. Regulatory Update

In the CY 2010 HH PPS final rule (74 FR 58080 through 58087), we discussed excessive growth in outlier payments, primarily the result of unusually high outlier payments in a few areas of the country. Despite program integrity efforts associated with excessive outlier payments in targeted areas of the country, we discovered that outlier expenditures still exceeded the 5 percent, target and, in the absence of corrective measures, would continue do to so. Consequently, we assessed the appropriateness of taking action to curb outlier abuse. To mitigate possible billing vulnerabilities associated with excessive outlier payments and adhere to our statutory limit on outlier payments, we adopted an outlier policy that included a 10 percent agency-level cap on outlier payments. This cap was implemented in concert with a reduced FDL ratio of 0.67. These policies resulted in a projected target outlier pool of approximately 2.5 percent. (The previous outlier pool was 5 percent of total HH expenditures.)

For CY 2010, we first returned 5 percent of these dollars back into the national, standardized 60-day episode payment rates, the national per-visit rates, the LUPA add-on payment amount, and the NRS conversion factor. Then, we reduced the CY 2010 rates by 2.5 percent to account for the new outlier pool of 2.5 percent. This outlier policy was adopted for CY 2010 only.

3. Statutory Update

As we noted in the CY 2011 HH PPS final rule (75 FR 70397 through 70399), section 3131(b)(1) of the Affordable Care Act amended section 1895(b)(3)(C) of the Act. As amended, ''Adjustment for outliers,'' states that ''The Secretary shall reduce the standard prospective payment amount (or amounts) under this paragraph applicable to HH services furnished during a period by such proportion as will result in an aggregate reduction in payments for the period equal to 5 percent of the total payments estimated to be made based on the prospective payment system under this subsection for the period.'' In addition, section 3131(b)(2) of the Affordable Care Act amended section 1895(b)(5) of the Act by re-designating the existing language as section 1895(b)(5)(A) of the Act, and revising it to state that the Secretary, ''subject to [a 10 percent program-specific outlier cap], may provide for an addition or adjustment to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. The total amount of the additional payments or payment adjustments made under this paragraph with respect to a fiscal year or year may not exceed 2.5 percent of the total payments projected or estimated to be made based on the prospective payment system under this subsection in that year.''

As such, beginning in CY 2011, our HH PPS outlier policy is that we reduce payment rates by 5 percent and target up to 2.5 percent of total estimated HH PPS payments to be paid as outliers. To do so, we first returned the 2.5 percent held for the target CY 2010 outlier pool to the national, standardized 60-day episode payment rates, the national per visit rates, the LUPA add-on payment amount, and the NRS conversion factor for CY 2010. We then reduced the rates by 5 percent as required by section 1895(b)(3)(C) of the Act, as amended by section 3131(b)(1) of the Affordable Care Act. For CY 2011 and subsequent calendar years we target up to 2.5 percent of estimated total payments to be paid as outlier payments, and apply a 10 percent agency-level outlier cap.

4. Loss-Sharing Ratio and Fixed Dollar Loss (FDL) Ratio

For a given level of outlier payments, there is a trade-off between the values selected for the FDL ratio and the loss-sharing ratio. A high FDL ratio reduces the number of episodes that can receive outlier payments, but makes it possible to select a higher loss-sharing ratio, and therefore, increase outlier payments for outlier episodes. Alternatively, a lower FDL ratio means that more episodes can qualify for outlier payments, but outlier payments per episode must then be lower.

The FDL ratio and the loss-sharing ratio must be selected so that the estimated total outlier payments do not exceed the 2.5 percent aggregate level (as required by section 1895(b)(5)(A) of the Act). Historically, we have used a value of 0.80 for the loss-sharing ratio which, we believe, preserves incentives for agencies to attempt to provide care efficiently for outlier cases. With a loss-sharing ratio of 0.80, Medicare pays 80 percent of the additional estimated costs above the outlier threshold amount. We are not proposing a change to the loss-sharing ratio in this proposed rule. In the CY 2011 HH PPS final rule (75 FR 70398), in targeting total outlier payments as 2.5 percent of total HH PPS payments, we implemented an FDL ratio of 0.67, and we maintained that ratio in CY 2012. Simulations based on CY 2010 claims data completed for the CY 2013 HH PPS final rule showed that outlier payments were estimated to comprise approximately 2.18 percent of total HH PPS payments in CY 2013, and as such, we lowered the FDL ratio from 0.67 to 0.45. We stated that lowering the FDL ratio to 0.45, while maintaining a loss-sharing ratio of 0.80, struck an effective balance of compensating for high-cost episodes while allowing more episodes to qualify as outlier payments (77 FR 67080). The national, standardized 60-day episode payment amount is multiplied by the FDL ratio. That amount is wage-adjusted to derive the wage-adjusted FDL amount, which is added to the case-mix and wage-adjusted 60-day episode payment amount to determine the outlier threshold amount that costs have to exceed before Medicare will pay 80 percent of the additional estimated costs.

Based on simulations using preliminary CY 2012 claims data, the proposed CY 2014 payments rates in section III.E. in this proposed rule, and the FDL ratio of 0.45; we estimate that outlier payments would comprise

approximately 1.82 percent of total HH PPS payments in CY 2014. Simulating payments using preliminary CY 2012 claims data and the CY 2013 payment rates (77 FR 67100 through 67105); we estimate that outlier payments would comprise 1.78 percent of total payments. Given the proposed increases to the CY 2014 national per-visit payment rates, our analysis estimates a 0.04 percentage point increase in estimated outlier payments as a percent of total HH PPS payment. We further estimate that by the end of the 4-year phase-in period required by the Affordable Care Act, estimated outlier payments as a percent of total HH PPS payments would be approximately 1.94 percent. We note, however, that these estimates do not take in to account any changes in utilization that may have occurred in CY 2013, and would continue to occur in CY 2014, due to decreasing the FDL ratio from 0.67 percent to 0.45 percent. Therefore, we not proposing a change to the FDL ratio for CY 2014 as the claims data showing any utilization changes that may have resulted from an FDL of 0.45 will not be available for analysis until next year. In the final rule, we will update our estimate of outlier payments as a percent of total HH PPS payments using the best analysis the most current and complete year of HH PPS data and will continue to monitor the percent of total HH PPS payments paid as outlier payments.

5. Outlier Relationship to the HH Payment Study

As we discuss in section III.G. of this proposed rule, section 3131(d) of the Affordable Care Act requires CMS to conduct a study and report on developing HH PPS payment revisions that will ensure access to care and payment for patients with high severity of illness. Our Report to Congress containing this study's recommendations is due no later than March 1, 2014. Section 3131(d)(1)(A)(iii) of the Affordable Care Act, in particular, states that this study may include analysis of potential revisions to outlier payments to better reflect costs of treating Medicare beneficiaries with high levels of severity of illness.

*G. Payment Reform: Home Health Study and Report*

To address concerns that some beneficiaries are at risk of not having access to Medicare HH services, and that the current HH PPS may encourage providers to adopt selective admission patterns, section 3131(d) of the Affordable Care Act requires the Secretary to conduct a study on HHA costs involved with providing ongoing access to care to low-income Medicare beneficiaries or beneficiaries in medically underserved areas, and in treating beneficiaries with varying levels of severity of illness (specifically, beneficiaries with ''high levels of severity of illness''). Section 3131(d) of the Affordable Care Act also gives the Secretary the authority to explore methods to revise the HH PPS to account for costs related to patient severity of illness or to improving beneficiary access to care and examine the potential impacts of any potential revisions to the payment system.

As we stated in the CY 2013 HH PPS proposed rule (77 FR 41572), we awarded a contract to L&M Policy Research in the fall of 2010 to perform exploratory work for the study on the vulnerable patient populations (that is, low-income Medicare beneficiaries, beneficiaries in medically underserved areas, and beneficiaries with high levels of severity of illness). The contractor performed a literature review of potential HH PPS payment vulnerabilities and access issues, established and convened technical expert panel (TEP) meetings and open door forums to help define the vulnerable patient populations and to gain insight on access issues these populations may face, and performed preliminary analysis looking at resource costs versus Medicare reimbursement.

In September 2011, we awarded a study contract to L&M Policy Research, along with subcontractors Avalere Health, Mathematica Policy Research, and Social & Scientific Systems, to develop an analytic plan, perform detailed analysis, and if necessary, develop recommendations for changes to the HH PPS. In 2012, we completed preliminary analyses on HHA costs associated with providing care for vulnerable patient populations. We presented our findings at a TEP meeting in December 2012 and received extensive feedback on our analyses. We refined our analytic approach based on feedback from the TEP meeting and we are in the process of performing the refined analyses. In addition to examining the costs of providing care to vulnerable patient populations, we are assessing whether the vulnerable patient populations experience access issues and potential factors that may prevent access to care. To do so, we mailed out HHA and physician surveys on access to care for vulnerable populations in February 2013. We are in the process of collecting and analyzing the data from the surveys.

The findings from our analysis of HHA costs and the survey on access to care for vulnerable patient populations may be used to develop recommendations on how to revise the current HH PPS to better account for costs and ensure access to care for these beneficiaries. Methods to revise the current HH PPS could include payment adjustments for services that involve either more or fewer resources, changes to reflect resources involved with providing HH services to low-income Medicare beneficiaries or Medicare beneficiaries residing in medically underserved area, and ways outlier payments could be revised to reflect costs of treating Medicare beneficiaries with high severity of illness. In addition, as part of the study, we may analyze operational issues involved with potential implementation of potential revisions to the HH payment system.

The Affordable Care Act requires that the Secretary submit a Report to Congress regarding the study no later than March 1, 2014. The report may contain recommendations for revisions to the HH PPS, recommendations for legislation and administrative action, and recommendations for whether further research is needed. The Congress also provided CMS with the authority to conduct a separate demonstration project to perform additional research and further explore recommendations from the study. We plan to provide updates regarding our progress on the HH study in future rulemaking and open door forums.

*H. Cost Allocation of Survey Expenses*

In the CY 2013 HH PPS proposed rule (77 FR 41548), we proposed to amend § 431.610(g), Relations with standard-setting and survey agencies, to require that Medicaid state plans explicitly include Medicaid's appropriate contribution to the cost of HH surveys. We proposed to add a reference to HHAs, along with NFs and ICFs/IIDs at § 431.610(g).

Surveys are required for determining a provider's or supplier's compliance with program participation requirements and the HHA surveys benefit both Medicare and Medicaid programs where the HHAs seek such dual certification. Thus, in accordance with OMB Circular A–87, the costs for surveys of HHAs that are certified for both Medicare and Medicaid should be shared between Medicare, Medicaid and state-only programs in proportion to the benefits received. However, to provide more time for dialogue with states and for any necessary adjustments to state Medicaid Plans, we removed the proposed provision at § 431.610(g) in the for CY 2013 HH PPS final rule (77 FR 67068). We are now proposing to

proceed to amend § 431.610(g) with additional explanation of our proposal, updated cost information, and request for comment on our proposed methodologies.

This proposed rule would clarify that a state Medicaid program must provide that, in certifying HHAs, the state's designated survey agency must carry out certain other responsibilities that already apply to surveys of nursing facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF–IID), including sharing in the cost of HHA surveys. Section 431.610(g) provides for the availability of federal financial participation (FFP) in the cost of such surveys, except for expenditures that the survey agency makes that are attributable to the state's overall responsibilities under state law and regulations. We believe that the principles articulated in OMB Circular A–87 require that HHA survey costs be allocated to Medicaid, Medicare and state-only programs in proportion to the benefits received. However, we also believe that the proposed amendment to § 431.610(g) would add clarity, and that a proposed rule will offer states and the public additional opportunity to comment or pose questions that will further aid adherence to the appropriate cost allocation principles. We further invite public comment on our proposed methods to ensure compliance with these requirements. Specifically, we propose to review each state's allocation of costs for HHA surveys for adherence to OMB Circular A–87 principles and the statutes with the goal of ensuring full adherence by each state no later than July 2014. For that portion of costs attributable to Medicare and Medicaid, we would assign 50 percent to Medicare and 50 percent to Medicaid. This is the standard 50/50 method that CMS and states have used effectively for many years in the allocation of expenses related to surveys of SNF/NF nursing homes, an approach we consider to be more straight-forward and economical compared with calculation of unique percentages that vary state-to-state and year-by-year. Most importantly, a 50/50 method best reflects the reality that Medicare and Medicaid requirements for home health agencies are generally the same and each program benefits from the regulations.

An alternative to the proposed 50/50 method for allocating each state's Medicare/Medicaid HHS survey costs would be to fix each state's Medicaid share each year based on the proportion of Medicaid funding for HH services in the state compared to the combined Medicare and Medicaid total funding in the most recent years for which the data are reasonably complete. This is the method adopted for the disbursement of civil monetary penalties (CMPs) in the CY 2013 HH PPS proposed rule (77 FR 41548). However, the effective date of HHA CMPs is not until July 1, 2014. Our preparations for imposing such CMPs in 2014 indicate that the annual data collection and calculations necessary for that methodology are (a) More complicated and burdensome than necessary, (b) involve an inherent data lag that could create uncertainty for states and CMS in preparing state survey agency budgets, (c) sufficiently variable from year to year to create further uncertainty for states, (d) unable to anticipate the effects of substantial expansion of Medicaid under the Affordable Care Act (which could increasingly enlarge the state Medicaid share) and (e) would not recognize that both Medicare and Medicaid programs benefit from the regulations. Therefore, we believe that the more efficient and advantageous method, for both CMS and states, would be the 50/50 allocation method that has been used successfully for many years in the allocation of survey costs for SNF/NF nursing homes. We invite comment not only on the 50/50 allocation method for the costs of HHA survey expenses, but on whether the method of distribution for CMP receipts back to states and to the U.S. Treasury should be changed to the same 50/50 methodology. Based on such a 50/50 ratio for each state, and based upon the projected national HHA survey budget for FY 2014 of $37.2 million, if implemented in the beginning of FY 2014, the anticipated aggregate share for Medicaid would amount to $18.6 million. The cost of surveys is treated as a Medicaid administrative cost, reimbursable at the professional staff rate of 75 percent. Therefore, the state Medicaid share will be approximately $4.65 million on an annualized basis. The $4.65 million cost is spread out over the 53 states/jurisdictions that currently conduct surveys under section 1864 of the Act. However, the proposed adherence date of July FY 2014 would reduce the Medicaid aggregate share to approximately $4.65 million (for 3 months of the annual $18.6 million aggregate cost) and the state Medicaid share to approximately $1.16 million (25 percent of expenses for the last quarter of FY 2014).

## IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Unless otherwise noted, to derive average costs we used data from the U.S. Bureau of Labor Statistics for all salary estimates. The salary estimates include the cost of fringe benefits, calculated at 35 percent of salary, which is based on the March 2011 Employer Costs for Employee Compensation report by the Bureau.

We are soliciting public comment on each of the section 3506(c)(2)(A)-required issues for the following information collection requirements (ICRs):

### *A. ICRs Regarding OASIS*

The information collection requirements and burden estimates associated with OASIS have been approved by OMB under OCN 0938–0760. While OASIS is discussed in preamble section III E.2a, this proposed rule does not revise any of its information collection requirements or burden estimates and, therefore, does not require additional OMB review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

### *B. ICRs Regarding Cost Allocation of Home Health Agency (HHA) Survey Expenses (§ 431.610)*

In § 431.610, HHAs would be added to the survey agency provision concerning Medicaid state plans. Since CMS already requires the state survey agencies to have qualified personnel perform onsite inspections as appropriate, we believe that the requirement to use qualified staff is met in the current state Medicaid plans. As explained in the preamble (section H, Cost Allocation of Survey Expenses), we also expect that the state Medicaid plans will provide for the appropriate Medicaid share of expenses for the conduct of HHA surveys. This is a budgeting task for which there may be

some incidental information collection burden. For some states we believe the information collection responsibility may be met within the context of their current state plan, while other states may need to make a simple amendment to their state Medicaid plan via use of the existing CMS–179 form (OCN 0938–0193). While CMS–179 would be the vehicle for transmitting the amendment to CMS, the amendment will be submitted to OMB for their review/approval under CMS–10489 (OCN 0938–NEW).

Consistent with time estimates for similar tasks, the time required to complete this information collection is estimated to average 15 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If all states, DC, and 2 territories needed to make such a state plan amendment, the aggregate hours would be 13.25 non-recurring hours (15/60 * 53). Applying a national average professional surveyor cost per hour of approximately $50.23 (inclusive of salary and fringe benefits), we estimate that the maximum information collection cost would be approximately $667 ($50.23 * 13.25) if all states needed to file a state plan amendment.

Apart from the SPA-related requirements, this proposed rule would not revise any budget-related recordkeeping or reporting requirements or estimates and, therefore, does not require additional OMB review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *C. ICRs Regarding Home Health Care CAHPS® (HHCAHPS®) Survey (§ 484.250)*

As part of the DHHS Transparency Initiative on Quality Reporting, CMS implements the HHCAHPS® Survey to measure and to publicly report patients' experiences with home health care they receive from Medicare-certified agencies. Section 484.250, Patient Assessment Data, requires that HHAs submit to CMS, HHCAHPS® data in order to administer the payment rate methodologies described in §§ 484.215, 484.230, and 484.235. The burden associated with this is the time and effort put forth by the HHAs to submit the HHCAHPS® data, the patients' burden to respond to the HHCAHPS® survey, and the cost to the HHAs to pay for the HHCAHPS® survey vendors to collect the data on their behalf. This burden is currently accounted for under OCN 0938–1066 (CMS–10275).

CMS allows Medicare-certified home health agencies that serve 59 or fewer HHCAHPS® eligible patients, to request an exemption from participating in the HHCAHPS® survey. Currently, we have posted the HHCAHPS® Participation Exemption Request (PER) Form for the CY 2015 Annual Payment Update on *https://homehealthcahps.org.* This form is in use without an OMB control number (OCN). The form is only to be used if home health agencies have 59 or fewer HHCAHPS® eligible patients in the count period that is referenced for a given calendar year. For the CY 2015 annual payment update, home health agencies with 59 or fewer HHCAHPS® patients in the period of April 2012 through March 2013 are exempt from participation in the HHCAHPS® Survey from April 2013 through March 2014, if they complete the HHCAHPS Participation Exemption Request Form for the CY 2015 Annual Payment Update, and the counts are verified in the CMS database for the same period. We are revising OCN 0938–1066 by adding the HHCAHPS® Participation Exemption Request Form for the CY Annual Payment Update and by adding our estimated burden that the form presents to Medicare-certified home health agencies.

The HHCAHPS® PER Form for the CY 2015 Annual Payment Update is a one-page form. We estimate that it would take 15 minutes to complete the form since it only has a few items to complete including one item concerning the count of HHCAHPS® eligible patients in an annual period. We believe that it would take an additional 20 minutes to count the patients and to verify the count. The annualized aggregated total burden to completion of the form would be 1,160 hr ((15 min + 20 min)/60 × 2,000 Medicare-certified home health agencies) at a total estimated cost of $36,400 for 2,000 home health agencies.

In deriving these figures, we used the following hourly labor rates and time to complete each task: $36.27/hr and 20 min (.33 hr) for a home health care agency director to check the work on the Participation Exemption Request Form and $24.92/hr and 15 min (.25 hr) for an executive assistant to perform the patient count and to complete the form. This amounts to $18.20 per respondent ($11.97 + $6.23) or $36,400 ($18.20 × 2,000) total.

### *D. Submission of PRA-Related Comments*

We have submitted a copy of this proposed 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 the OMB.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, (CMS–1450–P) Fax: (202) 395–6974; or Email: *OIRA_submission@omb.eop.gov.*

## V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## VI. Regulatory Impact Analysis

### *A. Introduction*

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563

emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This notice has been designated as economically significant rule, under section 3(f)(1)of Executive Order 12866. Accordingly, we have prepared a regulatory impact analysis (RIA) that to the best of our ability presents the costs and benefits of the rulemaking. Also, the rule has been reviewed by OMB.

*B. Statement of Need*

Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of HH services paid under Medicare. In addition, section 1895(b)(3)(A) of the Act requires (1) the computation of a standard prospective payment amount include all costs for HH services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited cost report data available to the Secretary, and (2) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs. Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the HH applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of appropriate case-mix adjustment factors for significant variation in costs among different units of services. Lastly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to HH services furnished in a geographic area compared to the applicable national average level.

Section 1895(b)(5) of the Act gives the Secretary the option to make changes to the payment amount otherwise paid in the case of outliers because of unusual variations in the type or amount of medically necessary care. Section 1895(b)(3)(B)(v) of the Act requires HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase. Also, section 1886(d)(2)(D) of the Act requires that HH services furnished in a rural area for episodes and visits ending on or after April 1, 2010, and before January 1, 2016, receive an increase of 3 percent the payment amount otherwise made under section 1895 of the Act.

Section 3131(a) of the Affordable Care Act mandates that starting in CY 2014, the Secretary must apply an adjustment to the national, standardized 60-day episode payment rate and other amounts applicable under section 1895(b)(3)(A)(i)(III) of the Act to reflect factors such as changes in the number of visits in an episode, the mix of services in an episode, the level of intensity of services in an episode, the average cost of providing care per episode, and other relevant factors. In addition, section 3131(a) of the Affordable Care Act mandates that rebasing must be phased-in over a 4-year period in equal increments, not to exceed 3.5 percent of the amount (or amounts) in any given year, applicable under section 1895(b)(3)(A)(i)(III) of the Act and be fully implemented in CY 2017.

*C. Overall Impact*

The update set forth in this proposed rule applies to Medicare payments under HH PPS in CY 2014. Accordingly, the following analysis describes the impact in CY 2014 only. We estimate that the net impact of the proposals in this rule is approximately $290 million in decreased payments to HHAs in CY 2014. The impact of the wage index would be a decrease of $40 million. However, we applied a standardization factor to the rates as discussed earlier. Therefore, the net effect of the wage index impact is zero dollars. The $290 million impact reflects the distributional effects of the 2.4 percent HH payment update percentage ($460 million increase), the effects of the rebasing adjustments to the national, standardized 60-day episode payment rate, the national per-visit payment rates, and the NRS conversion factor ($650 million decrease), and the effects of ICD–9 coding adjustments ($100 million decrease). The $290 million in savings is reflected in the last column of the first row in Table 29 as a 1.5 percent decrease in expenditures when comparing the CY 2013 HH PPS to the proposed CY 2014 HH PPS.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.0 million to $34.5 million in any 1 year. For the purposes of the RFA, we estimate that almost all HHAs are small entities as that term is used in the RFA. Individuals and states are not included in the definition of a small entity. The Secretary has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

A discussion on the alternatives considered is presented in section VI.E. of this proposed rule. The following analysis, with the rest of the preamble, constitutes our initial RFA analysis. We solicit comment on the RFA analysis provided.

In addition, section 1102(b) of the Act requires us to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This proposed rule applies to HHAs. Therefore, the Secretary has determined that this proposed rule would not have a significant economic impact on the operations of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold is approximately $141 million. This proposed rule is not anticipated to have an effect on state, local, or tribal governments in the aggregate, or by the private sector, of $141 million or more.

*D. Detailed Economic Analysis*

This proposed rule sets forth updates to the HH PPS rates contained in the CY 2013 HH PPS final rule. The impact analysis of this proposed rule presents the estimated expenditure effects of policy changes proposed in this rule. We use the latest data and best analysis available, but we do not make adjustments for future changes in such variables as number of visits or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare HH benefit, based primarily on preliminary Medicare claims from 2012. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to errors resulting from other changes in

the impact time period assessed. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress, or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of the Affordable Care Act, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Table 29 represents how HHA revenues are likely to be affected by the policy changes proposed in this rule. For this analysis, we used linked CY 2012 HH claims and OASIS assessments; the claims are for dates of service that started on or before May 31, 2012. The first column of Table 29 classifies HHAs according to a number of characteristics including provider type, geographic region, and urban and rural locations. The third column shows the payment effects of the wage index only. The fourth column shows the effects of the standardization factor only. The fifth column shows the effects of the rebasing adjustments to the national, standardized 60-day episode payment rate, the national per-visit payment rates, and NRS conversion factor; the 2014 wage index; and standardization. The sixth column displays the effects of ICD–9 coding changes and the seventh column shows the effects of the market basket increase. The last column shows the payment effects of all the proposed policies. For CY 2014, the average impact for all HHAs due to the effects of rebasing is a 3.4 percent decrease in payments. The overall impact for all HHAs, in estimated total payments from CY 2013 to CY 2014, is a decrease of approximately 1.5 percent.

TABLE 29—PROPOSED HOME HEALTH AGENCY POLICY IMPACTS FOR CY 2014, BY FACILITY TYPE AND AREA OF THE COUNTRY

| | Number of agencies | Proposed CY 2014 wage index (percent) | Standard-ization (percent) | Proposed rebasing, 2014 wage index, and standardiza-tion [1] (percent) | Proposed ICD–9 coding changes (percent) | CY 2014 HH market basket (percent) | Impact of all CY 2014 policies (percent) |
|---|---|---|---|---|---|---|---|
| All Agencies | 11,152 | −0.2 | 0.2 | −3.4 | −0.5 | 2.4 | −1.5 |
| Facility Type and Control: | | | | | | | |
| Free-Standing/Other Vol/NP | 1,042 | 0.2 | 0.3 | −2.9 | −0.3 | 2.4 | −0.8 |
| Free-Standing/Other Proprietary | 8,511 | −0.3 | 0.2 | −3.5 | −0.6 | 2.4 | −1.7 |
| Free-Standing/Other Government | 420 | −0.3 | 0.1 | −3.6 | −0.4 | 2.4 | −1.6 |
| Facility-Based Vol/NP | 810 | 0.0 | 0.2 | −3.1 | −0.3 | 2.4 | −1.0 |
| Facility-Based Proprietary | 122 | −0.1 | 0.1 | −3.4 | −0.4 | 2.4 | −1.4 |
| Facility-Based Government | 247 | −0.2 | 0.1 | −3.5 | −0.4 | 2.4 | −1.5 |
| Subtotal: Freestanding | 9,973 | −0.2 | 0.2 | −3.4 | −0.5 | 2.4 | −1.5 |
| Subtotal: Facility-based | 1,179 | 0.0 | 0.2 | −3.2 | −0.3 | 2.4 | −1.1 |
| Subtotal: Vol/NP | 1,852 | 0.1 | 0.2 | −3.0 | −0.3 | 2.4 | −0.9 |
| Subtotal: Proprietary | 8,633 | −0.3 | 0.2 | −3.5 | −0.6 | 2.4 | −1.7 |
| Subtotal: Government | 667 | −0.3 | 0.1 | −3.5 | −0.4 | 2.4 | −1.5 |
| Facility Type and Control: Rural: | | | | | | | |
| Free-Standing/Other Vol/NP | 222 | 0.2 | 0.1 | −3.0 | −0.3 | 2.4 | −0.9 |
| Free-Standing/Other Proprietary | 159 | −0.3 | 0.1 | −3.6 | −0.4 | 2.4 | −1.6 |
| Free-Standing/Other Government | 513 | −0.3 | 0.1 | −3.6 | −0.5 | 2.4 | −1.7 |
| Facility-Based Vol/NP | 279 | 0.1 | 0.1 | −3.2 | −0.3 | 2.4 | −1.1 |
| Facility-Based Proprietary | 43 | 0.2 | 0.1 | −3.1 | −0.4 | 2.4 | −1.1 |
| Facility-Based Government | 159 | 0.1 | 0.1 | −3.2 | −0.3 | 2.4 | −1.1 |
| Facility Type and Control: Urban: | | | | | | | |
| Free-Standing/Other Vol/NP | 882 | 0.2 | 0.3 | −2.9 | −0.3 | 2.4 | −0.8 |
| Free-Standing/Other Proprietary | 8,148 | −0.3 | 0.2 | −3.5 | −0.6 | 2.4 | −1.7 |
| Free-Standing/Other Government | 159 | −0.4 | 0.1 | −3.6 | −0.4 | 2.4 | −1.6 |
| Facility-Based Vol/NP | 531 | 0.0 | 0.2 | −3.1 | −0.3 | 2.4 | −1.0 |
| Facility-Based Proprietary | 79 | −0.2 | 0.1 | −3.5 | −0.4 | 2.4 | −1.5 |
| Facility-Based Government | 88 | −0.5 | 0.2 | −3.6 | −0.4 | 2.4 | −1.6 |
| Facility Location: Urban or Rural | | | | | | | 0.0 |
| Rural | 1,265 | −0.1 | 0.1 | −3.4 | −0.4 | 2.4 | −1.4 |
| Urban | 9,887 | −0.2 | 0.2 | −3.4 | −0.5 | 2.4 | −1.5 |
| Facility Location: Region of the Country: | | | | | | | |
| North | 837 | 0.6 | 0.4 | −2.4 | −0.3 | 2.4 | −0.3 |
| Midwest | 2,950 | −0.5 | 0.1 | −3.7 | −0.4 | 2.4 | −1.7 |
| South | 5,544 | −0.5 | 0.1 | −3.7 | −0.6 | 2.4 | −1.9 |
| West | 1,772 | 0.4 | 0.3 | −2.7 | −0.4 | 2.4 | −0.7 |
| Other | 49 | 0.8 | 0.1 | −2.4 | −0.2 | 2.4 | −0.2 |
| Facility Location: Region of the Country (Census Region): | | | | | | | |
| New England | 320 | 0.4 | 0.3 | −2.7 | −0.3 | 2.4 | −0.6 |
| Mid Atlantic | 517 | 0.8 | 0.4 | −2.3 | −0.3 | 2.4 | −0.2 |
| East North Central | 2,210 | −0.6 | 0.1 | −3.8 | −0.4 | 2.4 | −1.8 |
| West North Central | 740 | −0.2 | 0.1 | −3.4 | −0.4 | 2.4 | −1.4 |
| South Atlantic | 2,046 | −0.6 | 0.1 | −3.8 | −0.5 | 2.4 | −1.9 |
| East South Central | 436 | −0.4 | 0.1 | −3.7 | −0.4 | 2.4 | −1.7 |
| West South Central | 3,062 | −0.3 | 0.1 | −3.6 | −0.9 | 2.4 | −2.1 |
| Mountain | 638 | 0.0 | 0.2 | −3.2 | −0.4 | 2.4 | −1.2 |
| Pacific | 1,134 | 0.6 | 0.3 | −2.5 | −0.4 | 2.4 | −0.5 |
| Facility Size (Number of 1st Episodes): | | | | | | | |
| < 100 episodes | 3,385 | −0.2 | 0.2 | −3.5 | −0.6 | 2.4 | −1.7 |
| 100 to 249 | 2,971 | −0.4 | 0.2 | −3.6 | −0.6 | 2.4 | −1.8 |
| 250 to 499 | 2,237 | −0.4 | 0.2 | −3.6 | −0.6 | 2.4 | −1.8 |
| 500 to 999 | 1,477 | −0.2 | 0.2 | −3.4 | −0.5 | 2.4 | −1.5 |

TABLE 29—PROPOSED HOME HEALTH AGENCY POLICY IMPACTS FOR CY 2014, BY FACILITY TYPE AND AREA OF THE COUNTRY—Continued

| | Number of agencies | Proposed CY 2014 wage index (percent) | Standardization (percent) | Proposed rebasing, 2014 wage index, and standardization [1] (percent) | Proposed ICD–9 coding changes (percent) | CY 2014 HH market basket (percent) | Impact of all CY 2014 policies (percent) |
|---|---|---|---|---|---|---|---|
| 1,000 or More | 1,082 | −0.1 | 0.2 | −3.2 | −0.4 | 2.4 | −1.2 |

[1]The impact of rebasing includes the rebasing adjustments to the national, standardized 60-day episode payment rate, the national per-visit rates, and the NRS conversion factor and also includes the impact of the proposed LUPA add-on factors. The estimated impact of the NRS conversion factor rebasing adjustment, of −2.58 percent, is an overall −0.043 percent decrease in estimated payments to HHAs. The estimated impact of the proposed LUPA add-on factors is an overall 0.007 percent increase in payments to HHAs.

REGION KEY: New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; Middle Atlantic=Pennsylvania, New Jersey, New York; South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia; East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin; East South Central=Alabama, Kentucky, Mississippi, Tennessee; West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; West South Central=Arkansas, Louisiana, Oklahoma, Texas; Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming; Pacific=Alaska, California, Hawaii, Oregon, Washington; Outlying=Guam, Puerto Rico, Virgin Islands.

*E. Alternatives Considered*

As described in section III.D. of this proposed rule, ''Rebasing the National, Standardized 60-day Episode Payment Rate, LUPA Per-Visit Payment Amounts, and Nonroutine Medical Supply (NRS) Conversion Factor,'' the Affordable Care Act mandates that we rebase payments starting in CY 2014. In that section, we described our methodology for calculating the adjustments to the national, standardized 60-day episode payment rate and per-visit rates. We note that additional factors were considered but not incorporated into the methodology for calculating the rebasing adjustments. One such factor is a downward adjustment to the costs per-visit as a result of the findings from the audits of 98 Medicare HH cost reports. The results of the audits showed that agencies over-reported costs by an average of about 8 percent. Given this finding, we considered downward adjusting the costs on the cost report in order to better align payment with the agencies' true costs. We also considered updating costs by the HH payment update percentage (adjusted market basket) rather than the full HH market basket. In 2012 and 2013, HH payments were increased by the HH market basket minus one percentage point, as mandated by the Affordable Care Act. Furthermore, the Affordable Care Act mandates that CMS remove 5 percent of the national, standardized 60-day episode payment rate to fund the 2.5 percent outlier pool. Given this mandate, we considered setting our target national, standardized 60-day episode payment rate for rebasing at 5 percent below the estimated cost per episode that we derived from the 2011 cost reports. We plan to continue to evaluate these alternative factors for rebasing and may consider incorporating these factors into the CY 2014 HH PPS final rule.

In addition to the rebasing adjustments, we considered implementing a prospective reduction for nominal case-mix growth for CY 2014. In the past, various sources have suggested implementing a prospective nominal case-mix growth adjustment, which would attempt to predict the amount of nominal case-mix growth in future years and implement a reduction to prevent possible overpayments due to nominal case-mix growth. To date, we have implemented nominal case-mix growth adjustments retrospectively. That is, we use the most recent, complete data available—typically two to three years prior to the payment year—to identify nominal case-mix growth, and implement a payment reduction to account for the observed growth. The payment reductions for nominal case-mix growth do not attempt to re-coup overpayments made in previous years due to nominal case-mix growth. We plan to continue to monitor case-mix growth (both real and nominal case-mix growth) as more data become available and will consider implementing prospective reductions, as well as other possible approaches, to address nominal case-mix growth in future rulemaking.

*F. Cost Allocation of Survey Expenses*

We project that aggregate Medicare and Medicaid HH survey costs in FY 2014 will be approximately $37.2 million. As these costs would be assigned 50 percent to Medicare and 50 percent to Medicaid for each state, the anticipated national Medicaid share would amount to $18.6 million, if implemented at the beginning of FY 2014. However, the proposed adherence date of July FY 2014 would reduce the Medicaid aggregate share to approximately $4.65 million. The cost of surveys is treated as a Medicaid administrative cost, reimbursable at the professional staff rate of 75 percent. State costs for Medicaid HH surveys incurred in FY 2014, with an adherence date of July FY 2014, would be approximately $1.16 million (25 percent of the aggregate $4.65 million Medicaid cost for the last quarter of the FY), spread out across all states and two territories. While we regard Medicaid fair share of costs to reflect an existing cost allocation principle, the methods for making the appropriate determinations have not been clear. Therefore, in this rule we delineate those methods and provide that the Medicaid responsibility be reflected in the state Medicaid Plan.

*G. Accounting Statement and Table*

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in Tables 30 and 31, we have prepared an accounting statement showing the classification of the transfers associated with the provisions of this proposed rule. Table 30 provides our best estimate of the decrease in Medicare payments under the HH PPS as a result of the changes presented in this proposed rule.

TABLE 30—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS, FROM THE CY 2013 HH PPS TO THE CY 2014 HH PPS

| Category | Transfers |
|---|---|
| Annualized Monetized Transfers | −$290 million. |
| From Whom to Whom? | Federal Government to HH providers. |

Table 31 provides our best estimate of the proposed changes in the classification of the cost allocation of survey expenses.

TABLE 31—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED TRANSFERS RELATING TO THE MEDICARE AND MEDICAID HOME HEALTH SURVEY AND CERTIFICATION COSTS, FYS 2013 TO 2014

| Category | Transfers |
|---|---|
| Federal Medicaid HH survey & certification costs: | |
| Annualized Monetized Transfers | $17.44 Million. |
| From Whom to Whom? | Federal Government to Medicaid HH Survey Agencies. |
| State Medicaid HH survey & certification costs: | |
| Annualized Monetized Transfers | $1.16 Million. |
| From Whom to Whom? | State Governments to Medicaid HH Survey Agencies. |
| Medicare HH survey & certification costs: | |
| Annualized Monetized Transfers | −$18.6 Million. |
| From Whom to Whom? | Federal Government to Medicare HH Survey Agencies. |

*H. Conclusion*

In conclusion, we estimate that the net impact of the proposals in this rule is approximately $290 million in CY 2014 savings. The $290 million reflects the distributional effects of an updated wage index ($40 million decrease), a standardization factor to ensure budget neutrality in episode payments using the 2014 wage index ($40 million increase), the 2.4 percent HH payment update percentage ($460 million increase), the ICD–9 grouper refinement ($100 million decrease), and the rebasing adjustments required by section 3131(a) of the Affordable Care Act ($650 million decrease). This analysis, together with the remainder of this preamble, provides a RIA.

## VII. Federalism Analysis

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This rule would have no substantial direct effect on state and local governments, preempt state law, or otherwise have Federalism implications.

## List of Subjects in 42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR chapter IV as set forth below:

## PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

■ 2. Section 431.610 is amended by revising paragraph (g) introductory text to read as follows:

### § 431.610 Relations with standard-setting and survey agencies.

* * * * *

(g) *Responsibilities of survey agency.* The plan must provide that, in certifying NFs, HHAs, and ICF–IIDs, the survey agency designated under paragraph (e) of this section will—

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: June 10, 2013.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: June 14, 2013.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2013–15766 Filed 6–27–13; 1:37 pm]

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# FEDERAL REGISTER

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Part III

## Department of Housing and Urban Development

30-Day Notices of Proposed Information Collections: Notices

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–55]**

### 30-Day Notice of Proposed Information Collection: Application for Multifamily Project Mortgage Insurance

**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:* August 2, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on *April 4, 2013.*

### A. Overview of Information Collection

*Title of Information Collection:* Application for Multifamily Project Mortgage Insurance.

*OMB Approval Number:* 2502–0029.

*Type of Request:* Revision of a currently approved collection.

*Form Number:* HUD–2, HUD–92013, HUD–92013A, HUD–92013–B,HUD–92013–C,HUD–92013–SUPP,HUD–92013E,HUD–92264, HUD–92264–A,HUD–92273, HUD–92274, HUD–92326, HUD–92329, HUD–92331, HUD–92452, HUD–92485, HUD–92415, HUD–92447, HUD–92010, HUD–91708, HUD–92408M,FM–1006, HUD2880,HUD–92446 (Rider Forms–HUD–92466–R1,92466–R2,92466–R3,92466R4) HUD 2408 covered under OMB 2502–0029.

*Description of the need for the information and proposed use:* HUD reviews the information collection to determine the acceptability of the mortgagor, sponsor, and other key principles for an application for mortgage insurance. The Owner and Architect represent that they are familiar with HUD's architectural requirements and will comply with all rules and regulations as prescribed by HUD. These forms are available on Department's Web site. The forms are pdf fillable and will be sent by electronic mail with other required Multifamily Development application forms.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* An estimation of the total number of hours needed to prepare the information collection is 2. The estimated number of respondents is 3442. The estimated total number of annual burden hours is 385,496. The forms are submitted only once during the application for FHA mortgage insurance.

### 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.

### C. Authority

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 27, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–15993 Filed 7–2–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–56]**

### 30-Day Notice of Proposed Information Collection: Comprehensive Needs Assessment (CNA)

**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:* August 2, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 1, 2013.

**A. Overview of Information Collection**

*Title of Information Collection:* Comprehensive Needs Assessment (CNA).

*OMB Approval Number:* 2502–0505.

*Type of Request:* Revision of a currently approved collection.

*Form Number:* None: CNAs are required to be prepared by qualified third party entities and provided to the loan originator or servicer for review. The originator or servicer then provides the completed document to the owner, who must provide a copy to HUD.

*Description of the need for the information and proposed use:* Collecting this information is required for compliance with the statute. In addition, this information allows the project owner and HUD to assess current project resources and determine future financial resources required to meet the needs of the project.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 72,720. The number of respondents is 1,818, the number of responses is 1,818, the frequency of response is on occasion, and the burden hour per response is 40.

**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.

**C. Authority**

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 27, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–15994 Filed 7–2–13; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–57]**

## 30-Day Notice of Proposed Information Collection: Implementation of the Housing for Older Persons Act of 1995 (HOPA)

**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:* August 2, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on *December 28, 2012.*

**A. Overview of Information Collection**

*Title of Information Collection:* Implementation of the Housing for Older Persons Act of 1995 (HOPA).

*OMB Approval Number:* 2529–0046.

*Type of Request:* Reinstatement without change of a previously approved collection.

*Form Number:* None.

*Description of the need for the information and proposed use:* The Fair Housing Act [42 U.S.C. 3601 et seq.], prohibits discrimination in the sale, rental, occupancy, advertising, insuring, or financing of residential dwellings based on *familial status* (individuals living in households with one or more children under 18 years of age). However, under § 3607(b)(2) of the Act, Congress exempted three (3) categories of ''*housing for older persons*'' from liability for familial status discrimination: (1) Housing provided under any State or Federal program which the Secretary of HUD determines is ''*specifically designed and operated to assist elderly persons (as defined in the State or Federal program*)''; (2) housing ''*intended for, and solely occupied by persons 62 years of age or older'';* and (3) housing ''*intended and operated for occupancy by at least one person 55 years of age or older per unit* ['55 or older' housing]''. In December 1995, Congress passed the Housing for Older Persons Act of 1995 (HOPA) [Pub. L. 104–76, 109 STAT. 787] as an amendment to the Fair Housing Act. The HOPA modified the ''55 or older'' housing exemption provided under § 3607(b)(2)(C) of the Fair Housing Act by eliminating the requirement that a housing provider must offer ''*significant facilities and services specifically designed to meet the physical or social needs of older persons.''* In order to qualify for the HOPA exemption, a housing community or facility must meet each of the following criteria: (1) *At least 80 percent of the occupied units* in the community or facility must be occupied by at least one person who is 55 years of age of older; (2) the housing provider must publish and adhere to policies and procedures that demonstrate the *intent* to operate housing for persons 55 years of age or older; and (3) the housing provider must demonstrate compliance with ''*rules issued by the Secretary for verification of occupancy, which shall . . . provide for* [age*] verification by reliable surveys and affidavits.''*

The HOPA did not significantly increase the record-keeping burden for the ''55 or older'' housing exemption. It describes in greater detail the documentary evidence which HUD will

consider when determining, in the course of a familial status discrimination complaint investigation, whether or not a housing facility or community qualified for the ''55 or older'' housing exemption as of the date of the alleged Fair Housing Act violation.

The HOPA information collection requirements are necessary to demonstrate a housing provider's eligibility to claim the ''55 or older'' housing exemption as an affirmative defense to a familial status discrimination complaint filed with HUD under the Fair Housing Act. The information will be collected in the normal course of business in connection with the sale, rental or occupancy of dwelling units situated in qualified senior housing facilities or communities. The HOPA's requirement that a housing provider must demonstrate the intent to operate a ''55 or older'' housing community or facility by publishing, and consistently enforcing, age verification rules, policies and procedures for current and prospective occupants reflects the usual and customary practice of the senior housing industry. Under the HOPA, a ''55 or older'' housing provider should conduct an initial occupancy survey of the housing community or facility to verify compliance with the HOPA's '80 percent' occupancy requirement, and should maintain such compliance by periodically reviewing and updating existing age verification records for each occupied dwelling unit at least once every two years. The creation and maintenance of such occupancy/age verification records should occur in the normal course of individual sale or rental housing transactions, and should require minimal preparation time. Further, a senior housing provider's operating rules, policies and procedures are not privileged or confidential in nature, because such information must be disclosed to current and prospective residents, and to residential real estate professionals.

The HOPA exemption also requires that a summary of the occupancy survey results must be made available for public inspection. This summary need not contain confidential information about individual residents; it may simply indicate the total number of dwelling units actually occupied by persons 55 years of age or older. While the supporting age verification records may contain confidential information about individual occupants, such information .

*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 HOPA information collection requirements are the responsibility of the individual housing facility or community that claims eligibility for the HOPA's ''55 or older'' housing exemption. The HOPA does not authorize HUD to require submission of this information by individual housing providers as a means of certifying that their housing communities or facilities qualify for the exemption. Further, since the HOPA has no mandatory registration requirement, HUD cannot ascertain the actual number of housing facilities and communities that are currently collecting this information with the intention of qualifying for the HOPA exemption. Accordingly, HUD has estimated that approximately 1,000 housing facilities or communities would seek to qualify for the HOPA exemption. HUD has estimated that the occupancy/age verification data would require routine updating with each new housing transaction within the facility or community, and that the number of such transactions per year might vary significantly depending on the size and nature of the facility or community. HUD also estimated the average number of housing transactions per year at ten (10) transactions per community. HUD concluded that the publication of policies and procedures is likely to be a one-time event and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden hours are 5,500 hours.

### 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.

### C. Authority

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 27, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–15995 Filed 7–2–13; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–58]**

## 30-Day Notice of Proposed Information Collection: FHA TOTAL (Technology Open to Approved Lenders) Mortgage Scorecard

**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:* August 2, 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: Brenda Boldridge, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; fax: 202–708–XXXX. Email: *Brenda.K.Boldridge@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection

for a period of 60 days was published on *April 24, 2013.*

**A. Overview of Information Collection**

*Title of Information Collection:* FHA TOTAL (Technology Open to Approved Lenders) Mortgage Scorecard.

*OMB Approval Number:* 2502–0556.

*Type of Request:* Revision.

*Form Number:* None.

*Description of the need for the information and proposed use:* The regulation mandating this collection can be found in the Code of Federal Regulations at 24 CFR 203.255(b)(5). This information is necessary to assure that lenders (and automated underwriting system (AUS) vendors) are aware of their obligations regarding use of the TOTAL Mortgage Scorecard and are certifying that they will comply with all pertinent regulations. It also allows FHA to request reports from lenders regarding their use of the scorecard, that they have implemented appropriate quality control procedures for using the scorecard, and provides an appeal mechanism should FHA take an action to terminate a lender's use of the scorecard.

In order to serve its clients better, HUD has made the following non material changes: As part of the FHA Transformation Program, Single Family Housing is moving the TOTAL Scorecard to the Mortgage Industry Standard Maintenance Organization (MISMO) data standards format. The data elements are currently used throughout the industry and are therefore listed as industry standard business practice. The attached document outlines the benefits of converting the data and the mapping phases.

Both FHA Total Scorecard, 2502–0556 and Informed Consumer Choice Notice and Application for FHA Insured Mortgages, 2502–0059 will be affected in the two initial transformation phases and Informed Consumer Choice Notice and Application for FHA Insured Mortgages, 2502–0059 will be affected in the final transformation phase.

MISMO is a not-for-profit subsidiary of the Mortgage Bankers Association (MBA). MISMO's mission is to develop leading technical standards for residential and commercial real estate finance industries that are grounded in an open process to develop, promote and maintain voluntary electronic commerce procedures. The benefits of converting data to the MISMO format include:

- Improving data accuracy and consistency
- Allowing for secure and efficient exchange of information
- Increasing data transparency
- Boosting investor confidence in mortgages

All major lenders and GSEs have already adopted MISMO standards. FHA's transformation to the MISMO data standards will ensure consistency in the delivery of data from the lenders and GSE's.

The data elements that are being mapped to MISMO as part of the FHA Transformation Program, can be categorized under the three following phases; Loan Application, Loan Evaluation, and Loan Closing. The Loan Application and Loan Evaluation phase elements are contained in the 2502–0556 and 2502–0059 OMB data collections. The Loan Closing phase elements are contained in the 2502–0059 OMB data collection.

The first release for the TOTAL Scorecard conversion to MISMO will include all existing TOTAL data fields plus some additional fields that will be utilized by a Risk & Fraud tool that is currently being tested. These additional fields are industry standard and are part of a standard lender's loan application. The data elements in the first release can be categorized under two of the phases mentioned above. The data elements that are currently being collected in the TOTAL Scorecard are part of the Loan Application Phase. The data elements that will be collected through the Risk & Fraud tool are part of the Loan Evaluation Phase.

- Phase Definitions below:
  - ○ Loan Application (Currently collected through the 2502–0556 & 2502–0059 OMB data collections)—Collected by the lenders as part of the application process.
    - ▪ TOTAL data elements
    - ▪ Additional 1003 data elements
    - ▪ Credit Report data elements
  - ○ Loan Evaluation (Currently collected through the 2502—0556 & 2502—0059 OMB data collections)—Collected by the lender and used for scoring, loan underwriting and additional risk & fraud evaluation.
    - ▪ Risk & Fraud Tool data elements
  - ○ Loan Closing (Currently collected through the 2502—0059 OMB data collection)—Collected by the lender at loan closing and used to evaluate whether a loan is endorsed or not by FHA.
    - ▪ Endorsement data elements
    - ▪ eCase Binder data elements

*Respondents* (describe): Business or other for-profit.

*Estimated Number of Respondents:* 12,000.

*Estimated Number of Responses:* 452.

*Frequency of Response:* On Occasion.

*Average Hours per Response:* 464.

*Total Estimated Burdens:* 908.

**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.

**C. Authority**

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 27, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–15996 Filed 7–2–13; 8:45 am]

BILLING CODE 4210–67–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–59]**

## 30-Day Notice of Proposed Information Collection: Monthly Report of Excess Income and Annual Report of Uses of Excess Income

**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:* August 2, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to

the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 27, 2013.

### A. Overview of Information Collection

*Title of Information Collection:* Monthly Report of Excess Income and Annual Report of Uses of Excess Income.

*OMB Approval Number:* 2502–0086.

*Type of Request:* Extension.

*Form Number:* None.

*Description of the need for the information and proposed use:* Project owners are permitted to retain Excess Income for projects under terms and conditions established by HUD. Owners must submit a written request to retain some or all of their Excess Income. The request must be submitted at least 90 days before the beginning of each fiscal year, or 90 days before any other time during a fiscal year that the owner plans to begin retaining excess income for that fiscal year. HUD uses the information to ensure that required excess rents are remitted to the Department and/or retained by the owner for project use.

*Respondents:* Business and other for profit.

*Estimated Number of Respondents:* 834.

*Estimated Number of Responses:* 10842.

*Frequency of Response:* Annually.

*Average Hours per Response:* Three-quarters of an hour for the annual report of uses of excess income, and one-quarter hour for the monthly report of excess income.

*Total Estimated Burdens:* 3,128.

### 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.

### C. Authority

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 27, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–15997 Filed 7–2–13; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5683–N–60]**

## 30-Day Notice of Proposed Information Collection: Fair Housing Initiatives Program Grant

**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:* August 2, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 10, 2012.

### A. Overview of Information Collection

*Title of Information Collection:* Fair Housing Initiatives Program Grant.

*OMB Approval Number:* 229–0033.

*Type of Request:* Extension of a currently approved.

*Form Number:* 2880, SF LLL, HUD 27061, HUD 96010, HUD 904–A, HUD 904–B, HUD 904–C, HUD 27300, 424, 424CB, 424CBW.

*Description of the need for the information and proposed use:* This is an extension of a currently approved information collection used to select applicants for the Fair Housing Initiatives Program (FHIP) grants under a FHIP Notice of Funding Availability (NOFA). These grants are to fund fair housing enforcement and/or education and outreach activities under the following initiatives: Administrative Enforcement; Private Enforcement, Education and Outreach, and Fair Housing Organizations. Additionally, the information is collected to monitor grants and grant funds.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of 46,420 total hours is needed to prepare the information collection. The number of respondents is 400 with a frequency response of 1 per annum, and the total hours per respondent is 76.50 hours for application development. There is an estimated 104 agencies that will receive

funding and have to provide quarterly and final reports, with approximately 59 having to provide Enforcement Logs and 1 agency reporting on a semi-annual program on preventing and eliminating discriminatory housing practices.

**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.

**C. Authority**

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 27, 2013.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2013–15998 Filed 7–2–13; 8:45 am]

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# FEDERAL REGISTER

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Part IV

## Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 635

Highly Migratory Species; Atlantic Shark Management Measures; Amendment 5a; Final Rule

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 110831548–3536–02]**

**RIN 0648–BB29**

## Highly Migratory Species; Atlantic Shark Management Measures; Amendment 5a

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

**ACTION:** Final rule; fishery closure.

**SUMMARY:** NMFS publishes this final rule implementing the Final Amendment 5a to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). In developing Amendment 5a to the 2006 Consolidated HMS FMP, we examined a full range of management alternatives to maintain rebuilding of sandbar sharks; end overfishing and rebuild scalloped hammerhead and Atlantic blacknose sharks; and establish a total allowable catch (TAC) and commercial quota and recreational measures for Gulf of Mexico blacknose and blacktip sharks, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable laws. This final rule implements the final conservation and management measures in Amendment 5a to the 2006 Consolidated HMS FMP for sandbar, scalloped hammerhead, blacknose, and Gulf of Mexico blacktip sharks. This final rule also announces the revised 2013 annual regional quotas for aggregated large coastal sharks (LCS), hammerhead, Gulf of Mexico blacktip, blacknose, and non-blacknose small coastal sharks (SCS). These changes could affect all commercial and recreational fishermen who fish for sharks in the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea.

**DATES:** This final rule and revised annual quotas are effective on July 3, 2013, except for the amendments to §§ 635.5, 635.20, 635.21, and 635.22, which are effective August 2, 2013. The commercial Gulf of Mexico blacktip shark management group is closed effective 11:30 p.m. local time July 7, 2013, until the end of the 2013 fishing season on December 31, 2013 or if NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened.

**ADDRESSES:** Copies of the Final Amendment 5a to the 2006 Consolidated HMS FMP, including the Final Environmental Impact Statement (FEIS), the latest shark stock assessments, and other documents relevant to this rule are available from the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/*.

**FOR FURTHER INFORMATION CONTACT:** Peter Cooper, Guý DuBeck, or Karyl Brewster-Geisz at 301–427–8503.

**SUPPLEMENTARY INFORMATION:** Atlantic tunas and swordfish are managed under the dual authority of the Magnuson-Stevens Act and the Atlantic Tunas Conventions Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Federal Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the FMP for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries, including the Atlantic shark fisheries.

### Background

A brief summary of the background of this final action is provided below. Complete details of what was proposed and the alternatives considered are described in Draft Amendment 5 to the 2006 Consolidated HMS FMP and its proposed rule (77 FR 70552, November 26, 2012). Those documents are incorporated by reference and their description of management and conservation measures considered are not repeated here. Additional information regarding Atlantic HMS management can be found in the Final Environmental Impact Statement (FEIS) for Amendment 5a to the 2006 Consolidated HMS FMP, the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at *http://www.nmfs.noaa.gov/sfa/hms/*. The comments received on Draft Amendment 5 and its proposed rule, and our responses to those comments, are summarized below in the section labeled ''Response to Comments.''

On April 28, 2011, we made the determination that scalloped hammerhead sharks were overfished and experiencing overfishing (76 FR 23794). Following this determination, on October 7, 2011, we published a notice announcing our intent to prepare Amendment 5 to the 2006 Consolidated HMS FMP with an Environmental Impact Statement in accordance with the requirements of the National Environmental Policy Act (76 FR 62331). We made stock status determinations for sandbar, dusky, and blacknose sharks based on the results of the Southeast Data, Assessment, and Review (SEDAR) 21 process. Determinations in the October 2011 notice included that sandbar sharks are still overfished, but no longer experiencing overfishing, and that dusky sharks are still overfished and still experiencing overfishing (i.e., their stock status has not changed). The October 2011 notice also acknowledged that there are two stocks of blacknose sharks, the Atlantic blacknose shark stock and the Gulf of Mexico blacknose shark stock. The Atlantic blacknose shark stock is overfished and experiencing overfishing, and the Gulf of Mexico blacknose shark stock status is unknown.

We published a **Federal Register** notice on May 29, 2012 (77 FR 31562) notifying the public that we were considering the addition of Gulf of Mexico blacktip sharks to Amendment 5 to the 2006 Consolidated HMS FMP. This addition was proposed because Gulf of Mexico blacktip sharks were undergoing a stock assessment as part of the SEDAR 29 process, and that process would be completed before Amendment 5 to the 2006 Consolidated HMS FMP was finalized. Therefore, we determined that the addition of Gulf of Mexico blacktip sharks to Amendment 5 to the 2006 Consolidated HMS FMP would allow us to address new scientific information in the timeliest manner and facilitate administrative efficiency by optimizing our resources. We also expected that this addition would provide better clarify and communicate to the public any possible impacts of the rulemaking on shark fisheries by combining potential management measures resulting from recent shark stock assessments into fewer rulemakings. Since publication of the **Federal Register** notice announcing our intent to consider the addition of Gulf of Mexico blacktip sharks in Amendment 5 to the 2006 Consolidated

HMS FMP, we accepted the results of the stock assessment as final. As explained in the proposed rule, the stock assessment indicates that the Gulf of Mexico blacktip shark stock is not overfished and overfishing is not occurring.

Based on comments received during scoping, on the Predraft (an informal document that is shared with the HMS Advisory Panel and the public to obtain additional information and input from constituents on potential alternatives prior to development of the formal DEIS and proposed rule), and the addition of Gulf of Mexico blacktip sharks to this action, we determined the scope of significant issues of concern that would be addressed in Amendment 5 to the 2006 Consolidated HMS FMP. The Notice of Availability of the DEIS for Amendment 5 to the 2006 Consolidated HMS FMP and the proposed rule published in the **Federal Register** on December 7, 2012 (77 FR 73029), and November 26, 2012 (77 FR 70552), respectively. The public comment period ended on February 12, 2013.

During the comment period, we received numerous comments on the proposed dusky shark measures regarding the data sources used and the analyses of these data. We also received many comments requesting consideration of approaches to dusky shark fishery management that were significantly different from those we proposed and analyzed in the Amendment 5 proposed rule and DEIS. For example, commenters suggested exemptions to the proposed recreational minimum size increase that would protect dusky sharks but still allow landings of other sharks—such as blacktip sharks or ''blue'' sharks such as shortfin mako and thresher sharks—and other commenters suggested implementing gear restrictions instead of additional pelagic longline closures.

After reviewing all of the comments received, we concluded that further analyses are needed for dusky shark measures. In order to ensure that the other shark measures are finalized as expeditiously as possible, we decided to conduct additional dusky shark analyses in a separate proposed action, which will be referred to as ''Amendment 5b to the 2006 Consolidated HMS FMP'' (See 78 FR 24148; April 24, 2013). Comments received on the dusky shark portions of the November 2012 proposed rule will be considered in that action and there will be a comment period for the new 5b proposed rule. This current action implements Amendment 5a to the 2006 Consolidated HMS FMP and finalizes other shark measures from the November 2012 proposed rule needed to maintain rebuilding of sandbar sharks; end overfishing and rebuild scalloped hammerhead and Atlantic blacknose sharks; and establish a total allowable catch (TAC) and commercial quota and recreational measures for Gulf of Mexico blacknose and blacktip sharks.

We prepared an FEIS that discussed the direct, indirect, and cumulative impacts on the quality of the human environment as a result of the preferred management measures in Amendment 5a to the 2006 Consolidated HMS FMP. The FEIS, including the preferred management measures in Amendment 5a to the 2006 Consolidated HMS FMP, was made available on April 26, 2013 (78 FR 24743). On June 7, 2013, the Assistant Administrator for NOAA signed a Record of Decision (ROD) adopting Final Amendment 5a to the 2006 Consolidated HMS FMP. A copy of the FEIS, including final Amendment 5a to the 2006 Consolidated HMS FMP, is available from the HMS Management Division (see **ADDRESSES**). In brief, the final management measures implemented in this rule are to: establish a new hammerhead shark (great, scalloped, and smooth) management group with regional quotas; implement a Gulf of Mexico blacktip shark annual quota; establish aggregated LCS management groups with regional quotas; implement regional blacknose shark annual quotas; establish non-blacknose SCS annual quotas by region; establish regional quota linkages; and increase the recreational size limit for all hammerhead sharks. As described in the FEIS and the responses to comments below, we made several changes to the preferred alternatives between the DEIS and FEIS, based in part on public comments. Corresponding changes were made, where appropriate, in Final Amendment 5a to the 2006 Consolidated HMS FMP and this final rule. The specific changes are described below in the section titled ''Changes from the Proposed Rule.''

In addition to the management measures in this final action, we are also making several minor changes in the regulations for corrective or clarification purposes. These changes were in the proposed rule and we received no comments regarding them. These final changes are not expected to have any ecological or economic impacts and do not impose any new requirements on the regulated community or require fishermen to change their actions to comply with the regulations. These administrative changes are: (1) The addition of a definition of ''fork length''; (2) an update to the permit Web page and name of the reporting system at § 635.5(c)(1); (3) the deletion of incorrect text referring to swordfish permits in a sentence regarding tunas at § 635.20(a); (4) a correction changing the term ''NED closed area'' to ''NED restricted area'' at § 635.21(c)(5)(iii)(C); (5) the removal of smoothhound shark language at § 635.24(a)(7) that incorrectly remained after the final rule (76 FR 70064; November 10, 2011) delaying the effectiveness of the smoothhound measures indefinitely; (6) in Table 1 of Appendix A, a correction to the scientific name of Atlantic angel sharks along with a removal of the headings ''ridgeback'' and ''non-ridgeback sharks'' because, with the changes in this rule, those terms are no longer necessary as defined and are not used at this time; and (7) the removal of language at § 635.27(b)(1)(iv)(C) that required landings reported by dealers located in certain areas to be counted against the regional quota where the dealer is located because measures recently put in place in the electronic dealer reporting rule (77 FR 47303; August 8, 2012) allow dealers to report and to count landed fish against the appropriate quota of the region where the fish was caught. Additionally, to accommodate the changes being finalized in this rulemaking and to more clearly organize the regulations, § 635.27(b) has been reorganized. Changes to the operative text are minimal and include: removing language and sentences that refer to text that will expire before this rule is finalized and removing terms such as ''non-sandbar LCS'' that will no longer be relevant because of the changes in this rule.

**Response to Comments**

We received 115 written comments from fishermen, states, and other interested parties on the proposed rule during the comment period in writing or at public hearings. All written comments can be found at *http://www.regulations.gov/*. As described above, we separated out all of the dusky shark management measures and comments from this rulemaking. All comments received on the dusky shark measures will be addressed in Amendment 5b to the 2006 Consolidated HMS FMP. The comments received resulted in changes, as described below in the Changes from the Proposed Rule section. Significant comments are summarized below by major topic together with our responses. There are eight major issues: stock assessments, general support for measures in DEIS, TACs and quotas, quota linkages, recreational issues,

economic impacts, concerns regarding the DEIS, and general comments.

**A. Stock Assessments**

*Comment 1:* We received a variety of comments on the SEDAR stock assessment process and procedures. One commenter wanted an explanation of how NMFS conducts a stock assessment, while another commenter preferred that NMFS conduct a SEDAR stock assessment on all shark species. Another commenter wanted us to consider and address sources of mortality of sharks in other commercial fisheries.

*Response:* Domestic shark stock assessments are generally conducted through the SEDAR process, in which NMFS participates. This process is also used by the South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils and is designed to provide transparency throughout the stock assessment process. Generally, SEDAR stock assessments have three stages. Meetings in these stages may be face-to-face or by webinar or conference call. All meetings are open to the public. The first stage of the assessment process focuses on the available data. During this stage, fisheries monitoring programs, life history and other biological data, catch data, and indices of abundance from both fishery-independent (e.g., scientific surveys) and fishery-dependent (e.g., fishermen, dealer, and observer reports) sources are reviewed and compiled. The end result of this stage is a summary of all sources of data and relevant research, including all sources of potential mortality for the shark species in other commercial fisheries.

The second stage focuses on the assessment models themselves. During this stage, the participants discuss the available models, how the data fit the models, and any changes needed. The end result of this stage is a complete assessment model and a preliminary determination of the status of the stock.

The third stage is the peer review. During this part, scientists who were not participants in either previous stage and who do not have any conflict of interest review the data and the models to determine if they are appropriate and were conducted correctly. During this stage, the peer reviewers may ask the assessment scientists to re-run models or include specific sensitivity runs to check how the models work. This peer review stage may be done in a public forum or, as was done with the Gulf of Mexico blacktip stock assessment, may be done via a paper review. All reports from all stages of the process are available online at *http://www.sefsc.noaa.gov/sedar/*.

The SEDAR process can take several months to over a year depending on whether the species has been assessed before, if a species needs a full review of a previous assessment, or if the assessment is more of an update to previous assessments. Because the process takes so long and because of the large number of shark stocks that need to be assessed, there are times where we have reviewed stock assessments that were completed and peer reviewed outside of the SEDAR process and have determined the assessment to be appropriate for management. We have done that for both porbeagle and scalloped hammerhead sharks. Additionally, there are some shark stocks that are assessed internationally via the process established by ICCAT. In all cases, we ensure the data and models used are appropriate, all sources of mortality are considered, and that the end result constitutes the best available science, consistent with National Standard 2 of the Magnuson-Stevens Act and other requirements.

*Comment 2:* We received a comment that the non-sandbar LCS management group is not overfished with no overfishing occurring in the mid-Atlantic region.

*Response:* The LCS management group, including sandbar sharks, was last assessed as a whole in 2006 as part of the SEDAR 11 process. At that time, the peer reviewers found that while the data and assessment model were appropriate, the assessment as a whole was unlikely to produce effective management advice given the potential for conflicting information from the various species components in the catch and abundance index data. Based on this, we determined the status of the LCS management group to be unknown. Therefore, we do not know whether the non-sandbar LCS management group is overfished or if overfishing is occurring given the information currently available.

*Comment 3:* We received a comment regarding the stock determination for Gulf of Mexico blacktip sharks. The commenter noted that they disagree with the determination that the stock is not overfished and that overfishing is not occurring as they believe the fish population has been dramatically reduced and has not increased over time. In addition, the commenter wanted us to provide background on the data for the past 40 years.

*Response:* The best available scientific data and a rigorous SEDAR stock assessment process support the conclusion that Gulf of Mexico blacktip sharks are not overfished ($SSF_{2010}/SSF_{MSY}=2.00-2.78$) with no overfishing occurring ($F_{2010}/F_{MSY}=0.05-0.27$). The independent review panel determined that the data used in the stock assessment were considered the best available. They also determined that appropriate standard assessment methods based on general production models and on age-structured modeling were used to derive management benchmarks given the data available. The stock assessment scientists showed in the post-review updates and projections document that process error in recruitment was fully considered and that recruitment in the model was reasonable. They also showed that the low value of $F_{MSY}$ is consistent with what is expected from the biology of sharks, and that of the three indices mentioned by the reviewer that showed a decline, two show an increase in the terminal year of 2010. Therefore, the stock assessment scientists concluded that the stock assessment result of no overfishing is warranted. Thus, the commenters' contention that the stock is overfished with overfishing occurring is unfounded as is the contention that the GOM blacktip shark population has ''been dramatically reduced.'' In the SEDAR 29 stock assessment, background data for some catch indices were provided that went back as far as 1964. Commenters can access this data and additional background data at the SEDAR 29 stock assessment Web site at: *http://www.sefsc.noaa.gov/sedar/*.

*Comment 4:* Commenters asked us to schedule the Atlantic blacktip shark stock assessment in 2013, as the Gulf of Mexico blacktip shark assessment was completed in 2012. They consider the Atlantic blacktip assessment to be ''more important'' than the non-blacknose SCS (Atlantic sharpnose, bonnethead, and finetooth) assessments.

*Response:* We aim to conduct a number of shark stock assessments every year and to regularly reassess the stocks. The number of species that can be assessed each year depends on whether assessments are establishing baselines or are only updates to previous assessments. Assessments also depend on ensuring there is data available for a particular species; not all shark species or stocks have enough data to assess. We try to assess shark species as often as possible, particularly for primary commercial and recreational species, and will aim to conduct an Atlantic blacktip shark assessment as soon as practicable.

*Comment 5:* NMFS should perform a SEDAR stock assessment on all of the hammerhead (scalloped, great, and smooth) shark species. The Hayes *et al.*

(2009) scalloped hammerhead shark stock assessment was not a complete assessment and included modeling assumptions that were driven by flawed recreational harvest data. For smooth and great hammerhead sharks, we need a sufficient assessment of these species, as the impacts of the proposed hammerhead shark measures are only based on scalloped hammerhead sharks.

*Response:* The Hayes *et al.* (2009) stock assessment utilized a surplus production model, an approach commonly used in data poor scenarios, and incorporated commercial and recreational landings, fisheries dependent data, and fisheries independent data from NMFS observer programs and scientific surveys. We reviewed this paper and concluded that: the assessment is complete; the assessment is an improvement over a 2008 aggregated species assessment for hammerhead sharks; and the assessment is appropriate for U.S. management decisions (76 FR 23794; April 28, 2011). Based on the results of this paper, we determined that scalloped hammerhead sharks were overfished and experiencing overfishing. Scalloped hammerhead sharks are currently a part of the non-sandbar LCS management group, and this is the first assessment specific to scalloped hammerhead sharks. We intend to conduct SEDAR stock assessments on scalloped, smooth, and great hammerhead sharks in the future, as soon as practicable given timing, resource limits, and data availability.

*Comment 6:* NMFS should analyze the seasonality of hammerhead shark catches to avoid closing management groups with quota linkages in the Gulf of Mexico region.

*Response:* We analyzed a few ways to ensure fishermen can fully harvest the aggregated LCS, hammerhead, and blacktip shark quotas in the Gulf of Mexico region. Due to the short and variable shark fishing season lengths in the Gulf of Mexico region, the seasonality of hammerhead catches is not definitive. In 2010, the non-sandbar LCS fishery was only open for six weeks, while the season remained open for approximately five months in 2011 and 2012. In this amendment, we analyzed the catch composition on a per trip basis. We noticed that the catch composition varied. There were both trips that caught and landed primarily blacktip sharks and trips that caught and landed a mix of aggregated LCS and hammerhead sharks. The aggregated LCS and hammerhead sharks are caught in small amounts on trips targeting Gulf of Mexico blacktip sharks, so this should not affect the mortality rates of hammerhead sharks. In addition, the blacktip shark and aggregated LCS quotas will be set equal to average annual landings from 2008–2011. The preferred Gulf of Mexico hammerhead shark quota will be set using the TAC from the Hayes *et al.* (2009) stock assessment after accounting for all sources of mortality, but the results are quotas that are slightly higher in both regions than average annual landings from 2008–2011. If fishing continues in a fashion similar to the years 2008–2011, all three quotas in this region should fill at about the same rate. As long as the quotas do fill at about the same rate, significant additional mortality of aggregate LCS and hammerhead sharks should not occur after these management groups close. Dead discards of scalloped hammerhead sharks have already been factored into the preferred hammerhead shark quota.

Based on this information, we decided, in preferred Alternative Suite A6, to link the Gulf of Mexico regional quotas for aggregated LCS and hammerhead sharks while allowing the Gulf of Mexico blacktip shark management group to open and close independently. Closing the aggregated LCS management group when landings of hammerhead sharks reach, or are expected to reach, 80 percent of the hammerhead shark quota would prevent hammerhead sharks from being incidentally caught in the aggregated LCS fishery and the associated continued overfishing. Because the Gulf of Mexico blacktip management group would not necessarily close with the aggregated LCS and hammerhead shark management groups, there is the potential for incidental hammerhead mortality when fishing for blacktip sharks after the hammerhead shark management group has been closed. To address this concern, we will have the authority to close the blacktip shark management group before landings of blacktip sharks reach, or is expected to reach, 80 percent of the blacktip shark quota. This final action should allow fishermen to harvest as much of the Gulf of Mexico blacktip and aggregated LCS quotas as is possible without overfishing scalloped hammerhead sharks.

*Comment 7:* The State of Florida recommends NMFS coordinate with Regional Fishery Management Councils' Scientific and Statistical Committees (SSCs) to develop proper stock assessments with data poor or un-assessed stocks (i.e. Gulf of Mexico blacknose and Atlantic blacktip sharks).

*Response:* As described above, we conduct most domestic shark stock assessments through the SEDAR process. This process is the same process that the South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils use to assess their stocks. The only difference between how the Councils treat stock assessments and how federally managed shark stock assessments are treated by NMFS is that once the stock assessment is complete at the SEDAR level, the Regional Fishery Management Councils have their SSC review each stock assessment. NMFS does not have its own SSC. Instead, the assessment is reviewed internally before being accepted. Thus, our shark stock assessments use essentially the same processes to address data poor or un-assessed stocks as the Regional Fishery Management Councils.

*Comment 8:* Some commenters believe the recent NMFS stock assessments are incomplete due to lack of data, outdated data, and misguided assumptions. As an example, one commenter stated that NMFS assumes that Gulf of Mexico blacknose sharks needs rebuilding because the status of this species is unknown.

*Response:* As described above, we use the SEDAR process to conduct most domestic shark stock assessments. This process is a transparent one that includes meetings, webinars, and/or conference calls that are open to the public. All the working papers for SEDAR assessments along with the final reports are available online at *http://www.sefsc.noaa.gov/sedar/*. During the course of the assessment, the participants in the assessment carefully go through all the available data and any underlying assumptions regarding either the data or the models. The participants in the assessment are composed of both NMFS scientists as well as a mix of fishermen, academics, and environmentalists that are chosen from the members of the HMS SEDAR Pool. Consideration is given to each participant's expertise. The assessments themselves use the most up-to-date data available at the time the assessment is started. For example, if discussions about data begin in March of a particular year, the scientists may decide to use data from the previous year if that data has undergone a quality control check or the scientists may decide that the previous year's data would not be quality control checked and may rely on data from the year before instead. Because of the lengthy time in conducting an assessment (sometimes more than a year) and then incorporating the assessment results into management measures (this process can take two or more years depending on the action), it can seem as though the data the assessment relied on is out of

date. However, in our analyses of potential management measures in the FEIS, we use updated information where available even if that data was not included in the assessment model itself because it was not available at the time (e.g., 2011 commercial landings data). Thus, the assessment and the data upon which it relied remains the best scientific data available at this time, and we are required by National Standard 2 to utilize this information.

Regarding the specific comment about blacknose sharks, the SEDAR 21 blacknose shark stock assessment incorporated new landings and biological information that was not available for previous assessments. This was the first time blacknose sharks were assessed as two separate stocks. The scientists found that while the Atlantic blacknose assessment model appeared robust, the assessment model for the Gulf of Mexico stock did not fit some of the input data. Because of this lack of fit, the Review Panel did not accept the Gulf of Mexico blacknose stock assessment results. Therefore, we declared the status of the Gulf of Mexico blacknose shark stock as ''unknown.'' We would prefer to have a definitive status and will conduct a Gulf of Mexico blacknose shark stock assessment as soon as practicable given timing, resource limits, and data availability. In the meantime, the preferred Alternative Suite A6 caps Gulf of Mexico blacknose shark landings at current levels.

*Comment 9:* We received multiple comments on the issue of blacknose sharks caught in shrimp trawl nets. One commenter wanted NMFS to develop accountability measures in case the shrimp trawl fishery exceeds its blacknose shark allocation and to improve the quality of the best available science for future management decisions. Another commenter believes the SEDAR estimates of blacknose sharks being caught in shrimp trawl nets are incorrect, that the species is misidentified, and that we need to work with the Gulf of Mexico shrimpers to reduce shark bycatch.

*Response:* In this amendment, we are only implementing measures to reduce the landings and discards in Atlantic shark fisheries. Regulatory changes to the shrimp trawl fisheries in the South Atlantic and Gulf of Mexico regions are beyond the scope of this rulemaking and would be implemented through the Council process in those regions. At the blacknose shark stock assessment, we had several shrimp trawl industry scientists involved in estimating the number of blacknose sharks that are caught in shrimp trawl nets. Those scientists were instrumental in reviewing the data and developing the models that ultimately were used to estimate the number of blacknose sharks caught in shrimp trawl nets. Additionally, since the first blacknose stock assessment in 2007, NMFS has been collecting species-specific shark data reporting from the shrimp trawl observer program. Thus, we feel the stock assessment estimates of blacknose sharks caught in shrimp trawls is appropriate and the best available science.

**B. General Support for Measures in the DEIS and Proposed Rule**

*Comment 10:* We received comments that generally supported the measures in Alternative Suite A2. Commenters liked the idea of regional hammerhead shark, aggregated LCS, and Gulf of Mexico blacktip shark TACs and quotas, the quota linkages in the Atlantic and Gulf of Mexico regions, and the move to more species-specific shark management. The State of Maryland said that they believed the Alternative Suite A2 measures for sandbar, scalloped hammerhead, and blacknose sharks were appropriate.

*Response:* Most of the management measures that commenters liked in Alternative Suite A2 in the DEIS are also in the preferred Alternative Suite A6 in the FEIS. One change between Alternative Suites A2 and A6 is the quota linkages between Gulf of Mexico hammerhead, aggregated LCS and blacktip sharks. Alternative Suite A2 links all three quotas, while Alternative Suite A6 only links the aggregated LCS and hammerhead quotas. In the final action, we prefer linking only the aggregated LCS and hammerhead shark quotas, and not the blacktip shark quota, for two reasons. First, because average landings of hammerhead sharks in the Gulf of Mexico from 2008–2011 are slightly less than the preferred hammerhead shark quota for the Gulf of Mexico, and the preferred aggregated LCS and blacktip shark quotas are calculated based on average landings, it is anticipated that all three quotas will be reached at similar points in time if fishing practices continue as they have since 2008. Second, when analyzing commercial shark fishery observer data in the Gulf of Mexico from 2008–2011, we noticed much lower interactions with hammerhead sharks on trips that were specifically targeting blacktip sharks than on trips that generally targeted sharks. On observed trips outside of the shark research fishery that specifically targeted blacktip sharks, interactions with hammerhead sharks and aggregated LCS was low, while on trips that generically targeted sharks, hammerhead sharks and aggregated LCS had the highest interactions. Therefore, because recent average shark landings have been similar to preferred quotas and because the hammerhead shark and aggregated LCS catch is much higher on trips generally targeting shark than on trips specifically targeting blacktip sharks, we feel that it is appropriate to link the Gulf of Mexico aggregated LCS and hammerhead shark quotas and not link the Gulf of Mexico blacktip shark quota.

*Comment 11:* One commenter stated that the rule should be completed and implemented by April 2013 because the two-year rebuilding timeline for scalloped hammerhead sharks is in April. The commenter urged NMFS to not lose focus on ending overfishing for hammerhead, blacktip, and blacknose sharks.

*Response:* We understand the importance of implementing management plans that will rebuild stocks within 2 years of declaring them overfished as required by the Magnuson-Stevens Act. We have been working on a schedule to implement these measures within that deadline. As this action progressed, we realized we would not be able to implement final measures before the 2 year anniversary of declaring the scalloped hammerhead stock overfished with overfishing occurring. We worked, however, to implement the final action as soon as procedurally possible, and as close as possible to that deadline. This final action is designed to end overfishing of scalloped hammerhead and Atlantic blacknose sharks, consistent with the objective and need for this amendment. Gulf of Mexico blacktip sharks are not experiencing overfishing and this final action is designed to ensure that overfishing of that stock does not occur. While the status of the Atlantic blacktip shark is unknown, we determined that this final action would not cause overfishing.

**C. TACs and Quotas**

*Comment 12:* We received a comment that retention of sandbar sharks should be prohibited in all fisheries, including the shark research fishery. This commenter supported a prohibition rather than the current TAC that allows rebuilding after a long timeframe, in favor of a shorter rebuilding time.

*Response:* The latest sandbar shark stock assessment in SEDAR 21 found that, while the species is still overfished, overfishing is no longer occurring, and the species has a greater than 70 percent probability of rebuilding by 2070 with a greater than 50-percent probability of rebuilding by

2066 under current regulations and fishing pressure. Under no fishing, the species would likely rebuild by 2046; however, zero fishing pressure is difficult to achieve due to incidental catch. For this reason, a prohibition on sandbar shark retention would likely result in a rebuilding year later than 2046. Because the current TAC already provides a greater than 70-percent probability of rebuilding, and because overfishing is not occurring and the stock status is improving, maintaining the current TAC and rebuilding plan is fully consistent with the Magnuson-Stevens Act requirements and the National Standard Guidelines. The benefit of having a small, sustainable, well-regulated sandbar shark fishery outweighs the benefit of a shorter rebuilding timeframe. The small sandbar shark fishery, administered through the shark research fishery, allows commercial fishermen some access to the resource and also provides important data on the species. The latest stock assessment used information gathered from the shark research fishery, the absence of which would have reduced the confidence in assessment results. For these reasons, we prefer to continue with the rebuilding plan for sandbar sharks currently underway.

*Comment 13:* Some commenters stated that this amendment needs to provide additional regulations with regard to TACs for blue, porbeagle, or other sharks in the pelagic shark management group.

*Response:* Pelagic sharks are outside the scope of this rulemaking. As stated in the published Notice of Intent and the Purpose and Need section of the FEIS, this rulemaking addresses the recent stock assessments for scalloped hammerhead sharks, sandbar, blacknose sharks, and blacktip sharks.

*Comment 14:* Some commenters are concerned that regulations for sandbar, blacknose, scalloped hammerhead, and blacktip sharks force regulatory discards of some species and contribute to mortality that exceeds the TAC, causing overfishing.

*Response:* Regulations for sandbar, blacknose, scalloped hammerhead, and blacktip sharks are expressly designed to keep mortality below the TAC to end overfishing and rebuild, as necessary. Sandbar sharks are currently on a rebuilding plan, and the latest stock assessment confirms that current regulations will allow the species to rebuild within the required timeframe. The Atlantic blacknose shark assessment provided a TAC necessary to end overfishing and rebuild the stock. All sources of mortality were accounted for when developing a commercial quota, so mortality is unlikely to exceed the established TAC. The Gulf of Mexico blacknose shark stock status is unknown; however, we considered all sources of mortality when calculating the Gulf of Mexico blacknose TAC and capped that commercial quota at recent commercial landings to keep total mortality from exceeding current levels. Scalloped hammerhead sharks are overfished with overfishing occurring and the latest stock assessment provided a TAC that would end overfishing and allow the stock to rebuild. All sources of mortality were accounted for when developing a scalloped hammerhead commercial quota, so mortality is unlikely to exceed the established TAC. The Gulf of Mexico blacktip shark stock is not overfished nor is it experiencing overfishing, and current mortality levels are sustainable.

Regulatory discards are a possibility for any of these species. The nature of regulations that provide an open season (when there is quota available) and a closed season (when the quota is closed) leaves the possibility that incidentally caught individuals will be discarded if the quota is closed. Many of the discarded fish are alive, but some will not be. Our concern over regulatory discards and additional mortality is one of the reasons we prefer quota linkages for some species in Alternative Suite A6. These regulatory discards are a source of mortality and we take them into consideration when developing commercial quotas within each species or management group's quota. For example, when developing the hammerhead management group quota, we took into account dead discard estimates from a variety of fisheries that interact with scalloped hammerhead sharks, including directed shark fisheries. This estimate, among other sources of mortality, was subtracted from the TAC to provide a sustainable commercial quota. See Chapter 2 of the FEIS for Amendment 5a to the 2006 Consolidated HMS FMP for more details of the quota calculations. We strive to prevent or minimize regulatory discards. If we are unable to eliminate dead discards, we account for this mortality to ensure no species or management group exceeds its TAC.

*Comment 15:* We received a comment that the preferred Gulf of Mexico blacknose shark quota of 2.0 mt dw is too low. The commenter is concerned that higher than expected catch levels or new entrants into the fishery could land too many blacknose sharks resulting in closing both the blacknose shark management group and the linked non-blacknose SCS management group. This commenter requested an increase in the Gulf of Mexico blacknose quota to prevent the stock from becoming a ''choke species'' for non-blacknose SCS.

*Response:* The SEDAR 21 stock assessment for Gulf of Mexico blacknose sharks was not accepted by the review panel and was not accepted for management. Consequently, the stock status for Gulf of Mexico blacknose sharks is unknown. Under this final action, we would cap total mortality based on recent commercial landings, dead discards, and recreational landings. For 2011, commercial landings for Gulf of Mexico blacknose sharks were 2.0 mt dw. At this time, we do not have any information to support an increase beyond the 2011 commercial landings estimate.

Because the Gulf of Mexico blacknose shark quota is linked to the non-blacknose quota, both management groups will close when either quota is reached, or is expected to reach, 80 percent. The Gulf of Mexico blacknose shark quota in this final action is smaller than the non-blacknose SCS quota and would likely fill more quickly, closing the non-blacknose SCS quota before it had been filled (becoming what the commenter termed a ''choke species''). However, the Gulf of Mexico blacknose shark quota in this final action is set equal to commercial landings since the implementation of Amendment 3 to the 2006 Consolidated HMS FMP (which established a separate blacknose quota and encouraged fishermen to avoid the species), excluding 2010 landings which were impacted by the Deepwater Horizon/BP oil spill fishing closures. Because the preferred quota is based on recent annual landings, it is likely that this quota would last most of the year if the fishery continues as it has. Consequently, it is unlikely that the Gulf of Mexico blacknose shark quota will result in a ''choke species.''

*Comment 16:* The Florida Fish and Wildlife Commission commented that the blacknose shark quota should be linked to the LCS and sandbar quotas, in addition to the non-blacknose SCS quota. While blacknose sharks are sometimes caught alongside non-blacknose SCS, the Commission stated that blacknose sharks are commonly caught in the LCS and snapper/grouper longline fisheries, especially in South Florida. These sources of mortality were not accounted for in the quota calculations. Additionally, LCS are often caught in the directed SCS fisheries when the LCS attempt to feed on the SCS already caught in the fishing gear (depredation).

*Response:* In both the Atlantic and Gulf of Mexico regions, all sources of blacknose shark mortality were accounted for in this final action, including other fisheries such as the LCS and snapper/grouper fisheries. In the Atlantic region, the TAC specified in the stock assessment was reduced by recreational landings, research set-asides, and dead discards to derive the commercial quota. These dead discards were estimated using gillnet and bottom longline observer data and were accounted for in this final action's quota calculations. The Gulf of Mexico TAC and quota were calculated in a slightly different way in this final action, but the dead discards were also accounted for from gillnet and bottom longline observer data.

LCS are sometimes caught in the directed SCS fishery, whether through depredation or conventional capture. In the context of this rulemaking, the only LCS species addressed is hammerhead sharks, the quota for which was calculated in this final action by taking the scalloped hammerhead shark TAC from the stock assessment and subtracting scalloped hammerhead shark recreational landings, research set-aside, and dead discards from the LCS and other fisheries. These dead discards were estimated from logbook data in the directed pelagic longline and bottom longline shark fisheries, gillnet observer program data, and the reef fish observer program. Therefore, dead discards of LCS in the directed SCS fisheries were accounted for when calculating the hammerhead shark quotas.

*Comment 17:* Some commenters do not support aggregating multiple species into management groups such as the LCS, SCS, and pelagic shark management groups.

*Response:* As more single-species stock assessments are conducted, we have been moving toward single-species management rather than group management where appropriate. Recent stock assessments that have allowed us to move to some single-species management include: sandbar sharks, Atlantic blacknose sharks, scalloped hammerhead sharks, Gulf of Mexico blacktip sharks, dusky sharks, and porbeagle sharks. At this time, we do not have accepted and approved single species assessments for Gulf of Mexico blacknose sharks or the remaining aggregated LCS species: Atlantic blacktip, silky, tiger, bull, lemon, spinner, nurse, and great and smooth hammerhead sharks. For SCS, we have single-species assessments for Atlantic sharpnose, finetooth, and bonnethead sharks, which indicate that these species are not overfished nor are they experiencing overfishing. However, we manage these species under a single management group as these species co-occur in the SCS fishery. This simplifies quota tracking and management while minimizing the risk of unsustainable fishing occurring on one or more of the stocks. Additionally, some single-species regulations exist in the recreational fishery. Both Atlantic sharpnose and bonnethead sharks are exempt from the recreational minimum size limits and current regulations allow limited additional retention of these two species above the per vessel bag limit. For pelagic sharks, we have species-specific assessments for porbeagle, blue sharks, and shortfin mako sharks; however, international management for pelagic species complicates single-species management. There are no international quotas for these species or country-specific allocations. Porbeagle and blue sharks were last assessed by the ICCAT SCRS in 2012, which determined that porbeagle sharks were overfished but that overfishing has likely stopped and that blue sharks are neither overfished nor experiencing overfishing. Both of these species are managed under separate quotas. For shortfin mako sharks, we established conservation initiatives in Amendment 3 to the 2006 Consolidated HMS FMP after a 2008 ICCAT SCRS assessment indicated that the North Atlantic stock was experiencing overfishing and approaching an overfished status. These conservation initiatives included outreach and efforts to encourage live release of the species. Since then, a 2012 ICCAT SCRS assessment concluded that indications of potential overfishing shown in the 2008 stock assessment had diminished and that the current level of catches may be considered sustainable. Please visit *http://www.iccat.int/Documents/SCRS/ExecSum/SHK_EN.pdf* for more information.

*Comment 18:* Several commenters expressed support for establishing separate TACs for hammerhead sharks, Atlantic blacknose, Gulf of Mexico blacknose, and Gulf of Mexico blacktip sharks.

*Response:* We agree that establishing separate quotas and TACs for the two blacknose shark stocks and Gulf of Mexico blacktip sharks will rebuild overfished Atlantic blacknose and scalloped hammerhead sharks, provide additional protection for the Gulf of Mexico blacknose and blacktip stocks, and minimize socioeconomic impacts, consistent with the Magnuson-Stevens Act. For these reasons, we prefer these measures at this time.

*Comment 19:* Some commenters felt that Atlantic blacktip sharks should be separated from the LCS management group like Gulf of Mexico blacktip sharks.

*Response:* The peer review panel for the 2006 stock assessment for Atlantic blacktip sharks concluded that while the methods were scientifically sound, the assessment model did not provide reliable estimates of abundance, biomass, or exploitation rates. As a result, we determined the stock status of Atlantic blacktip sharks to be unknown (71 FR 65086; November 7, 2006). Unlike the situation for Gulf of Mexico blacknose sharks, where the status of the stock was declared to be unknown as a result of a peer review of the stock assessment, there is no previous stock assessment for blacktip sharks on which to appropriately base a species-specific TAC or quota. Therefore, because we had no new information to inform a separate quota or TAC, we decided to maintain Atlantic blacktip sharks in the aggregated LCS management group. When we have a peer reviewed and approved stock assessment for Atlantic blacktip sharks, we will reconsider this decision.

*Comment 20:* The State of Louisiana expressed concern that we conducted a SEDAR stock assessment and then used current landings for the TAC instead of the stock assessment results. In the Magnuson-Stevens Act, there is a mandate for NMFS to manage fisheries towards optimum yield, but the approach preferred in the DEIS does not address that mandate.

*Response:* Based on SEDAR 29, we made the determination that the Gulf of Mexico blacktip shark stock is not overfished and no overfishing is occurring. However, the SEDAR 29 process did not include the projections and the calculations needed to determine the acceptable biological catch during the stock assessment itself. Rather, the SEFSC calculated the projections after the stock assessment was peer reviewed. The stock assessment noted that current removal rates are sustainable and the subsequent projections, which were completed outside the SEDAR process, indicate that current removals are unlikely to lead to an overfished fish stock by 2040. The projections also indicate that higher levels of removal (those associated with an $F_{TARGET}$ scenario) are unlikely to result in an overfished stock; however, the methodology for estimating $F_{TARGET}$ is currently in development for sharks and has yet to be introduced and reviewed within the SEDAR process. Therefore, because the projections for blacktip sharks have not been peer

reviewed through the SEDAR process and as described in the preferred Alternative Suite A6 in the FEIS, we are establishing a TAC based on current sustainable levels of catch. The TAC based on current sustainable levels of catch will be 413.4 mt dw, the total of all of the sources of mortality (recreational landings, commercial discards, and research set-aside mortality) and the commercial quota. The commercial quota is calculated by taking the proportion of current Gulf of Mexico blacktip shark landings that make up the Gulf of Mexico non-sandbar LCS quota multiplied by the Gulf of Mexico non-sandbar LCS quota that will be in effect in 2013. This results in a commercial quota of 256.6 mt dw (565,700 lb dw).

*Comment 21:* We received comments that retention of lemon, tiger, scalloped hammerhead, and blacknose sharks, and any species without a stock assessment should be prohibited.

*Response:* Although some states have prohibited retention of these species, we have codified criteria that guide our decision whether to declare a species prohibited. The species must meet at least two of following four criteria for us to consider adding it to the prohibited species list:

(1) Biological information indicates that the stock warrants protection.

(2) Information indicates that the species is rarely encountered or observed caught in HMS fisheries.

(3) Information indicates that the species is not commonly encountered or observed caught as bycatch in fishing operations for species other than HMS.

(4) The species is difficult to distinguish from other prohibited species.

At this time, we do not have a stock assessment for lemon or tiger sharks. Therefore, we do not have information indicating that tiger or lemon sharks meet at least two of these criteria. We will revisit and consider these criteria in a future action if additional data become available about the species indicating that such review is warranted.

Scalloped hammerhead and Atlantic blacknose sharks have stock assessments that form the basis for the management measures under this final action. These stock assessments indicate a level of harvest which can occur while still allowing for the species and stock to rebuild. After taking all sources of mortality, including recreational harvest, into consideration, the TACs in the stock assessment provide room for commercial harvest of the species and stock. This is the basis for the preferred commercial quotas for scalloped hammerhead and Atlantic blacknose sharks. Gulf of Mexico blacknose sharks do not have an accepted stock assessment and the stock status is unknown. Under this final action, we established the quota based on current landings to help prevent future mortality from increasing. At this time, we do not have information that Gulf of Mexico blacknose sharks meet at least two of the above criteria for prohibiting a species.

*Comment 22:* Commenters suggested that NMFS should cease all shark fishing and that all of these species are overfished and should be considered endangered.

*Response:* We continually monitor stocks of all species under our jurisdiction and promptly begin the rulemaking process should one of these stocks be determined to be overfished or have overfishing occurring based on the results of a stock assessment. Based on the best available scientific information, we take the required action for those shark species that are determined to be overfished through fishery management actions focused on rebuilding the fishery. Species that are ''overfished'' as defined by the Magnuson-Stevens Act are not necessarily also ''endangered'' as defined under the Endangered Species, which applies a different legal standard. We work closely with the NMFS Office of Protected Resources to determine if shark species warrant protection under ESA.

*Comments 23:* NMFS should remove hammerhead sharks from the LCS management group and designate them as a prohibited species under the ESA.

*Response:* This amendment is being conducted under the authority of the Magnuson-Stevens Act, not the ESA. While we could consider prohibiting hammerhead sharks under the regulatory criteria established in the 2006 Consolidated HMS FMP, any consideration of listing hammerhead sharks under the ESA would need to take place through a different process. Regarding listing scalloped hammerhead sharks under the ESA, we have received petitions to list scalloped hammerhead and great hammerhead sharks under the ESA. The 90-day finding for the scalloped hammerhead shark petition concluded that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted. Consistent with legal requirements, a status review was conducted to determine if the petitioned action is warranted. The 90-day finding alone does not result in legal obligations pertaining to management of the species. NMFS is now proposing to list four populations of scalloped hammerhead sharks under the ESA, two as threatened and two as endangered (78 FR 20717; April 5, 2013). However, NMFS has not proposed listing the species in the majority of U.S. waters due to steps fisheries managers and fishermen have already taken to help protect these species. NMFS would have to consider management implications for the species if it is listed, consistent with ESA requirements. Two other petitions to list great hammerhead sharks are currently awaiting 90-day findings.

In the current rulemaking, we did consider prohibiting all commercial and recreational shark fishing, which would include fishing for hammerhead sharks, in Alternative Suite A5 but rejected that alternative because prohibiting retention would curtail data collection for future stock assessments and other alternatives would meet the objectives of this Amendment with less significant adverse socioeconomic impacts. Generally, prohibiting hammerhead sharks from retention may not meet rebuilding goals because of the high at-vessel mortality rate of hammerhead sharks on bottom longline gear. Establishing regional TACs and quotas and quota linkages with aggregated LCS should rebuild the scalloped hammerhead stock while minimizing socioeconomic impacts because fishermen could still retain some hammerhead sharks, which otherwise would be discarded dead if there was a prohibition. We will continue to collect fishery-dependent and independent data to incorporate into stock assessments as well as incorporating new data sources when available and appropriate.

*Comment 24:* We received comments that management measures should be coordinated across state, regional, and Federal plans.

*Response:* Although this rulemaking addresses shark regulations in federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea, we closely consult with Regional Fisheries Management Councils and affected States to coordinate shark management to the greatest extent practical. Furthermore, Federal shark commercial quotas take into account commercial landings from both Federal and state waters. Applying all landings, regardless of catch location, to Federal shark quotas helps keep total mortality below the TAC.

*Comment 25:* We received support for the preferred alternative suite's measures to manage all hammerhead sharks together under the same quota due to the similarity in appearance.

*Response:* Under this final action, we will include all hammerhead sharks under one quota that is divided between two regions. The quota was calculated by taking the scalloped hammerhead shark TAC from the stock assessment and subtracting recreational landings, commercial discards, and research set-aside mortality to establish a quota for commercial landings. Although this calculation provides a cap to scalloped hammerhead commercial landings that keeps mortality below the TAC, all hammerhead landings will count toward this calculated quota. The three hammerhead sharks are difficult to differentiate, with the most evident differences being small differences in the shape of the front of the head. Once the head has been removed and the carcass has been dressed, species identification becomes more difficult. For this reason, all hammerhead shark landings will count toward the quota calculated using scalloped hammerhead shark-specific data. This would help prevent species misidentification from causing scalloped hammerhead shark mortality to exceed the TAC.

*Comment 26:* We received comments that the preferred hammerhead shark regional quotas would not reduce landings sufficiently to protect scalloped hammerhead sharks, particularly because the preferred quotas are very close to recent landings and commercial landings would not be significantly reduced.

*Response:* The stock assessment for scalloped hammerhead sharks by Hayes *et al.* (2009) determined a TAC under which overfishing for the species would end and rebuilding could occur. Under this final action, the commercial quota for hammerhead sharks was calculated by reducing this TAC by scalloped hammerhead shark recreational landings, the research set–aside mortality, and dead discards. The resulting commercial quota was divided between the two regions using historical landing proportions. The resulting regional hammerhead shark quotas ended up at levels near recent landings. This could lead to the misperception that we are not reducing mortality from commercial landings, despite an assessment that determined that scalloped hammerhead sharks are overfished with overfishing occurring. However, the stock assessment considered data through the year 2006. Since then, commercial landings for all hammerhead sharks, including scalloped hammerhead sharks are at a lower level for a variety of market and management reasons, including Amendment 2 to the 2006 Consolidated HMS FMP which reduced LCS trips limits. Thus, the landings for hammerhead sharks did not need to be reduced significantly to reduce mortality consistent with the stock assessment.

*Comment 27:* One commenter stated that we should adopt the most precautionary TACs and bottom longline (BLL) restrictions for Atlantic blacknose sharks.

*Response:* The TAC provided by the stock assessment would allow Atlantic blacknose sharks to rebuild by 2043 with a 70-percent probability of success. Under zero fishing mortality, the stock would have a 70-percent change of rebuilding by 2034. This rebuilding year under zero fishing mortality is greater than 10 years; therefore, a generation time (9 years) is added to the rebuilding year of 2034 to provide a rebuilding target year of 2043, consistent with the Magnuson-Stevens Act. Under the TAC in this final action, Atlantic blacknose sharks have a 70-percent probability of rebuilding by 2043. This TAC provides a probability of rebuilding in line with our stated goals for rebuilding depleted stocks. For this reason, we adopted the TAC calculated in the stock assessment.

Different types of BLL effort controls were considered but not further analyzed in the DEIS including gear tending requirements, soak time restrictions, and hook restrictions. We decided not to further consider these actions due to enforcement and monitoring concerns, safety-at-sea issues, and uncertainty regarding the conservation benefit of hook restrictions for some species because the effects of different types of hooks are not the same for all species. For these reasons, we feel setting a TAC and commercial quota, without further BLL effort controls, for Atlantic blacknose sharks will rebuild the stock. Blacknose shark dead discard estimates are calculated using BLL observer program data and these estimates are considered in the stock assessment. Furthermore, in each region commercial dead discards of blacknose sharks are used to calculate the TAC so that total mortality from the commercial fishery is accounted for.

*Comment 28:* Some commenters stated that the Gulf of Mexico blacktip shark quota should be increased above recent landings because the stock is not overfished and overfishing is not occurring.

*Response:* The SEDAR 29 stock assessment for Gulf of Mexico blacktip sharks found that the stock is not overfished, that overfishing is not occurring, and that current mortality levels are likely sustainable. Beyond these conclusions, the stock assessment does not provide projections for future removal rates. Projections were completed by SEFSC scientists outside the SEDAR process and suggest that current removals are unlikely to lead to an overfished fish stock by 2040 and that higher levels of removal are unlikely to result in an overfished stock; however, the projection methodology for shark stocks that are not overfished is currently in development and has yet to be introduced and reviewed within the SEDAR process for this species. Therefore, these projections have a high degree of uncertainty, and SEFSC scientists noted that they were not peer-reviewed through the SEDAR process. For these two reasons, we do not prefer, at this time, to increase the Gulf of Mexico blacktip shark quota above recent landings.

*Comment 29:* We received a comment for a new alternative suite consisting of one hammerhead shark quota covering both regions or two quotas equally divided between the regions (Alternative Suite A3); establishing regional aggregated LCS quotas using the base quotas on highest annual landings in each region (method outlined in Alternative Suite A4); establishing a Gulf of Mexico blacktip quota of 1,992.6 mt dw (Alternative Suite A4); not establishing quota linkages (Alternative Suite A3); maintaining current blacknose shark and non-blacknose SCS quotas (Alternative Suite A1); and maintaining current recreational size limits (Alternative Suite A1) while increasing outreach and education efforts.

*Response:* In the FEIS, we created a new preferred Alternative Suite A6, which is a combination of Alternative Suites A2 and A3, and does not contain any of the measures suggested by the commenter. This final action is a balance between the rebuilding requirements of the Magnuson-Stevens Act by addressing the overfished and overfishing status, while minimizing the socioeconomic impacts to shark fishery participants. Alternative Suite A6 will establish a new hammerhead shark (great, scalloped, and smooth) management group with regional quotas calculated from the average annual landing percentage of hammerhead sharks by region. A separate hammerhead shark quota in each region would allow us to effectively monitor commercial landings of the species to keep mortality within the recommended TAC in the stock assessment and to rebuild within the parameters set by the rebuilding plan. Because hammerhead and Gulf of Mexico blacktip sharks are removed from the non-sandbar LCS management group in Alternative Suite A6, new regional aggregated LCS

management groups that do not include those species, as appropriate, will be created. Because this management group has an unknown stock status in both regions, we created regional quotas based on average annual landings from 2008 through 2011 of the species remaining in the management group. Due to the stock status, we did not want to increase the quotas by establishing regional aggregated LCS quotas using the base quotas on highest annual landings in each region as outlined in Alternative Suite A4. The Gulf of Mexico blacktip shark quota will be established based on average blacktip shark landings from 2008–2011 under Alternative Suite A6. Based on SEDAR 29, the stock assessment showed that current removal rates of Gulf of Mexico blacktip sharks are sustainable, and the subsequent projections, which were completed outside the SEDAR process, indicate that current removals are unlikely to lead to an overfished fish stock by 2040. SEFSC scientists calculated that an increase in mortality might be sustainable, but stated that these projections have a high degree of uncertainty and noted that they were not peer-reviewed through the SEDAR process. For these reasons, we do not prefer, at this time, to increase the Gulf of Mexico blacktip shark quota as in Alternative Suites A3 or A4. In Alternative Suite A6, we linked the quotas of shark species and management groups that are caught together to prevent incidental catch mortality from exceeding the TAC. The aggregated LCS and hammerhead shark quotas and the blacknose and non-blacknose SCS quotas will be linked in each region. The Gulf of Mexico blacktip shark quota will not be linked and the management group will open and close independent of the aggregated LCS and hammerhead shark management groups. The blacknose shark and non-blacknose SCS quotas were first linked by Amendment 3 to the 2006 Consolidated HMS FMP (NMFS 2010) and both quotas are administered as a single region across both the Atlantic and Gulf of Mexico. Since implementation of the Amendment 3, a blacknose shark fishery closure has only caused a closure in the linked non-blacknose SCS fishery once, the first year of implementation. For these fisheries, the quota linkages will not present any substantial impediments to full quota utilization. In addition, we will allow inseason regional quota transfers between regions for hammerhead shark and non-blacknose SCS management groups. Due to the stock assessment and quota linkage, we adjusted the blacknose and non-blacknose shark quota in Alternative Suite A6. We will create separate commercial quotas for Atlantic and Gulf of Mexico blacknose sharks based on the recent blacknose assessments conducted under the SEDAR 21 process, which determined that two separate stocks exist (Atlantic and Gulf of Mexico). In the Atlantic, we established a regional blacknose shark quota based on the stock assessment TAC. The assessment model for the Gulf of Mexico stock did not fit some of the input data, so we used current landings to determine the regional quota. Based on public comment, we will maintain the current recreational management measures on all authorized shark species, except for hammerhead sharks, and address any dusky shark rebuilding measures in a separate rulemaking. Based on the reasons above, we implemented this final action, which will maximize the beneficial ecological impacts, while minimizing the adverse socioeconomic impacts to the fishery.

**D. Quota Linkages**

*Comment 30:* We received several comments expressing support for the proposed quota linkages as a means to minimize incidental mortality after the quotas have been filled. We also received comments cautioning against the use of quota linkages due to concerns of creating a ''choke'' species that precludes landings of species with higher quotas. These commenters suggested that quota linkages cause some quotas to close prematurely, reducing fishing opportunities at an economic cost.

*Response:* Quota linkages are designed to prevent incidental mortality of one species from occurring in another shark fishery after its management group has closed. For example, under this final action, in each region, the blacknose shark quota is linked to the non-blacknose SCS quota. If landings of either stock or management group reach, or are expected to reach, 80 percent of either quota, both management groups would close. If blacknose shark landings in one region trigger a quota closure, the non-blacknose SCS management group in that region would close as well. This would prevent blacknose mortality in the directed non-blacknose SCS fishery from occurring after the quota has been filled. We agree with some of the commenters that this management approach can offer benefits in some cases, specifically for blacknose sharks and non-blacknose SCS in both regions and hammerhead sharks and aggregated LCS in both regions. Analyses in Amendment 3 to the 2006 Consolidated HMS FMP indicated that fishermen can avoid blacknose sharks. The quota linkage between blacknose sharks and non-blacknose SCS management groups, which has been in effect since implementing that amendment, has only been triggered once, in the first year of effectiveness, which is consistent with the Amendment 3 analysis. The regional hammerhead shark and aggregated LCS quota linkages could result in closure of one of the management groups before its quota is filled, but we anticipate that quotas will be reached at approximately the same rate. Unharvested quota does result in some negative economic impacts, but the protections provided by the quota linkage are important to end overfishing and rebuild stocks. However, as described in Chapter 2 of the FEIS under this final action, we do not expect the hammerhead shark quota in either region to be filled at a significantly faster rate than the aggregated LCS quota. The preferred aggregated LCS quota is set equal to average annual landings in each region from 2008–2011. The preferred hammerhead quota was set using the TAC from the Hayes *et al.* (2009) stock assessment after accounting for all sources of mortality, but the results are quotas that are slightly higher in both regions than average annual landings from 2008–2011. If fishing continues in a similar fashion to the years 2008–2011, both quotas in each region should fill at about the same rate, reducing the chances of premature management group closures. Although the two quotas would likely be filled at the same rate, we still prefer to link the quotas to provide extra protection for scalloped hammerhead sharks. As described in Chapter 2 of the FEIS, scalloped hammerhead sharks are often caught with aggregated LCS. If the hammerhead shark quota is filled more quickly than usual, linking the quotas will provide protection for scalloped hammerhead sharks in the aggregated LCS fishery.

After considering comments provided during the public comment period and analyzing updated data, we no longer prefer to link the Gulf of Mexico blacktip quota to the Gulf of Mexico aggregated LCS and hammerhead shark quotas. In this region, the blacktip shark and aggregated LCS quotas will be set equal to average annual landings from 2008–2011. The preferred Gulf of Mexico hammerhead shark quota will be set using the TAC from the Hayes *et al.* (2009) stock assessment after accounting for all sources of mortality, but the result are quotas that are slightly higher in both regions than average annual landings from 2008–2011. If fishing continues in a similar fashion to

the years 2008–2011, all three quotas in this region should fill at about the same rate. Furthermore, aggregated LCS and hammerhead sharks are caught in small amounts on trips targeting Gulf of Mexico blacktip sharks, so this should not affect the mortality rates of hammerhead sharks. As long as the quotas do fill at about the same rate, significant additional mortality of aggregate LCS and hammerhead sharks should not occur after these management groups close. Dead discards of scalloped hammerhead sharks in the greater LCS fishery have already been factored into the preferred hammerhead shark quota. As a safeguard, this final action will provide us with a mechanism to close the Gulf of Mexico blacktip shark management group after the hammerhead shark fishery closes if high levels of scalloped hammerhead shark mortality were occurring.

To try to prevent closures with quota remaining to the extent possible, this final action will also allow for the transfer of hammerhead shark quota and non-blacknose SCS quota between regions. The quotas for these two management groups were split for quota linkage purposes and not because of differences in stocks. If one of the regional quotas is filling more quickly than the other, we could transfer quota between regions to maximize access to the resource. When considering quota transfers, we would follow a set of criteria as outlined in Chapter 2 of the FEIS. A full analysis of economic impact of quota transfers is available in Chapter 4 of the FEIS.

*Comment 31:* We received comments that instead of implementing quota linkages, we should deduct the estimated incidental mortality that would occur after a quota closure, and deduct it from the commercial quota.

*Response:* Dead discards have already been factored into the quotas where quota linkages will be implemented under this final action: the blacknose sharks and non-blacknose SCS quotas in each region and the aggregated LCS and hammerhead shark quotas in each region. The blacknose shark and non-blacknose SCS quotas were first linked by Amendment 3 to the 2006 Consolidated HMS FMP and both quotas are administered as a single region across both the Atlantic and Gulf of Mexico regions. The blacknose shark quota was established based upon a recent stock assessment. The non-blacknose SCS quota was based on average landings for finetooth, Atlantic sharpnose, and bonnethead sharks. This approach for the non-blacknose SCS quota was used to ensure that fishing mortality of those species would not be increased, consistent with the 2007 SCS stock assessment. This action, although reconsidering the blacknose shark quotas, would only split the non-blacknose SCS quota between the two regions without impacting the dead discard mitigation measures implemented though Amendment 3. Since implementation of Amendment 3, a blacknose shark fishery closure has only caused a closure in the linked non-blacknose SCS fishery once, in the first year of implementation. For these two fisheries, the quota linkage has not presented any substantial impediments to full quota utilization.

Similarly, the aggregated LCS and hammerhead shark quotas in each region would likely be harvested at about the same rate. Both regional aggregated LCS quotas were set equal to average annual landings from 2008–2011. Both regional hammerhead shark quotas were established using the TAC, reduced by non-commercial landings sources of mortality, and then divided among the regions. The resulting commercial quotas are at a level slightly above average annual hammerhead shark landings from 2008–2011. Because both the aggregated LCS and hammerhead quotas are at or slightly below average annual landings, both should be taken at about the same rate and the quota linkages should not present any substantial impediments to full quota utilization.

As noted in our response to Comment 30, we no longer prefer to link the Gulf of Mexico blacktip shark management group to the aggregated LCS and hammerhead shark management groups. All three quotas should be harvested at about the same rate, so the blacktip management group closure would likely occur shortly before or after the hammerhead shark management group closure. The hammerhead shark quota has also already considered dead discards from a variety of fisheries, including the non-sandbar LCS fishery, of which Gulf of Mexico blacktip sharks are currently a part.

*Comment 32:* Several commenters, including the Florida Fish and Wildlife Commission, noted that quota linkages could also result in fishermen discarding the species with the smaller quota (sometimes referred to as a ''choke species'') to avoid closure of the larger fishery, resulting in unreported dead discards.

*Response:* The regional aggregated LCS and hammerhead shark quota linkages under this final action are unlikely to result in excessive discards. As discussed in Chapter 2 of the FEIS, we expect these two quotas to be harvested at about the same rate, disincentivizing discards of hammerhead sharks to keep the aggregated LCS fishery open. Therefore, because the quotas of these management groups are expected to be filled at about the same time we do not expect one management group to overwhelmingly act as a ''choke species'' on the other management groups.

Currently, the blacknose shark and non-blacknose SCS quotas are linked. These quotas are administered across both regions, but this final action will separate both into Atlantic and Gulf of Mexico regions. Since implementation of the blacknose shark and non-blacknose SCS quota linkage, we have not received information about excessive discards. When analyzing the impacts of this quota linkage in Amendment 3 to the 2006 Consolidated HMS FMP, we found that fishermen were largely able to avoid blacknose sharks. Furthermore, dead discard estimates from observer programs are collected and factored into the SEDAR 21 stock assessment and will be factored into future assessments as well. For these reasons, total mortality will still be accounted for.

*Comment 33:* We received comments that we should send updates to dealers and give advanced notice regarding the landings of hammerhead sharks to minimize the risk of a premature aggregated LCS management group closure.

*Response:* Currently, we send periodic shark landings updates to all interested parties and post these updates online throughout the year. All members of the public have access to these landings updates. As of January 1, 2013, dealers are now required to report all HMS, including sharks, electronically. This new requirement will produce more timely information and can provide more frequent shark landings reports for all interested parties, including dealers. Upon implementation of this amendment, we will also provide landings updates of all management units, including the hammerhead shark management group.

*Comment 34:* One commenter expressed concern that quota linkages could provide a mechanism for an individual or group to obtain fishing and dealer reports and close shark fisheries through false landings reports.

*Response:* This type of activity is unlikely. We review logbook and dealer reports regularly and would likely notice these types of reports. Irregularities in the reported information, including excessive landings or unusual fishing operations would flag these reports for further

review. Furthermore, quota linkages are unlikely to make this practice more effective. If this action was possible, quota linkages would not increase the effectiveness. Finally, falsifying Federal reports is unlawful and any individual or group engaging in this type of activity would be subject to enforcement action.

*Comment 35:* The Florida Fish and Wildlife Commission suggested that the proposed management approach on dusky sharks may have significant impacts on hammerhead sharks, and recommends that a more comprehensive management approach be developed that considers sandbar, dusky and hammerhead sharks together.

*Response:* The recent dusky shark stock assessment (SEDAR 21) determined that dusky sharks are overfished with overfishing occurring. Measures to end overfishing and rebuild this species were included in the DEIS for this action but, as detailed in the Chapter 1 of the FEIS, will not be addressed in this rulemaking but will instead be addressed in the upcoming Amendment 5b to the 2006 Consolidated HMS FMP. The measures in that rulemaking to reduce mortality of dusky sharks could have an impact on hammerhead shark mortality; however, any impact would likely be quite low. Dusky sharks and hammerhead sharks are rarely caught together as they largely interact with different gears (pelagic longline for dusky sharks and bottom longline for hammerhead sharks). Furthermore, any measures to reduce mortality of dusky sharks in the pelagic longline fishery is unlikely to affect hammerhead sharks because the retention of hammerhead sharks caught with pelagic longline gear is already prohibited (76 FR 53652). Finally, as detailed in Chapter 1 of the FEIS, we need to address overfishing on scalloped hammerhead sharks and implement a rebuilding plan based on a timeline mandated in the Magnuson-Stevens Act. For that reason, we cannot delay action until dusky shark overfishing is addressed.

**E. Recreational Issues**

*Comment 36:* We received a comment stating that because recreational shark fishing is mostly catch-and-release, anglers should be allowed to occasionally land a shark that is not overfished for personal consumption.

*Response:* Recreational anglers with an HMS Angling Permit or HMS Charter/Headboat Permit are currently allowed to retain one authorized shark per vessel per trip as long as the shark meets the 54-inch minimum size requirement and one additional Atlantic sharpnose and one bonnethead per person per trip with no minimum size. The preferred alternative suite presented in the FEIS increases the minimum size for hammerhead sharks but otherwise does not change these regulations. As such, recreational fishermen will still be allowed to land a limited number of sharks.

*Comment 37:* We received a comment that many shark species are not good candidates for a catch-and-release fishery and that the proposed minimum size increase could be dangerous and increase discard mortality.

*Response:* We recognize that an increase in minimum size could cause some safety concerns given the larger size of sharks retained and difficulties associated with bringing them onboard and may increase discard mortality. However, increasing the minimum size as in the preferred Alternative Suite A6 would ensure that only larger hammerhead sharks are landed and that as the scalloped hammerhead stock rebuilds, increased fishing opportunities may result in the long-term. Furthermore, the increased minimum size would ensure that only larger or ''trophy'' sized sharks are landed. Post-release mortality rates of sharks in the recreational fishery are generally believed to be low when injuries from hooking and releasing the shark are minimized.

*Comment 38:* The regulations should be split into three sectors: commercial, recreational, and charter/headboat.

*Response:* Current regulations apply to the commercial and recreational sectors and do not address the charter/headboat sector separately. The proposed rule did not consider all restructuring the regulations vis-à-vis three sectors, thus we cannot make change in the final rule. However, we will take into consideration in future amendments, as appropriate.

*Comment 39:* NMFS should divide the HMS recreational permits to separate shark permits from tuna and other HMS permits. Permits should be issued to the individual rather than the vessel. NMFS should also consider requiring operator permits.

*Response:* In preparing the FEIS and final rule, we considered the commenter's recommendation to split the HMS recreational permits apart by species, issuing individual and not vessel permits, and requiring operator permits, but found that it was not considered ''reasonable'' under the NEPA Screening Criteria (see Chapter 2 of the FEIS). Specifically, the alternative is not administratively feasible under current budget restrictions. and costs associated with this recommendation require additional resources not available at this time. HMS Angling permits were originally authorized to allow recreational fishing activities for all HMS species (sharks, swordfish, tunas, and billfish) to simplify the permitting process, as some anglers may wish to fish for a variety of HMS species. Additionally, recreational fishing for large pelagic species often results in capture of tunas, swordfish, billfish, or sharks on a given trip. Because Atlantic HMS regulations require permits for species that are likely to be caught, having a single recreational permit for all HMS ensures that a vessel owner is properly permitted in the event that an HMS is caught. This system allows for effective management of the recreational fishery at this time. While we do not currently consider the commenter's suggested alternative reasonable, we will take these options into consideration in future amendments.

*Comment 40:* One commenter supported the approach in Alternative Suite A4 that would set species-specific quotas for recreational fisheries.

*Response:* We considered species-specific shark quotas for the recreational fishery under Alternative Suite A4. Species-specific shark quotas have not been implemented in the recreational fishery due to the difficulty in estimating recreational landings in real-time. Currently, anglers are limited to one authorized shark species per vessel per trip and one Atlantic sharpnose and one bonnethead shark per person per vessel per trip. We determined that Alternative Suite A4 would have minor, beneficial ecological impacts on sandbar sharks, which are currently sometimes landed (though prohibited) due to misidentification by anglers. However, we felt that increasing outreach, an identification guide, and increasing the hammerhead shark minimum size limit would result in beneficial long-term ecological impacts. Due to the administrative difficulties in establishing and monitoring numerous species-specific recreational quotas, we do not currently prefer this alternative.

*Comment 41:* The Florida Fish and Wildlife Conservation Commission does not support the claim that NMFS needs to reduce the recreational mortality of blacknose sharks to meet the rebuilding target for the established total allowable catch. Reductions in recreational mortality are likely not needed as harvest reductions in the Atlantic blacknose shark fishery due to management measures in Amendment 3 to the 2006 Consolidated HMS FMP implemented in 2010 were not taken into account for the 2010 stock assessment for Atlantic blacknose, and

it is highly questionable that Atlantic blacknose sharks are overfished and experiencing overfishing at this time.

*Response:* In the calculation of total allowable catch and quotas, we examined 2011 data for commercial landings. The results of the SEDAR 21 stock assessments for blacknose sharks showed the overfished/overfishing status of blacknose sharks in the Gulf of Mexico region is currently unknown and blacknose sharks are overfished and experiencing overfishing in the Atlantic region. The commercial blacknose quota in the Atlantic region is based on the TAC from the SEDAR 21 stock assessment after deducting other sources of mortality, including recreational landings. Because the status is unknown in the Gulf of Mexico region, the commercial quota is based on landings capped at a level already reduced since the implementation of Amendment 3 to the 2006 Consolidated HMS FMP. Under the preferred Alternative SuiteA6, current recreational size and retention limits will remain at 54 inches fork length, except for the recreational minimum size for hammerhead sharks, which will increase to 78 inches fork length. Blacknose sharks rarely, if ever, reach 54 inches fork length as a maximum size. Blacknose sharks will not be explicitly prohibited, and states may continue to allow recreational landings of blacknose sharks. We determined that these current regulations would continue to provide adequate protection for blacknose sharks in the commercial and recreational fishery. This final action also includes additional outreach to recreational anglers on identification of sharks.

*Comment 42:* NMFS needs to be more involved in fishing tournaments.

*Response:* We require any fishing competition involving Atlantic HMS in which participants must register or in which a prize/award is offered for catching or landing HMS to register their tournament with the HMS Management Division of NMFS at least four weeks prior to the start of the tournament. At that time, the HMS Management Division provides tournaments with copies of compliance guides and recreational placards. The NMFS SEFSC notifies tournament organizers if their tournament has been selected for reporting and all reporting forms must be sent to SEFSC within seven days of the tournament ending. Additionally, NMFS NEFSC often samples sharks landed at shark fishing tournaments and provides outreach to anglers as needed. Tournament operators are responsible for ensuring that anglers are aware of and compliant with Federal regulations. Currently, we hold shark identification workshops that are mandatory for shark dealers, although other parties can attend, and have recreational shark identification placards that categorize the differences between the recreational sharks. The placards can be attained on the HMS Web site (*http://www.nmfs.noaa.gov/sfa/hms/sharks/2008/Rec_shark_ID_placard.pdf*) or by contacting the HMS Management Division at 301–427–8503. We are also working on an identification guide for all the prohibited shark species to help with this outreach. Measures in this action will also increase outreach and education on shark identification and recreational measures.

*Comment 43:* We received a number of comments recommending that NMFS require circle hooks in recreational shark fisheries. The Mid-Atlantic Fishery Management Council recommended that circle hooks be required in shark fishing tournaments. One commenter suggested requiring non-offset circle hooks with natural bait.

*Response:* We currently do not have hook requirements in the shark recreational fishery, but require the use of circle hooks in billfish tournaments where billfish fishery-specific data indicated a substantial decrease in white marlin mortality when circle hooks were used. The effect of circle hooks is not the same for all species, and their conservation benefit for some species may be mixed (as discussed in Section 2.2 Alternatives Considered but not Further Analyzed in Chapter 2 of the FEIS). We are not aware of any shark-specific research demonstrating the performance of circle hooks in reducing shark mortality in recreational fisheries. We may consider this action, as appropriate, in future amendments.

*Comment 44:* Texas Parks and Wildlife expressed concern about the level of illegal shark fishing occurring that involves foreign fishing vessels operating illegally in U.S. waters and asserted that the number of sharks harvested illegally far exceeds the landings that Texas has seen in recreational and commercial fisheries combined.

*Response:* NOAA and the U.S. Coast Guard are actively working to address illegal fishing vessel incursions into U.S. waters, and NMFS has begun including illegal catches from the border of Texas and Mexico in stock assessments to ensure we are considering all sources of mortality. Illegal fishing is of high concern to us as this capture undermines management and rebuilding strategies, makes stock assessments and capture data less reliable for science, and hurts legal fishermen.

*Comment 45:* The same laws should apply to commercial or recreational fishermen fishing on boats as those fishing from shore.

*Response:* Fishermen fishing for sharks from shore are subject to state regulations as they are fishing in state waters. If fishermen are harvesting Atlantic sharks in federal waters, they are required to hold an HMS permit. HMS permit holders must abide by all applicable Federal regulations, regardless of where fishing occurs, including in state waters. However, when fishing in the waters of a state with more restrictive regulations, the more restrictive state regulations apply.

*Comment 46:* Charter boat operators should be able to harvest sharks if the season is open.

*Response:* Under the HMS Charter/Headboat permit, most Charter/Headboat operators fish under the recreational retention limits for sharks and follow the same retention limits and size limits as would any angler. However, if the vessel has been issued both an HMS Charter/Headboat permit and a commercial shark permit, the vessel operator is allowed to land commercial limits and use commercial gear types under certain conditions. More information is provided in the HMS 2012 Recreational Compliance Guide, which can be obtained by contacting the HMS Management Division (see **ADDRESSES**).

*Comment 47:* NMFS received comments supporting an increase in minimum fork length to 78 inches for hammerhead sharks as considered in Alternative Suite A3. One commenter expressed concern that the proposed length of 96 inches is too large for great hammerhead sharks, although appropriate for scalloped and smooth hammerheads. Another commenter suggested that the minimum size for hammerheads be increased to 96 inches fork length or that NMFS should add the species to the prohibited species list.

*Response:* This recommendation is part of our new preferred Alternative Suite A6 in the FEIS. The larger recreational size limit will limit the retention of scalloped hammerhead sharks to mature individuals. Also, we will include all hammerhead species together for this alternative due to identification issues. Hammerhead sharks are difficult to identify even for experienced fishermen, particularly when dressed with the head removed. We found that this action, as proposed in Alternative Suite A3, would be unlikely to impact tournaments, as participants typically target larger

sharks than other recreational fishermen and many tournaments have minimum shark sizes greater than 54 inches fork length. Additionally, increasing the recreational size limit for hammerhead sharks would ensure that only larger, trophy sharks would be landed. The size increase is necessary to end overfishing and rebuild the scalloped hammerhead stock. As the scalloped hammerhead shark stock rebuilds, future fishing opportunities are likely to increase. Due to the difficulty of distinguishing between the different hammerhead shark species, it is important to have the same minimum size across the three hammerhead shark species. Therefore, an increase to 96 inches fork length is not appropriate at this time.

*Comment 48:* We received a number of comments recommending that NMFS increase the shark minimum fork length to 72 inches. Commenters suggested 72 inches as a compromise between the current minimum size of 54 inches and the proposed minimum size of 96 inches.

*Response:* We did not consider a shark minimum size increase to 72 inches fork length in the DEIS because there is no biological reason we are aware of for a 72-inch minimum size. The current minimum size of 54 inches was established due to the size-at-maturity for sandbar sharks. We proposed an increase to 96 inches fork length minimum size due to the size-at-maturity for dusky sharks, which are no longer considered under this amendment. The 78 inches fork length increased minimum size for hammerhead sharks in this final action is due to the size-of-maturity for scalloped hammerhead sharks.

*Comment 49:* We received comments that an increase in minimum size limit for all recreationally caught sharks would essentially eliminate the recreational fishery for blacktip sharks as they are smaller sharks. Commenters suggested that blacktip sharks be exempt from the minimum size limit in the Gulf of Mexico region.

*Response:* We understand the concerns with blacktip sharks specifically with regard to an increase in minimum size as the Gulf of Mexico blacktip shark stock was found to be not overfished and not experiencing overfishing. According to the most recent stock assessment, current fishing rates are sustainable, and the current quotas maintain these rates. If we exempted Gulf of Mexico blacktip sharks for the recreational minimum size, this would increase mortality on these sharks. The preferred Alternative Suite A6 in the FEIS does not increase the minimum size for blacktip sharks. We may consider exempting Gulf of Mexico blacktip sharks from the minimum size limit in the future.

*Comment 50:* We should increase the recreational size limit to 60 inches fork length, as some 54 inches fork length mako sharks weigh only 70 lb and that is pretty small for a keeper.

*Response:* We considered increasing the minimum size to 96 inches fork length for all sharks in recreational fisheries or 78 inches fork length for hammerhead sharks in the DEIS. The Preferred Alternative Suite A6 in the FEIS does not increase the minimum size for mako sharks. In 2012, ICCAT conducted a stock assessment of shortfin mako sharks, which found that shortfin mako sharks are not overfished and that overfishing is not occurring. Therefore, additional action on shortfin mako sharks is not needed at this time.

*Comment 51:* We received a number of comments in support of mandatory reporting of recreational landings especially if this data would improve stock assessments. Many commenters, including state agencies such as the Maryland Department of Natural Resources, Florida Fish and Wildlife Conservation Commission, and South Carolina Department of Natural Resources, supported reporting requirements for hammerhead sharks specifically and suggested having information on reporting included on permits and through the HMS online non-tournament reporting system.

*Response:* Despite many public comments in favor of mandatory reporting of recreational landings, particularly of hammerhead sharks, we have determined to not move forward with this requirement at this time. Estimates of recreational mortality for hammerhead sharks will continue to occur via existing surveys (LPS/MRIP), which NMFS has determined is sufficient for immediate rebuilding purposes, as set out in Alternative Suite 6 (the Preferred Alternative). Recreational shark reporting measures will be further addressed in Amendment 5b. We removed dusky shark regulations and measures from the current action. Mandatory reporting of all recreationally landed sharks, not just hammerhead sharks, may be considered in a future action.

*Comment 52:* We received many comments that strongly supported NMFS' proposal to increase outreach, education, and shark identification training to recreational anglers and tournament participants. Many commenters had specific suggestions for NMFS to improve these efforts. The State of Maryland, South Carolina Department of Natural Resources, Florida Fish and Wildlife Conservation Commission, and the Mid-Atlantic Fishery Management Council expressed their support and suggestions as well. Specific suggestions include: Publish information in sport fishing magazines and Web sites; sending identification placards to all HMS recreational fishing permit holders; holding public seminars; posting placards at marinas, fishing jetties, and piers; having identification guides focus on key morphological characteristics of species; and restructuring the HMS recreational permits so that anglers cannot harvest sharks without an ''endorsement'' that can only be received after shark identification training. For charter/headboat operators, one commenter recommended that NMFS create shark identification videos and post them to popular video-sharing sites and require charter boat permit holders to show the videos to customers. This commenter also suggested that videos of the top five most frequently caught and top five overfished sharks with specific characteristics to look for and instructions on how to differentiate between similar looking species be sent to the Regional Fishery Management Councils. The South Carolina Department of Natural Resources recommended that NMFS emphasize better enforcement of the regulations already in place. One commenter expressed concern about surf-fishermen in Delaware where shark interactions are high, and suggested that NMFS have outreach information and shark identification placards at these beaches. One commenter emphasized the need for NMFS to increase outreach to tournaments, especially as some are not registered with HMS. This commenter suggested that placards and checklists be sent to tournament operators and that NMFS check with state enforcement officials or state Sea Grant offices to ensure tournament registration. One commenter also provided suggestions for how to distinguish between different hammerhead shark species. Many emphasized that benefits from increased outreach efforts by NMFS would improve the quality of species-specific catch data for future assessments.

*Response:* We agree with all commenters that additional outreach and education, particularly to recreational anglers, is important to increasing compliance with recreational regulations and in ensuring the sustainability of recreational fishing. We greatly appreciate the many suggestions by commenters on how to improve education and outreach and will take these under consideration. Preferred

Alternative Suite A6 in the FEIS will allow for such activities to occur. Currently, we hold shark identification workshops that are mandatory for shark dealers, but others can attend. We also have recreational shark identification placards that categorize the differences between the recreational sharks. The placards can be obtained on the HMS Web site (*http://www.nmfs.noaa.gov/sfa/hms/index.htm*) or by contacting the HMS Management Division at 301–427–8503. Additionally, we are currently working on a similar placard for all the prohibited shark species to help with this outreach. In the future, we could increase cooperation with states to improve identification of species in state waters as a larger portion of the recreational catches of some species occurs in state waters. It may also be necessary to work with states to ensure consistent regulations and enforcement.

**F. Economic Impacts**

*Comment 53:* We received several comments regarding the adverse economic impact of proposed recreational measures on the Charter/Headboat fishery including one from the Mississippi Department of Marine Resources highlighting the importance of the large coastal shark fishery to the livelihood of Charter/Headboat captains.

*Response:* We agree that the large coastal shark fishery is important to the HMS Charter/Headboat industry; the new preferred alternative suite to raise the minimum size limit on hammerhead sharks (great, smooth, and scalloped) would have minimal impact on the Charter/Headboat fleet. Recreational regulations will remain the same for all other shark species, and the preferred hammerhead shark regulations will only apply to three hammerhead shark species. Furthermore, the preferred minimum size limit could potentially create a trophy fishery for hammerhead sharks while ensuring the continued sustainability of the hammerhead shark stocks, which could lead to positive long-term economic impacts for the Charter/Headboat fishery.

*Comment 54:* While reducing catch limits may have an immediate negative economic impact, the impact on shark stocks in the long-term will only be positive.

*Response:* We agree that the preferred catch limits and quotas would have a positive impact on the long-term sustainability of the associated shark stocks. Additionally, while the preferred quota reductions will have some minor short-term adverse economic impacts, their long-term economic impacts should be positive as they allow for rebuilding of overfished stocks.

*Comment 55:* NMFS is incorrect that the impacts of these proposals will have a neutral effect on the surrounding resources yet will have a minor effect on the social and economic impact of fishermen and their communities. You will see that the current regulations are having a severe negative impact on the surrounding resources as is evidenced by the multitude of damaged and wasted fish due to shark predation.

*Response:* Under the Magnuson-Stevens Act, we must manage all our nation's marine fisheries for optimum yield and end overfishing of all fish stocks, including shark fisheries. Current regulations are established under the Magnuson-Stevens Act to manage all our nation's marine fisheries for optimal yield and to rebuild overfished fish stocks for all fisheries, including sharks. We work closely with the regional fisheries management councils to ensure actions in the HMS fisheries do not jeopardize the continued existence of other fisheries. The cumulative direct and indirect impacts on EFH, predator/prey relationships, and protected resources would be neutral for the short- and long-term because commercial quotas would be similar to current levels and fishing pressure is not expected to change. Sharks are a natural and integral part of the marine ecosystem, and commercial and recreational shark fisheries provide significant positive economic impacts to our coastal communities.

When taken as a whole, this final action would likely have direct short- and long-term minor adverse socioeconomic impacts. These impacts would mostly affect fishermen targeting scalloped hammerhead and blacknose sharks, because the quotas would be reduced. These fishermen are likely to adapt to the new regulations by fishing in other fisheries, or changing their fishing habitats. Recreational management measures would increase the size limit for hammerhead sharks and cause fishermen to catch and release more hammerhead sharks, although tournament participants should not be impacted. Neutral socioeconomic impacts are expected for fishermen targeting the aggregated LCS and non-blacknose SCS management groups because the quotas are based on the average landings for each species.

Indirect short-term minor adverse socioeconomic impacts would likely result from this alternative suite's actions. The measures in this alternative suite adjust quotas based on new scientific information and would impact shark landings. Consequently, it is possible that dealers and supporting businesses such as bait and tackle suppliers may experience minor adverse impacts in the short-term. However, as they do not rely solely on the shark fishery and buy from and sell to a variety of fisheries, the impacts are expected to be neutral in the long-term. The changes to quotas would impact fishermen retaining certain shark species, but the changes are small enough that dealers and supporting businesses are unlikely to experience impacts from this alternative suite and its effects are therefore expected to be neutral.

*Comment 56:* The EPA says that while they appreciated NMFS' effort to evaluate the potential economic impact on these communities, more research is needed to address the impact on the fisherman, especially if these proposed limitations will have a disproportionate economic impact on minority and/or low-income populations.

*Response:* We agree that it is important to assess the economic impacts of regulatory actions on minority and/or low-income populations. However, this final action is expected to have neutral or minor adverse economic impacts at worst, and positive long-term impacts as overfished shark populations are rebuilt. As such, these measures will benefit everyone affected in the long-term. Our analyses of economic impacts used the best data available at this time. In future rulemakings, we will use more specific data regarding economic impacts on minority and/or low-income populations if it becomes available. We continue to support the development of methods to identify whether proposed amendments will have disproportionally high adverse impacts on minority or low income populations, as appropriate.

**G. Concerns Regarding the DEIS**

*Comment 57:* The DEIS document is more than 600 pages and very difficult to understand at times, especially the information, data, and its sources.

*Response:* We recognize that the DEIS was large and complex because it contained a complete range of alternatives for rebuilding multiple shark stocks. The removal of the dusky shark measures to a future action has reduced the number of alternatives in the FEIS, and we have made a concerted effort to explain these measures, and their impacts, using language that is as clear and concise as possible.

*Comment 58:* We received comments that pointed out typographical errors and other errors in the DEIS.

*Response:* We appreciate these comments and have made the appropriate edits in the FEIS.

*Comment 59:* The EPA recommended that NMFS provide the reader with a better understanding of when the agency has received the same comment multiple times, thus helping the reader with further public comment.

*Response:* We appreciate the EPA's comment and made a point to note in the FEIS that we received numerous public comments on the dusky shark measures in the DEIS. In part, these comments helped us make the decision to remove the dusky shark measures from this rulemaking and re-evaluate and analyze approaches to rebuild dusky sharks in an upcoming proposed action.

*Comment 60:* The EPA commented that NMFS provided a clear and understandable table summarizing preferred alternatives for each shark species.

*Response:* We appreciate the EPA's comment and note that tables in the Executive Summary of the FEIS clearly summarizes the preferred alternative suite as well as changes from the DEIS and the reasons for those changes.

*Comment 61:* The State of North Carolina and Atlantic States Marine Fisheries Commission (ASMFC) recommended moving forward with management measures to achieve ending overfishing for scalloped hammerhead and delaying other measures until they can be more fully analyzed, and emphasized that NMFS should delay the measures to end dusky shark overfishing.

*Response:* We appreciate the State of North Carolina's and the ASMFC's comment and have removed the dusky shark measures from this rulemaking to re-evaluate and analyze approaches to rebuild dusky sharks in an upcoming proposed action. We did not receive substantive comment to delay any of the measures proposed in the DEIS for blacknose, sandbar, or Gulf of Mexico blacktip sharks; therefore, we are moving forward with these management measures, as well as the management measures to rebuild scalloped hammerhead sharks, in this amendment.

*Comment 62:* We received a number of requests to extend the DEIS comment period for 45 days. Some of the reasons for this request included additional time for data analysis and extra time for fishermen impacted by Super Storm Sandy to read and comment on the DEIS. The ASMFC was concerned that the 2-year rebuilding timeline for scalloped hammerhead sharks would be cited as a reason not to extend the comment period.

*Response:* We did not extend the DEIS comment period, in part in an attempt to meet our Magnuson-Stevens Act requirement to establish a rebuilding plan within 2-years after a stock has been determined to be overfished. Also, the requests to extend the comment period for additional data analysis and public comment were mainly concerned with the dusky shark measures that were included in the DEIS. We would not have been able to complete additional dusky shark data analyses or develop additional measures based on public comment within a 45-day extension of the comment period. Therefore, we decided to remove the dusky shark measures from this rulemaking to re-evaluate and analyze approaches to rebuild dusky sharks in an upcoming proposed action. This will allow us to conduct further data analysis for dusky shark rebuilding measures and allow the public ample opportunity to comment on these upcoming proposed measures, while continuing with Amendment A5a to establish a rebuilding plan for scalloped hammerhead sharks.

**H. General Comments**

*Comment 63:* The proposed regulations drive regulatory discards, contribution to mortality over established limits and overfishing. Waste of sharks and inefficiencies from derby rules (e.g., trip limits and market gluts) are in conflict with National Standards 1, 8, 9, and 10.

*Response:* While conducting assessments and in calculating TACs and quotas, we take regulatory discards into account. As described in Chapter 2 of the FEIS, dead discards of scalloped hammerhead sharks are already considered under the TAC. The quota linkages in preferred Alternative Suite A6 are necessary in these multispecies fisheries to ensure that the TAC of shark species under a rebuilding plan is not exceeded and to minimize regulatory discards, to the extent practicable. To allow maximum access to the Gulf of Mexico blacktip shark resource, this final action will allow us to open and close the Gulf of Mexico blacktip shark management group independently of the hammerhead shark and aggregated LCS management groups. We also do not anticipate increased discards in the recreational fishery, as the increase in minimum size to 78 inches fork length is limited to hammerhead sharks.

As part of this FEIS, we have analyzed the consistency with the National Standards and found the action to meet them all. This final action would be consistent with National Standard 1 because it would implement adjustments to mortality levels consistent with the stock assessments for blacknose, blacktip, and scalloped hammerhead sharks that would allow fishermen to harvest optimum yield for these species while allowing for rebuilding and preventing overfishing. With respect to National Standard 8, this final action strikes an appropriate balance between positive ecological impacts that are necessary to rebuild and prevent overfishing on depleted stocks while minimizing, to the extent practicable, the severity of negative social and economic impacts that will occur as a result of these actions. For National Standard 9, this final action considers bycatch while focusing on capping fishing mortality. The preferred quota linkages would prevent bycatch of sharks by opening and closing shark management groups at the same time to prevent excessive mortality of one species due to incidental capture while targeting other shark species. Additionally, the bycatch of hammerhead sharks while fishing for Gulf of Mexico blacktip sharks was explicitly analyzed under the quota linkage section in Alternative Suite A6. No impact to safety of life at sea is anticipated to result from this final action, meeting National Standard 10. Please see Chapters 2, 4, 6, and 10 in the FEIS for more information.

*Comment 64:* We received several comments expressing support for us to accelerate the rulemaking process for Amendment 6 to the 2006 Consolidated HMS FMP, which would consider catch shares in some or all of the Atlantic shark fisheries. Some commenters suggested that we should wait to implement the measures in this rulemaking until Amendment 6 is implemented, citing the possibility of increased accountability in the fishery and decreased incentives for discards of sharks.

*Response:* We are currently working on Amendment 6 to the 2006 Consolidated Highly Migratory Species Fishery Management Plan. Under current limited resources, we do not have the ability to work on both Amendment 6 and Amendment 5 simultaneously. Because statutory mandates require us to implement a rebuilding plan to rebuild overfished species (in this case, scalloped hammerhead sharks) within two years of a stock status determination that the stock is overfished, we must complete this amendment prior to development of Amendment 6 to the 2006 Consolidated HMS FMP. We will consider the issues raised in this comment as we develop draft Amendment 6 to the 2006 Consolidated HMS FMP.

*Comment 65:* We need to provide clear objectives to both recreational and

commercial fisherman to describe what a successful rebuilding plan would look like. What would need to happen for us to increase TACs or bring back the former minimum size limits?

*Response:* The Magnuson-Stevens Act National Standards require us to meet certain standards when making fisheries management decisions. National Standard 1 requires us to end overfishing while achieving, on a continuing basis, optimum yield from each fishery. National Standard 8 states that conservation and management measures shall take into account the importance of fishery resources to fishing communities. As mentioned in response to other comments, we continually monitor stocks of all species under our jurisdiction and promptly begin the rulemaking process should one of these stocks be determined to be overfished or have overfishing occurring based on the results of a stock assessment. As management measures for overfished stocks result in stock rebuilding, we will be able to revisit TACs, minimum size limits, and other management measures to provide more fishing opportunities, consistent with legal requirements.

*Comment 66:* The current shark regulations have caused the shark populations to increase and cause a direct negative impact on other fishery stocks. Due to the high predation from the abundant sharks, profits in other commercial fisheries have declined on every trip. Not only does this create more discards and waste of our resources, it has a direct impact on the increased cost of fishing due to lost gear.

*Response:* We are required under the Magnuson-Stevens Act to rebuild overfished fish stocks, including sharks, to manage for optimum yield. We conduct stock assessments and seek to maintain shark stocks at a level that allows them to be harvested at optimum yield while also maintaining their role in the ecosystem. Sharks are top predators and hunt and eat lower trophic level species, including fishes targeted by other fishermen. We work closely with five Atlantic Fishery Management Councils (New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, and the Caribbean), the two Atlantic Interstate Marine Fisheries Commissions (Atlantic States and Gulf States), and the HMS Advisory Panel to promote an ecosystem-based approach to management which takes such interactions into consideration.

*Comment 67:* We received two comments regarding the listing of sharks under the ESA: one comment requested to know the status of the scalloped hammerhead shark 90-day finding; the other comment urged us to continue to promulgate shark regulations in a proactive and conservative way, so that petitions for listing sharks under the ESA are found to be without substantial scientific or commercial information indicating that the petitioned action may be warranted. The commenter stated that such listings will almost definitely force time/area closures for a variety of fishermen and reduce fishing opportunities across a number of fisheries. The commenter stated that it is important for fishermen to understand that economic value is excluded from consideration under the ESA, and that once these listings occur, fishermen will lose their voice in the regulatory process.

*Response:* On November 28, 2011 (76 FR 72891), the NMFS Office of Protected Resources determined that the listing of scalloped hammerhead sharks may be warranted and began a status review. Two other petitions to list great hammerhead sharks are currently awaiting 90-day findings. The results of the status review will lead either to a determination that listing scalloped hammerhead sharks is not warranted or a proposed rule to list the species. The NMFS Office of Protected Resources has also received petitions to list whale, great hammerhead, dusky, and Pacific great white sharks under the ESA. NMFS is reviewing those requests to determine if the petitions contained present substantial scientific or commercial information indicating that the petitioned action may be warranted. We agree with the commenter that if some species of sharks are listed as endangered or threatened under the ESA, there could be changes to how the shark fishery operates and that economic value of a fishery is not considered in the context of the ESA.

*Comment 68:* One comment urged NMFS to try to work with Mexico and other countries, as well as the Department of State, regarding blacktip sharks.

*Response:* We are dedicated to working with other nations, particularly those with which we share a border, and within international organizations, to promote sustainable management practices of sharks, including blacktip sharks. We participate in annual bilateral meetings with Canada and Mexico, as well as annual ICCAT meetings and stock assessments to discuss management measures for shared stocks. With Mexico in particular, we aim to strengthen our coordination within the Gulf of Mexico and promote sustainable management of shared shark stocks. In SEDAR 29, we invited a Mexican scientist to participate in the stock assessment process. The scientist provided data critical to the assessment of Gulf of Mexico blacktip sharks. We recognize that it is essential to work collaboratively when managing tunas, sharks, and other highly migratory species when stocks are shared and fished by both nations. We also work closely with our colleagues at the Department of State to promote cooperation in this area.

*Comment 69:* We need to continue investigating measures to minimize mortality after sharks are caught (particularly limits on gear deployment, soak time, and tending) as these hold promise for enhancing recovery of particularly sensitive and depleted shark species.

*Response:* We have considered alternative approaches to minimize shark mortality, including limits on gear deployment, hook type, soak type, and gear tending. We have found that limiting soak times and requiring gear tending may have safety-at sea implications, especially if fishing vessels are forced to retrieve fishing gear during unsafe sea conditions, and may reduce flexible fishing techniques. Additionally, enforcing restrictions on soak times is extremely resource-intensive as close monitoring is required to ensure compliance. Regulating quantity and type of hooks deployed (e.g. Selective Magnetic and Repellant Treated (SMART) hooks, circle hooks, or weak hooks), have also been considered as a method for reducing fishing mortality and contribute to rebuilding of overfished stocks. A SMART hook requirement may have potential economic impacts to the bottom longline and pelagic longline fisheries and ecological benefits for blacknose, sandbar, dusky, or scalloped hammerhead sharks have not been demonstrated. The effect of circle hooks is not the same for all species, and their conservation benefit for some species may be mixed (as discussed in Section 2.2 Alternatives Considered but not Further Analyzed in Chapter 2 of the FEIS). A weak hook alternative may protect some species of sub-adult sharks until they have had a chance to reproduce; however, because of the range in size at maturity among shark species, it may be difficult to discern which gauge hook to use to ensure these benefits. Therefore, because these hook options would not achieve the purpose of managing these fishery resources in a manner that maximizes resources sustainability, while minimizing, to the greatest extent possible, the socioeconomic impacts on affected

fisheries, they were not further analyzed.

**Changes From the Proposed Rule (77 FR 70552; November 26, 2012)**

As described above, as a result of public comment and additional analyses, we have made several substantive changes in the final rule consistent with changes made between the DEIS and FEIS. As discussed previously, the primary change was the removal of the dusky shark measures into a separate proposed action for Amendment 5b to the 2006 Consolidated HMS FMP. This final rule implements Amendment 5a to the 2006 Consolidated HMS FMP and finalizes measures needed to rebuild sandbar sharks, end overfishing and rebuild scalloped hammerhead and Atlantic blacknose sharks, and establish a TAC, commercial quota, and recreational measures for Gulf of Mexico blacknose and blacktip sharks. Amendment 5b to the 2006 Consolidated HMS FMP will contain further analysis and consideration of management approaches, data sources, and available information that are needed for dusky sharks beyond those considered in the proposed rule.

The specific changes among the remaining management measures are outlined below.

1. Final 2011 Data. In the proposed rule, we used preliminary 2011 commercial data because the finalized data were not available at that time. Finalized 2011 commercial data are now available and are used in the FEIS and final rule. Specifically, the final 2011 dealer data changed the species landings percentage of the total LCS and SCS landings slightly; therefore, finalized quotas were updated appropriately. Additionally, the final 2011 logbook data changed the dead discard mortality estimates for hammerhead sharks.

2. Quota Linkages. We proposed several quota linkages: The Atlantic aggregated LCS and hammerhead shark quotas; the Gulf of Mexico aggregated LCS, hammerhead and blacktip shark quotas; and the blacknose and non-blacknose small coastal shark regional quotas. Based on public comment, we re-evaluated the quota linkage between the management groups. In the Gulf of Mexico region, the hammerhead and aggregated LCS quotas will be linked because directed shark fishermen frequently catch these species together when targeting LCS. The Gulf of Mexico blacktip shark quota will not be linked to the aggregated LCS or hammerhead shark quotas, mainly because aggregated LCS and hammerhead sharks are caught in small amounts on trips targeting Gulf of Mexico blacktip sharks. We maintain the flexibility to close the Gulf of Mexico blacktip shark management group depending on several criteria in the final rule, which will ensure that bycatch of hammerhead sharks and aggregated LCS does not result in mortality that will exceed the TAC of either management group. The other proposed quota linkages did not change in this final rule.

3. Inseason Quota Transfers. In the proposed rule, we proposed allowing inseason or annual regional quota transfers for non-blacknose SCS quota because the non-blacknose SCS quota is being split between regions for management purposes and not because there are different stocks between the Atlantic and Gulf of Mexico regions. Based on public comment and because the scalloped hammerhead shark stock assessment was based on a single stock between the Atlantic and Gulf of Mexico regions, in the final rule, we will also allow for inseason or annual regional transfers of the hammerhead quota.

4. Recreational Minimum Size. We proposed to increase the recreational size limit to 96 inches fork length based on the size-at-maturity of dusky sharks. As described above, we are addressing dusky shark management measures in another rulemaking; therefore we are not finalizing the proposed increase to 96 inches fork length. Instead, as part of the rebuilding plan for scalloped hammerhead sharks implemented in this action, we are increasing the minimum size limit to 78 inches fork length for all hammerhead sharks based on the size-at-maturity for scalloped hammerheads and are maintaining the current size limit of 54 inches fork length for all other shark species, except for Atlantic sharpnose and bonnethead sharks.

5. Mandatory Reporting of Hammerhead Sharks. We proposed requiring mandatory reporting of all hammerhead sharks landed recreationally to NMFS through the non-tournament landing system. This final action would not require mandatory reporting of hammerhead sharks because we have determined that the existing surveys (Large Pelagics/Marine Recreational Information Program) are sufficient for immediate rebuilding purposes. Recreational shark reporting measures may be addressed in the upcoming dusky shark proposed action (Amendment 5b to the 2006 Consolidated HMS FMP).

**Commercial Fishing Season Notification**

Pursuant to the measures being implemented in this final rule, the Gulf of Mexico regional base annual quotas will be as follows:

- Blacktip sharks = 256.6 mt dw;
- Aggregated LCS = 157.5 mt dw;
- Hammerhead sharks = 25.3 mt dw;
- Non-blacknose SCS = 45.5 mt dw; and
- Blacknose sharks = 2.0 mt dw.

The Atlantic regional base quotas will be as follows:

- Aggregated LCS = 168.9 mt dw;
- Hammerhead sharks = 27.1 mt dw;
- Non-blacknose SCS = 176.1 mt dw; and
- Blacknose sharks = 18.0 mt dw.

As described in the final rule that established the initial 2013 quotas based on the previous quotas (77 FR 75896, December 26, 2012), the quotas for the LCS and SCS management groups were not exceeded in 2012. As such, none of these regional base annual quotas need to be adjusted for overharvests. However, as described in the December 2012 final rule, the non-blacknose SCS quota was not fully harvested in 2012, and because the species in that management group are not overfished and are not experiencing overfishing, we increased the initial 2013 quota by 107.6 mt dw (237,106 lb dw). In this final rule, we have split that increase based on the regional split described in the FEIS (79.4 percent in the Atlantic and 20.6 percent in the Gulf of Mexico), and adjusted the 2013 Atlantic and Gulf of Mexico regional non-blacknose SCS quotas accordingly. As such, the new final adjusted 2013 quotas are the same as the respective base quotas for all management groups except for the non-blacknose SCS management group, which is adjusted as described above. The final adjusted 2013 quotas are as follows.

For the Gulf of Mexico region:

- Blacktip sharks = 256.6 mt dw (565,700 lb dw);
- Aggregated LCS = 157.5 mt dw (347,317 lb dw);
- Hammerhead sharks = 25.3 mt dw (55,722 lb dw);
- Non-blacknose SCS = 67.7 mt dw (149,161 lb dw); and
- Blacknose sharks = 2.0 mt dw (4,513 lb dw).

For the Atlantic region:

- Aggregated LCS = 168.9 mt dw (372,552 lb dw);
- Hammerhead sharks = 27.1 mt dw (59,736 lb dw);
- Non-blacknose SCS = 261.5 mt dw (576,484 lb dw); and
- Blacknose sharks = 18.0 mt dw (39,749 lb dw).

As of June 14, 2013, based on dealer reports, the following landings have been reported in the Gulf of Mexico region:

- Blacktip sharks = 202.8 mt dw (79% of quota);
- Aggregated LCS = 115.4 mt dw (73% of quota);
- Hammerhead sharks = 7.7 mt dw (30% of quota);
- Non-blacknose SCS = 21.1 mt dw (31% of quota); and
- Blacknose sharks = 0.5 mt dw (23% of quota).

The landings in the Atlantic region are as follows:

- Aggregated LCS = 68.7 mt dw (41% of quota);
- Hammerhead sharks = 9.2 mt dw (34% of quota);
- Non-blacknose SCS = 40.1 mt dw (15% of quota); and
- Blacknose sharks = 8.2 mt dw (46% of quota).

Dealer reports through June 14, 2013, indicate that 202.8 mt dw or 79 percent of the new final adjusted quota for the Gulf of Mexico blacktip shark management group has been landed. Projections using dealer reports indicate that using catch rates from May 1, 2013 to June 1, 2013, that 83.2 percent of the available Gulf of Mexico blacktip shark quota could be landed by July 1, 2013. Accordingly, NMFS is closing the commercial Gulf of Mexico blacktip shark management group as of 11:30 p.m. local time July 7, 2013. This closure does not affect any other shark management groups.

During the closure, retention of sharks from the Gulf of Mexico blacktip shark management group is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under § 635.4, unless the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and ''no sale'' provisions apply (§ 635.22(a) and (c)). A shark dealer issued a permit pursuant to § 635.4 may not purchase or receive Gulf of Mexico blacktip sharks from a vessel issued an Atlantic shark limited access permit (LAP), except that a permitted shark dealer or processor may possess Gulf of Mexico blacktip sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under this closure, a shark dealer issued a permit pursuant to § 635.4 may, in accordance with state regulations, purchase or receive Gulf of Mexico blacktip sharks if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued an Atlantic Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

## Classification

The Assistant Administrator for Fisheries (AA) determined that Amendment 5a to the 2006 Consolidated HMS FMP is necessary for the conservation and management of the Atlantic shark fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Pursuant to 5 U.S.C. 553(d)(3), the AA has determined that there is good cause to waive the 30-day delay in effective date for the revised commercial quotas for Gulf of Mexico blacktip sharks. This final rule will implement, among other management measures, new commercial quota and management groups and revised quotas. A delay in effectiveness of this rule for these revised quotas and management groups would cause negative ecological impacts on the fishery resource because the newly established rebuilding plans and TACs will be exceeded. As described above, the landings for the Gulf of Mexico blacktip shark management group are projected to reach 80 percent of the new final adjusted 2013 quotas by July 1, 2013. Given these landings, we need to close the Gulf of Mexico blacktip shark management group to ensure that the new final adjusted 2013 quotas are not overharvested in 2013. The situation where we implement new management group quotas then close a management group immediately has not happened in the past. In past rulemakings of this scope, the shark fishery has generally remained closed for the entire year until the new management groups and quotas were implemented. This year, we decided to open the fishery in order to provide equitable opportunities across all regions. In the final rule establishing the 2013 fishing seasons, we notified constituents that the quotas could be changing as a result of Amendment 5 and that any changes would be made in this final rule. Generally, the LCS shark fisheries have remained open for only a few months for the entire year. The fisheries this year have remained open for six months (since January 1, 2013). Thus, because of the notice in the final specifications rule and because of normal fishing season length practices, the fishermen who could be affected were aware that we could implement the new management group quotas and potentially close the fisheries in this rulemaking.

For this reason, the AA finds good cause to waive the 30-day delay in effectiveness of the new final adjusted 2013 commercial quotas for Gulf of Mexico blacktip sharks.

We prepared an FEIS for this Amendment 5a to the 2006 Consolidated HMS FMP. The FEIS was filed with the Environmental Protection Agency on April 19, 2013. A notice of availability was published on April 26, 2013 (78 FR 24743). In approving Amendment 5a to the 2006 Consolidated HMS FMP on June 7, 2013, we issued a ROD identifying the selected alternative suite. A copy of the ROD is available from the HMS Management Division (see **ADDRESSES**).

This final rule has been determined to be not significant under EO 12866.

### *Coastal Zone Management Act*

The Coastal Zone Management Act (CZMA) requires that Federal agency activities that have reasonably foreseeable coastal effects be consistent to the maximum extent practicable with the enforceable policies of affected federally-approved state coastal management programs (CMPs). This rule implements Alternative Suite A6 from the FEIS, which is a new alternative that largely represents a hybrid of measures previously proposed in the DEIS under Alternative Suites A2 and A3, as well as minor adjustments resulting from the application of final 2011 data. Thus, we have determined that this rule will be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have federally approved CMPs. In December 2012, we provided all coastal states along the eastern seaboard and the Gulf of Mexico (21 states), including Puerto Rico and the U.S. Virgin Islands, with a copy of the proposed rule and DEIS for Amendment 5 to the 2006 Consolidated HMS FMP. Under 15 CFR 930.41, states and/or U.S. territories have 60 days to respond after the receipt of the consistency determination and supporting materials. States can request an extension of up to 15 days. If a response is not received within those time limits, NMFS can presume concurrence (15 CFR 930.41 (a)). Nine states replied within the response time period that the proposed regulations were consistent with the enforceable policies of their CMPs (Alabama, Delaware, Florida, Louisiana, Mississippi, New Hampshire, New Jersey, Rhode Island, and South Carolina). Another nine states (Connecticut, Maine, Maryland, Massachusetts, New York, South Carolina, Texas, U.S. Virgin Islands, and Puerto Rico) did not respond within the response time period, nor did they

request an extension in the comment period; therefore, we presume their concurrence. The State of Georgia replied that they concur with our consistency determination with the condition that changes are made to the rule or incorporate other state agency comments. The State of North Carolina concurred with our consistency determination but also stated that the proposed action would have negative impacts on North Carolina fishermen and we should incorporate the North Carolina Division of Marine Fisheries' (NCDMF's) suggestions and concerns to the greatest extent practicable. The Commonwealth of Virginia indicated that Alternative Suites A2, A3, and A4 were consistent with its CMP, noted that Alternative Suites A2 and A3 would severely restrict recreational fishermen's access to other species of LCS, and that Alternative Suite A3 would have the greatest potential to allow Virginia commercial and recreational fishermen access to a portion of the annual quota of the managed shark management groups while still adequately protecting those species of shark identified as overfished.

**A. Response to the State of Georgia**

The State of Georgia, in its February 12, 2013, CZMA consistency letter to NMFS, stated that ''portions of the preferred Alternative Suite A2 would place undue burdens on Georgia's recreational shark fishery when there are other alternatives that would meet NMFS's objectives and reduce coastal use impacts.'' The State of Georgia also noted that rather than linking quotas, ''bycatch and post-release mortality should be considered when catch levels are determined'' and that ''whenever possible single species management should be considered until appropriate multispecies assessments can be developed.'' The State of Georgia concurred with NMFS' consistency determination on the proposed rule with the condition that the following changes be made to the rule. Georgia would prefer Alternative Suite A3 for TAC and commercial quota measures since no quota linkage would fulfill the intended goal of this amendment and reduce impacts to Georgia's fishermen. The State of Georgia also stated that it did not support the increase to the shark minimum recreational size limit to 96 inches fork length stating that this increased size would eliminate recreational shark fishing in Georgia. The State of Georgia suggested that NMFS prohibit the take of all ridgeback sharks and implement a fine for landings of any prohibited species. In the Alternative Suite A2, the State of Georgia would like NMFS to postpone mandatory reporting of hammerhead sharks until a process has been fully developed, and postpone education and outreach for prohibited shark identification unless Federal funds are used to support this program.

While we acknowledge the potential impacts to Georgia fishermen, under the Magnuson-Stevens Act's (16 U.S.C. 1801 *et seq.*) National Standards, we are required to, among other things, implement conservation and management measures to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery; base actions upon the best scientific information available; manage stocks throughout their range to the extent practicable; minimize adverse economic impacts on fishing communities to the extent practicable; and minimize bycatch and bycatch mortality to the extent practicable (16 U.S.C. 1851(a)(1), (2), (3), (8), and (9)). In the preparation of this final action, we performed an extensive analysis on quota linkages for shark species that are caught together to determine which quotas would likely trigger management group closures. This analysis concluded that the aggregated LCS quota would likely be reached before the hammerhead shark quota in the Atlantic region based on species landings per trip from the logbook data. Opening and closing these two management groups concurrently would strengthen the conservation benefits of either group's quota closure. Furthermore, SCS fishermen have been able to avoid blacknose sharks to fully retain the non-blacknose SCS quota since Amendment 3 to the 2006 Consolidated HMS FMP in 2008. Regarding bycatch and post-release mortality, we already account for fishing mortality of sharks across multiple fisheries in the TACs and commercial quota estimates for sharks, consistent with the State of Georgia's recommendation.

During the comment period for Amendment 5 to the 2006 Consolidated HMS FMP, we received numerous comments on the proposed dusky shark measures, some requesting consideration of approaches to dusky shark fishery management that were significantly different from those we analyzed in the proposed rule and DEIS. After reviewing all of the comments received, we are not proceeding at this time with the dusky shark measures as proposed and will address the dusky shark overfishing and rebuilding plan in an upcoming proposed separate action. Therefore, we will not be implementing the 96 inches fork length minimum size as it was designed for dusky shark rebuilding, consistent with the State of Georgia's recommendation. In the FEIS, the preferred Alternative Suite A6 will establish a rebuilding plan for scalloped hammerhead sharks, which includes an increase in the minimum size limit of all recreationally landed hammerhead sharks to 78 inches fork length. In addition, we will increase outreach to the recreational community regarding the identification of prohibited shark species in recreational fisheries. This outreach could be in the form of updated shark identification placards for authorized and prohibited species, and outreach to state agencies and fishing tournaments on the current recreational shark regulations. This outreach would not impose costs on state agencies as NMFS will produce and distribute the placards.

The minor adverse economic and social impacts resulting from the quota linkage and recreational measures do not outweigh the ecological benefits for these shark species. Therefore, we are implementing these quota linkage and recreational measures in the shark fishery. Because the recent stock assessments were determined to be the best scientific data available, this finding is consistent with National Standard 2, which requires that management measures be based on the best scientific information available. Based on the information in this amendment and combined with the Magnuson-Stevens Act legal requirements noted in this paragraph, under the CZMA and NOAA regulations, we find that the preferred Alternative Suite A6 and this final action are consistent to the maximum extent practicable with Georgia's CMP enforceable policies.

**B. Response to the State of North Carolina**

The State of North Carolina, in its January 17, 2013, CZMA consistency letter to NMFS, stated that the proposed actions are consistent, to the maximum extent practicable, with the relevant enforceable policies of North Carolina's CMP. Though the State of North Carolina concurred with the proposed action, they encouraged us to incorporate the suggestions and concerns of the NCDMF to the greatest extent possible. During the comment period for the DEIS, we received comments from the NCDMF. NCDMF did not support quota linkage for the LCS and SCS fisheries because having one species as a trigger for closure can result in reduced fishing opportunity and have significant economic consequences. In this final rule, we are linking the quotas of shark species and

management groups that are caught together to prevent incidental catch mortality from exceeding the TAC, consistent with National Standard One. The aggregated LCS and hammerhead shark quotas and the blacknose and non-blacknose SCS quotas will be linked in each region. The Gulf of Mexico blacktip shark quota will not be linked and will open and close independent of the aggregated LCS and hammerhead management groups. In addition, we are allowing in-season quota transfers between regions for hammerhead shark and non-blacknose SCS management groups. NCDMF was also concerned that the increase in the recreational minimum size to 96 inches fork length would eliminate almost all recreational shark harvest, and recommended a slot limit for recreationally harvested shark species. The final action in this rule will not increase the recreational minimum size to 96 inches fork length, consistent with the NCDMF's recommendation, and will only increase the recreational size limit for all landed hammerhead sharks to provide additional protection for the scalloped hammerhead shark stock, which is overfished and is experiencing overfishing. As described above, all of the dusky shark measures will be addressed in a separate rulemaking. Therefore, we find the preferred Alternative Suite A6 and this final action to be consistent to the maximum extent practicable with the enforceable policies of the State of North Carolina's CMP.

**C. Response to the Commonwealth of Virginia**

The Commonwealth of Virginia, in its January 17, 2013, CZMA consistency letter to NMFS, stated that, while the Alternative Suites A2 and A3 have measures severely restricting recreational fishermen access to other species of LCS, these alternative suites are consistent with the enforceable fisheries management policy of the Virginia CMP. The State of Virginia finds that Alternative Suite A3 would have the greatest potential to allow Virginia commercial and recreational fishermen access to a portion of the annual quota of the managed shark management groups, while still adequately protecting those species of shark identified as being overfished. Additionally, they support additional outreach to all fishermen to improve the identification of sharks. Based on public comment, we have changed the preferred alternative suite. In the FEIS, preferred Alternative Suite A6 is a combination of management measures from Alternative Suites A2 and A3. The State of Virginia's CZMA consistency letter noted that Alternative Suite A2 and A3 would be consistent with the state's CMP. Therefore, we find the actions in the FEIS to be consistent with the State of Virginia's CMP enforceable policies, to the maximum extent practicable.

*Summary of the Final Regulatory Flexibility Analysis*

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, our responses to those comments, and a summary of the analyses completed to support the action. The full FRFA is available from us (see **ADDRESSES**). A summary is provided below.

**A. Statement of the Need for and Objectives of the Final Rule**

Section 604(a)(1) of the Regulatory Flexibility Act (RFA) requires a succinct statement of the need for and objectives of the rule. Chapter 1 of the FEIS and the proposed rule fully describes the need for and objectives of this final rule. The management goals and objectives of this final action are to provide for the sustainable management of shark species under authority of the Secretary consistent with the requirements of the Magnuson-Stevens Act and other statutes which may apply to such management, including the ESA, MMPA, and ATCA. The Magnuson-Stevens Act mandates that the Secretary provide for the conservation and management of HMS through development of an FMP for species identified for management and to implement the FMP with necessary regulations. In addition, the Magnuson-Stevens Act directs the Secretary, in managing HMS, to prevent overfishing of species while providing for their optimum yield on a continuing basis and to rebuild fish stocks that are considered overfished. The management objectives of this final action are to amend the 2006 Consolidated HMS FMP to rebuild and end overfishing of both the scalloped hammerhead and Atlantic blacknose shark stocks, maintain rebuilding for sandbar sharks, and achieve optimum yield and provide an opportunity for the sustainable harvest of Gulf of Mexico blacknose and Gulf of Mexico blacktip sharks.

**B. A Summary of Significant Issues Raised by the Public Comments in Response to the IRFA**

Section 604(a)(2) of the RFA requires a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS received many comments on the proposed rule and draft Amendment 5 to the 2006 Consolidated HMS FMP during the public comment period. A summary of these comments and the Agency's responses, including changes as a result of public comment, are included above. For general economic comments, see section F in ''Responses to Comments.'' NMFS did not receive comments specifically on the IRFA.

**C. A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply**

Section 604(a)(3) of the RFA requires a description and estimate of the number of small entities to which the final rule would apply. The Small Business Administration has defined a ''small'' fishing entity as one with average annual receipts of less than $4.0 million; a small charter/party boat entity is one with average annual receipts of less than $7.0 million; a small wholesale dealer as one with 100 or fewer employees; and a small seafood processor as one with 500 or fewer employees (13 CFR 121.201). Under these standards, we consider all Atlantic HMS permit holders subject to this rulemaking to be small entities.

The commercial measures in this final action will apply to the 486 commercial shark permit holders in the Atlantic shark fishery based on an analysis of permit holders as of October 2012 (NMFS 2012). Of these permit holders, 215 have directed shark permits and 271 hold incidental shark permits. Not all permit holders are active in the fishery in any given year. We estimate that between 2008 and 2011, approximately 108 vessels with directed shark permits and 71 vessels with incidental shark permits landed sharks. These measures could also affect 92 shark dealers. A further breakdown of these permit holders is provided in Amendment 5a to the 2006 Consolidated HMS FMP.

The recreational measures in this final action will impact HMS angling category and HMS charter/headboat category permit holders, as well as HMS tournaments. In general, the HMS charter/headboat category permit holders can be regarded as small businesses, while HMS angling category

permits are typically obtained by individuals who are not considered small entities for purposes of the RFA. While HMS tournaments are not themselves small businesses, many of them are organized by small businesses as promotional events. In 2012, 4,129 vessels obtained HMS charter/headboat category permits, and 235 HMS tournaments were registered. Chapter 6 of the FEIS for Amendment 5a to the 2006 Consolidated HMS FMP provides the overall historic trend in the number of charter/headboat permit holders and registered HMS tournaments from 2008 to 2012. It is unknown what portion of HMS charter/headboat permit holders actively participate in shark fishing or market shark fishing services for recreational anglers.

We have determined that the rule would not likely affect any small governmental jurisdictions. More information regarding the description of the fisheries affected, and the categories and number of permit holders can be found in Amendment 5a to the 2006 Consolidated HMS FMP.

**D. A Description of the Projected Reporting, Record-keeping, and Other Compliance Requirements of the Final Rule**

Section 604(a)(4) of the RFA requires a description of the projected reporting, record-keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities that would be subject to the requirements of the report or record. The preferred commercial and recreational measures in Alternative Suite A6 of the FEIS will not introduce any new reporting or record-keeping requirements.

**E. A Description of the Steps Taken To Minimize the Significant Economic Impact on Small Entities**

Section 604(a)(5) of the RFA requires a description of the steps the Agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and the reason that each one of the other significant alternatives to the rule considered by the Agency that affect small entities was rejected. These impacts are discussed below and in the FEIS for Amendment 5a to the 2006 Consolidated HMS FMP. Additionally, the RFA (5 U.S.C. 603 (c)(1)–(4)) lists four general categories of ''significant'' alternatives that could assist an agency in the development of significant alternatives. These categories of alternatives are: Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; use of performance rather than design standards; and, exemptions from coverage of the rule for small entities.

In order to meet the objectives of this rule, consistent with Magnuson-Stevens Act and ESA, we cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. We do not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, we analyzed several different alternatives in this rulemaking and provide rationale for identifying the preferred alternative to achieve the desired objective.

The alternatives considered and analyzed have been grouped into six alternative suites that address various shark TACs, quotas, quota linkages, and recreational measures. Alternative Suite A1 would maintain the current Atlantic shark fishery (no action). Alternative Suite A2 would establish new species management groups by regions, adjust LCS and SCS quotas, and link appropriate quotas. Alternative Suite A3 would establish new species management groups by region, adjust LCS and SCS quotas with no quota linkages, and increase the hammerhead shark minimum recreational size to 78 inches fork length. Alternative Suite A4 would establish new species management groups by region, adjust LCS and SCS quotas, and establish species-specific recreational shark quotas. Alternative Suite A5 would close all commercial and recreational shark fisheries. Finally, Alternative Suite A6, the preferred alternative, would establish new species management groups by regions, adjust LCS and SCS quotas, link appropriate quotas, and increase the hammerhead shark minimum recreational size to 78 inches fork length. Additionally, Alternative Suites A2, A3, and A6 would also require the Agency to conduct more outreach on shark identification to recreational anglers and Charter/Headboat permit holders, which could lead to reduced landings of prohibited species, but we anticipate that any reductions will be minimal.

The potential impacts these alternatives may have on small entities have been analyzed and are discussed in the following sections. The preferred alternative in the FEIS is Alternative Suite A6. The economic impacts that would occur under this preferred alternative suite was compared with the other alternatives to determine if economic impacts to small entities could be minimized while still accomplishing the stated objectives of this rule.

**A. Alternative Suite A1**

Alternative Suite A1 (status quo) would not change current management of the Atlantic shark fisheries. When taken as a whole, Alternative Suite A1 would likely have neutral economic impacts on small entities in the short-term because the fisheries would continue to operate as status quo. In the long-term, it could cause direct minor adverse economic impacts because we would need to make to changes to the fishery to address the overfishing and overfished stocks. Since Alternative Suite A1 does not address the overfished and/or overfishing determination based on recent stock assessments, we do not prefer this alternative at this time.

*1. Scalloped Hammerhead Sharks*

From 2008 through 2011, approximately 22 vessels with directed shark permits had hammerhead shark landings, while approximately 2 vessels with incidental shark permits had hammerhead shark landings in the Atlantic region. In the Gulf of Mexico region, approximately 12 vessels with directed shark permits had hammerhead shark landings, while 1 vessel with an incidental shark permit had hammerhead shark landings. Spread amongst the directed and incidental shark permit holders that landed scalloped hammerhead in the Atlantic region, the average directed shark permit holder earned $1,443 in average annual gross revenues, and the average incidental shark permit holder earned $491 in average annual gross revenues from scalloped hammerhead shark landings. Divided evenly amongst the directed and incidental shark permit holders that landed scalloped hammerhead in the Gulf of Mexico region, the average directed shark permit holder earned $3,303 in average annual gross revenues, and the incidental shark permit holder earned $40 in annual gross revenues from scalloped hammerhead shark landings. Scalloped hammerhead sharks compose

a small portion of total non-sandbar LCS landings; an annual average of 7.3 percent of non-sandbar LCS landings are scalloped hammerhead sharks in the Atlantic region and 4.3 percent on the Gulf of Mexico region. Scalloped hammerhead sharks are overfished with overfishing occurring, and the stock could become increasingly unproductive under the status quo, therefore we do not prefer this alternative at this time.

*2. Large Coastal Sharks*

From 2008 through 2011, approximately 43 vessels with directed shark permits had non-sandbar LCS landings, while approximately 14 vessels with incidental shark permits had non-sandbar LCS landings in the Atlantic region. In the Gulf of Mexico region, approximately 18 vessels with directed shark permits had non-sandbar LCS landings, while approximately 6 vessels with incidental shark permits had non-sandbar LCS landings. It is estimated that these permit holders would be the most affected by management measures proposed for non-sandbar LCS. Spread amongst the directed and incidental shark permit holders that landed non-sandbar LCS in the Atlantic region, the average directed shark permit holder earned $15,200 in average annual gross revenues, and the average incidental shark permit holder earned $1,444 in average annual gross revenues from non-sandbar LCS landings. Spread amongst the directed and incidental shark permit holders that landed non-sandbar LCS in the Gulf of Mexico region, the average directed shark permit holder earned $58,920 in average annual gross revenues, and the average incidental shark permit holder earned $1,786 in average annual gross revenues from non-sandbar LCS landings.

*3. Gulf of Mexico Blacktip Sharks*

From 2008 through 2011, approximately 15 vessels with directed shark permits had blacktip shark landings, while approximately 2 vessels with incidental shark permits had blacktip shark landings in the Gulf of Mexico region. Spread amongst the directed and incidental shark permit holders that landed blacktip shark, the average directed shark permit holder earned $41,532 in average annual gross revenues, and the average incidental shark permit holder earned $1,251 in average annual gross revenues from blacktip shark landings.

*4. Blacknose Sharks*

Since Amendment 3 was implemented in 2010, an average of approximately 25 vessels with directed shark permits had blacknose shark landings, while approximately 3 vessels with incidental shark permits had blacknose shark landings. It is estimated that these permit holders would be the most affected by management measures proposed for blacknose sharks. Spread amongst the directed and incidental shark permit holders that landed blacknose, the average directed shark permit holder earned $2,075 in average annual gross revenues, and the average incidental shark permit holder earned $353 in average annual gross revenues from blacknose shark landings.

*5. Non-Blacknose Small Coastal Sharks*

Since Amendment 3 was implemented in 2010, an average of approximately 41 vessels with directed shark permits had non-blacknose shark landings, while approximately 13 vessels with incidental shark permits had non-blacknose SCS landings. It is estimated that these permit holders would be the most affected by management measures proposed for non-blacknose SCS. Spread amongst the directed and incidental shark permit holders that landed non-blacknose SCS, the average directed shark permit holder earned $13,107 in average annual gross revenues, and the average incidental shark permit holder earned $844 in average annual gross revenues from non-blacknose SCS landings.

*6. Quota Linkages*

Because Alternative Suite A1 does not create any new species or management group quotas, new quota linkages would be unnecessarily. Consequently, there are no additional direct or indirect socioeconomic impacts in the short or long-term beyond those discussed for scalloped hammerhead, blacktip sharks, non-blacknose SCS, and blacknose sharks.

*7. Recreational Measures*

Under Alternative Suite A1, there would be no changes to the existing recreational retention limits for all species. Therefore, small entities, such as charter/headboat operators and tournaments that target sharks, would not experience any change in economic impact under this alternative.

**B. Alternative Suite A2**

Alternative Suite A2 would establish new species management groups by regions, adjust LCS and SCS quotas, and link appropriate quotas. When taken as a whole, Alternative Suite A2 would likely have direct short and long-term minor adverse economic impacts. These impacts would mostly affect fishermen targeting scalloped hammerhead and blacknose sharks because the quotas would restrict the amount of sharks that could be landed some years. These fishermen are likely to adapt to the new regulations by fishing in other fisheries, or change their fishing habitats. Neutral economic impacts are expected for fishermen targeting the aggregated LCS and non-blacknose SCS management groups because the new proposed quotas are based on the average landings for each species. Quota linkages could have moderate adverse economic impacts based on the fishing rate of each linked shark quota in some years, but not all years. Furthermore, failure to alter recreational measures under this alternative could lead to long-term adverse economic impacts due to continued overfishing.

*1. Scalloped Hammerhead Sharks*

Under Alternative Suite A2, we would establish an Atlantic and a Gulf of Mexico hammerhead shark quota (including scalloped, smooth, and great hammerhead sharks) using the methodology outlined in Chapter 2 of the FEIS. Compared to average landings the quotas could result in a fishery-wide increase in revenue of $1,719 in the Atlantic region and $2,005 in the Gulf of Mexico region. However, because hammerhead sharks are currently counted against the regional non-sandbar LCS quotas, which are much higher than the regional hammerhead shark quotas in Alternative Suite A2, the opportunities to land hammerhead sharks under this alternative suite would be reduced. Fishing activities could be more constrained in future years under the quotas as compared to the historical range of landings. Therefore, impact on the annual revenues of individual vessels actively involved in the fishery are anticipated to be neutral in most years, but minor impacts may be experienced in years of high landings.

*2. Large Coastal Sharks*

Alternative Suite A2 would establish new, separate quotas for scalloped hammerhead sharks and Gulf of Mexico blacktip sharks, necessitating removal of these species from the non-sandbar LCS management group (which will then be renamed ''aggregated LCS'' in both the Atlantic and Gulf of Mexico regions). The aggregated LCS quota would be based on average annual landings of the remaining species (see Chapter 2 of the FEIS for annual landings of remaining species), therefore, those species composing the aggregated LCS management group would not experience a change in fishing pressure

and landings would be capped at recent levels. For these reasons, economic impacts to small entities resulting from this portion of Alternative Suite A2 are expected to be neutral.

*3. Gulf of Mexico Blacktip Sharks*

Alternative suite A2 would establish a new, separate quota for Gulf of Mexico blacktip sharks based on current average landings. This alternative suite's blacktip shark action would likely result in neutral economic impacts to small entities. As discussed in Chapter 1 of the FEIS, based on the SEDAR 29 Gulf of Mexico blacktip shark stock assessment, we have determined that the Gulf of Mexico blacktip shark stock is not overfished and not experiencing overfishing (NMFS 2011). These results indicate the Gulf of Mexico blacktip shark stock can sustain current fishing levels and should not result in any additional impacts to small entities.

*4. Blacknose Sharks*

Alternative Suite A2 would separate blacknose sharks into the Atlantic and Gulf of Mexico regions as suggested in the SEDAR 21 stock assessment (NMFS 2011). These alternatives would increase the blacknose shark landings in each region. Average annual gross revenues for the blacknose shark landings for the Atlantic region would increase from $50,501 under the No Action alternative to $54,854 under Alternative Suite A2. Although, because the blacknose shark quota for the Atlantic region would be less than the current overall blacktip shark quota (19.9 mt dw), there could be some minor, adverse socioeconomic impacts associated with the reduced opportunities to land blacknose sharks. We anticipate that directed and incidental shark permit holders would experience neutral direct socioeconomic impacts in the short- and long-term as blacknose sharks are not the targeted shark species for SCS fishermen. Average annual gross revenues for the blacknose shark landings for the Gulf of Mexico region would decrease slightly from $5,645 under the No Action alternative to $5,641 under Alternative Suite A2. NMFS anticipates these directed and incidental shark permit holders would experience minor economic impacts since the new Gulf of Mexico blacknose shark quota is consistent with current landings. In the short-term, lost revenues would be moderate for the 20 directed shark permit and 1 incidental shark permit holders that land blacknose sharks in the Atlantic region, and the 5 directed shark and the 2 incidental shark permits that land blacknose sharks in the Gulf of Mexico.

*5. Non-Blacknose Small Coastal Sharks*

Alternative Suite A2 would establish regional quotas for non-blacknose SCS based on the landings since Amendment 3 was implemented in 2010 (NMFS 2010). In the Atlantic, an average of approximately 35 vessels with directed shark permits had non-blacknose shark landings, while approximately 9 vessels with incidental shark permits had non-blacknose SCS landings. In the Gulf of Mexico, an average of approximately 5 vessels with directed shark permits had non-blacknose shark landings, while approximately 2 vessels with incidental shark permits had non-blacknose SCS landings since Amendment 3 was implemented in 2010. Under the Alternative Suite A2, there would be neutral economic impacts to directed and incidental shark permit holders as the average annual gross revenues from non-blacknose SCS landings would be the same as the status quo in the short- and long-term. Fishermen would be expected to operate in the same manner as the status quo in the short-term. However, this alternative suite could have minor negative economic impacts on fishermen if fishing effort increases for non-blacknose SCS. The fishery has never filled the entire quota established for the fishery in 2010, but that could change with a smaller regional quota and if fishermen are displaced from other fisheries.

*6. Quota Linkages*

The quota linkages under this alternative suite could have short and long-term moderate adverse economic impacts. Quota linkages are explicitly designed to concurrently close multiple shark management groups, regardless of whether all the linked quotas are filled. This provides protection against incidental capture for species for which the quota has been reached, but it could also preclude fishermen from harvesting the entirety of each of the linked quotas. A quantitative analysis of the economic impact is not possible without comparing the rates of hammerhead shark, blacktip shark, and aggregated LCS catch and without knowing the extent to which fishermen can avoid hammerhead sharks. However, a qualitative analysis can provide insight on the possibility of adverse socioeconomic impacts. Under Alternative Suite A2, both the hammerhead shark and aggregated LCS management groups would close when landings of either reaches or is expected to reach 80 percent of the quota. If hammerhead shark landings reach 80 percent of the quota, the aggregated LCS management group would close, regardless of what portion of the quota has been filled. If the entire aggregated LCS management group has not been harvested, the fishery would not realize the full level of revenues possible under the established quota. However, given that the hammerhead quota for the Atlantic region is larger than average landings of hammerhead sharks in the Atlantic region by a little over than 2,000 lb dw and that the Atlantic aggregated LCS quota is not changing from average landings, we do not expect either quota to reach or be projected to reach 80 percent significantly faster than the other quota as a result of this alternative suite. A similar situation could occur in the Gulf of Mexico region under Alternative Suite A2 where both the hammerhead shark and blacktip shark quotas would be linked to the aggregated LCS quota. In the Gulf of Mexico the hammerhead, Gulf of Mexico blacktip, and aggregated LCS management groups would close when landings of any one reaches or is expected to reach 80 percent of its quota. However, given that the hammerhead quota for the Gulf of Mexico region is larger than average landings of hammerhead sharks in the Gulf of Mexico region by a little over than 2,000 lb dw and that the Gulf of Mexico aggregated LCS and blacktip quotas are not changing from average landings, we do not expect either quota to be reach or be projected to reach 80 percent significantly faster than the other quotas as a result of this alternative suite.

The blacknose shark and non-blacknose SCS socioeconomic impacts would be the same as the LCS since there would be similar scenarios with the quota linkage by species and region. In addition, we would allow inseason quota transfers between non-blacknose SCS regions. This would have minor beneficial economic impacts for the fishery as the non-blacknose SCS quota would not be the limiting factor. Consequently, the quota linkages proposed under this Alternative Suite could have moderate adverse economic impacts, but will likely have neutral impacts most years.

*7. Recreational Measures*

Under Alternative Suite A2, there would be no changes to the existing recreational retention limits for all species. Therefore, small entities, such as charter/headboat operators and tournaments that target sharks, would not experience any change in economic impact under this alternative. However, continued overfishing of selected shark

species could lead to long-term adverse economic impacts.

**C. Alternative Suite A3**

Alternative Suite A3 would establish new species management groups by regions, adjust LCS and SCS quotas, and increase the hammerhead shark minimum recreational size to 78 inches fork length. When taken as a whole, Alternative Suite A3 would likely have moderate adverse economic impacts on small entities. These impacts would mostly affect fishermen catching hammerhead and blacknose sharks. The hammerhead shark quota would be based on the scalloped hammerhead shark TAC and would potentially reduce hammerhead shark landings in years of high landings. The blacknose shark quota in the Atlantic would be reduced, while the Gulf of Mexico blacknose TAC would be insufficient to allow for commercial or recreational harvest due to discards in other fisheries. Recreational management measures would affect fishermen who catch hammerhead sharks since the increased size limit would result in more hammerhead sharks having to be released under this alternative suite. In addition, the lack of quota linkages would allow fishermen to fully harvest all of the quotas. While this alternative suite might have more beneficial direct economic impacts than preferred Alternative Suite A6, the ecological impacts would be adverse and would not achieve the objectives and needs for this rulemaking.

*1. Scalloped Hammerhead Sharks*

Under Alternative Suite A3, NMFS would remove hammerhead sharks from the non-sandbar LCS quota and establish a separate hammerhead shark quota for the three species of large hammerhead sharks (scalloped, smooth, and great hammerhead sharks), similar to Alternative Suites A2 and A6. In contrast to Alternative Suites A2 and A6, however, the hammerhead shark quota under Alternative Suite A3 would not be split between the Atlantic and Gulf of Mexico regions; rather, there would be one hammerhead shark quota across both regions. Although this difference could create some administrative difficulties, it is unlikely to alter the economic impacts from Alternative Suites A2 or A6's minor adverse economic impacts. Alternative Suites A2 and A6 would split the quota between the two regions based on historical landings; therefore, even though there would be one hammerhead shark quota under Alternative Suite A3, a similar breakdown of landings would likely occur.

*2. Large Coastal Sharks*

Non-sandbar LCS management measures under Alternative Suite A3 are identical to those under Alternative Suites A2 and A6. See the Large Coastal Shark section of Alternative Suite A6 for more details on impacts.

*3. Gulf of Mexico Blacktip Sharks*

Alternative Suite A3 would create a separate Gulf of Mexico blacktip shark TAC and commercial quota, by increasing the TAC calculated in Alternative Suites A2 and A6 by 30 percent, which is based on the current landings percentage of Gulf of Mexico blacktip sharks. This increase would result in a commercial quota of 380.6 mt dw (839,090 lb dw), which is a 48 percent increase from average Gulf of Mexico blacktip shark landings from 2008–2011 (256.6 mt dw; 565,700 lb dw). This increase would increase average ex-vessel revenues across the fleet by $339,467 when compared to current revenues.

From 2008 through 2011, approximately 15 vessels with directed shark permits had blacktip shark landings, while approximately 2 vessels with incidental shark permits had blacktip shark landings in the Gulf of Mexico region. Spread amongst the directed and incidental shark permit holders that landed blacktip shark, the average shark permit holder could potentially land up to $19,969 in additional annual revenue from Gulf of Mexico blacktip sharks.

*4. Blacknose Sharks*

The blacknose shark management measures under Alternative Suite A3 are identical to those under Alternative Suites A2 and A6 for the Atlantic region. However, there are differences for the Gulf of Mexico region. Given that the TAC under Alternative Suite A3 would be 11,900 sharks, there would be no TAC available for commercial and recreational harvest of blacknose sharks in the Gulf of Mexico region. We would then work with the Gulf of Mexico Fishery Management Council to reduce the mortality of blacknose sharks in the Gulf of Mexico shrimp trawl fishery to attain the TAC of 11,900 sharks, and to establish bycatch reduction methods, as appropriate, to reduce mortality in the shrimp trawl and reef fish fisheries. Currently, the average annual gross revenues for blacknose shark landings for the entire commercial fishery in the Gulf of Mexico region are $5,645, but would be reduced to $0 under this alternative. Under Alternative Suite A3, lost revenues would lead to moderate direct adverse economic impacts for the 8 directed shark and the 2 incidental shark permit holders that land blacknose sharks in the Gulf of Mexico.

*5. Non-Blacknose Small Coastal Sharks*

Alternative Suite A3 would keep the non-blacknose SCS management group as status quo with one regional quota of 221.6 mt dw (488,539 lb dw). There would be neutral economic impacts to shark permit holders.

*6. Quota Linkages*

Under Alternative Suite A3, no quota linkages would be implemented. All shark management groups would open and close independently of each other. Quota linkages can lead to closures of shark management groups whether their quotas are fully harvested or if landings indicate linked quotas are within 80 percent of being fully harvested. If each management group opens and closes independently, each quota would have a higher likelihood of being filled, allowing for full realization of potential revenues. Thus, the lack of quota linkages under this alternative suite could lead to beneficial economic impacts in the short-term, but adverse economic impacts in the long-term if overfishing is allowed to continue.

*7. Recreational Measures*

Alternative Suite A3 would increase the minimum recreational size for all hammerhead sharks (great, smooth, and scalloped hammerhead sharks) to 78 inches fork length, and increase outreach to recreational anglers concerning identification of all shark, including prohibited species. Therefore, this alternative would likely result in minor adverse economic impacts for charter/headboat operators and tournaments that target hammerhead sharks because of the reduced incentive to recreationally fish for these species. Increasing the recreational size limit for hammerhead sharks would ensure that only larger or ''trophy'' sized sharks would be landed.

**D. Alternative Suite A4**

Alternative Suite A4 would establish new species management groups by regions, adjust LCS and SCS quotas, link appropriate quotas, and establish a species-specific recreational shark quota. Overall, Alternative Suite A4 would likely have direct short- and long-term minor, adverse economic impacts. These impacts would mostly affect fishermen catching blacknose sharks. The blacknose shark quota in the Atlantic region would be reduced, while in the Gulf of Mexico region, there would be no TAC available for commercial and recreational harvest of

blacknose sharks given the blacknose shark mortality in non-HMS fisheries in the Gulf of Mexico. Recreational management measures would affect fishermen who retain sharks because we would implement a species-specific quota for the recreational fishery. Neutral economic impacts are expected for recreational and commercial fishermen targeting scalloped hammerhead sharks, aggregated LCS and non-blacknose SCS. While this alternative suite might have minor adverse economic impacts, there is the potential for more adverse economic impacts if quotas are exceeded in the future. Although this alternative suite would allow for the highest Gulf of Mexico blacktip shark commercial quota, it is based on base model projections, which the NMFS scientists who participated in the stock assessment felt had a high degree of uncertainty, and, because these projections were developed outside of the standard SEDAR process and were not peer reviewed, they could not conclude with certainty that such a high level of catch would not result in overfishing. In addition to the uncertainty in the model, the blacktip shark quota proposed under this alternative suite could lead to increased bycatch of other species due to increased fishing effort. For all of these reasons, and because of the potential for additional adverse socioeconomic impacts if quotas are exceeded, we do not prefer this alternative suite at this time.

*1. Scalloped Hammerhead Sharks*

Alternative Suite A4 would use the scalloped hammerhead shark TAC established in Hayes *et al.* (2009) to create separate Atlantic and Gulf of Mexico quotas applicable to only scalloped hammerhead sharks rather than all three large hammerhead sharks as considered under Alternative Suites A2, A3, and A6. The quotas in both regions are higher than current landings (see Chapter 2 of the FEIS for landings information). Therefore, we expect neutral economic impacts. Great and smooth hammerhead sharks could continue to be landed at current levels under the aggregated LCS quota.

*2. Large Coastal Sharks*

Alternative Suite A4 would establish new aggregated LCS quotas in the Atlantic and Gulf of Mexico regions using a similar methodology to that outlined in Alternative Suites A2 and A6, except for one difference. While Alternative Suite A6 would calculate each species' contribution to total non-sandbar LCS landings using average annual landings between 2008 and 2011, Alternative Suite A4 would instead calculate each species' contribution to total non-sandbar LCS landings using the year with the highest annual landings for the management group between 2008 and 2011 for each species. The year with the highest non-sandbar LCS landings in the Atlantic was 2008 and the highest in the Gulf of Mexico was 2011. This deviation in method does not substantially change the quotas; therefore, economic impacts are unchanged from Alternative Suites A2 and A6.

*3. Gulf of Mexico Blacktip Sharks*

Alternative Suite A4 would establish a separate Gulf of Mexico blacktip shark quota of 1,992.6 mt dw based upon projections produced by SEFSC stock assessment scientists. The quota of 1,992.6 mt dw is more than five times the current Gulf of Mexico non-sandbar LCS quota. Ex-vessel revenue resulting from this blacktip shark quota could increase by up to $4,426,331 in the Gulf of Mexico region. Spread amongst the 17 directed and incidental shark permit holders that landed blacktip sharks, the average shark permit holder could potentially land up to $260,372 in additional annual revenue from Gulf of Mexico blacktip sharks. However, it is unlikely that this value would be realized. The Gulf of Mexico blacktip shark quota would be linked to the Gulf of Mexico aggregated LCS and scalloped hammerhead shark quotas. All three of these management groups would close when landings of any of them reached, or was expected to reach, 80 percent of the respective quota. Either the aggregated or scalloped hammerhead quota would likely be filled before the larger blacktip shark quota was filled. Regardless, the increased blacktip shark quota would allow for increased fishing opportunities and positive impacts to small entities.

*4. Blacknose Sharks*

Under Alternative Suite A4, the mortality of blacknose sharks in the Atlantic region would be limited to the TAC recommended by the SEDAR stock assessment of 7,300 blacknose sharks. All of the economic impacts resulting for the Atlantic region from this portion of the alternative suite are the same as those analyzed in Alternative Suites A2 and A6.

For the Gulf of Mexico region, we would establish a TAC of 9,792 blacknose sharks. As described in Alternative Suite A3, there would be no TAC available for commercial and recreational harvest of blacknose sharks in the Gulf of Mexico region given the blacknose shark mortality in non-HMS fisheries in the Gulf of Mexico. We would also work with the Gulf of Mexico Fishery Management Council to reduce bycatch mortality of blacknose sharks in the shrimp trawl and reef fish fisheries. The average annual gross revenues for blacknose shark landings for the commercial fishery are $5,645, but would be reduced to $0 under this alternative. Under Alternative Suite A4, it is anticipated that there would be moderate adverse economic impacts. In the short-term lost revenues would be moderate for the 5 directed shark and the 2 incidental shark permit holders that land blacknose sharks in the Gulf of Mexico region. Over the long-term, the adverse economic impact would be moderate, as the other management measures could be implemented to reduce the discards of blacknose sharks.

*5. Non-Blacknose Small Coastal Sharks*

Under Alternative Suite A4, we would establish regional quotas for non-blacknose SCS by dividing the current quota in half. This alternative would cause significant adverse economic impacts for shark fishermen in the Atlantic region. Alternative Suite A4 would restrict fishing of non-blacknose in the Atlantic to 244,269.5 lb dw and potentially reduce current annual revenue by $164,109. In the Gulf of Mexico region, this alternative would cause beneficial economic impacts for the non-blacknose SCS fishery as the quota would be larger than their average landings. This larger quota could potentially increase gross revenues by $257,928. However, this alternative suite would cause adverse impacts on blacknose sharks since current fishing and bycatch levels of blacknose sharks could increase. Since Alternative Suite A4 would not reduce blacknose shark mortality in the Gulf of Mexico region and decrease the Atlantic non-blacknose SCS fishing levels, we do not prefer this alternative at this time.

*6. Quota Linkages*

Quota linkages under Alternative Suite A4 are nearly identical to those under Alternative Suite A2, except that instead of linking the hammerhead quotas to the aggregated LCS quota in the Atlantic and Gulf of Mexico regions, the scalloped hammerhead quota would be linked instead. This deviation should not change the expected economic impacts. In addition, we would link the Atlantic blacknose and non-blacknose SCS quotas, and Gulf of Mexico blacknose shark and non-blacknose SCS quotas, and allow inseason quota transfer between the non-blacknose SCS regions. The quota linkages proposed

under Alternative Suite A4 would be expected to have moderate adverse economic impacts.

*7. Recreational Measures*

Under Alternative Suite A4, we would establish species-specific recreational shark quotas. This alternative would cause short-term neutral economic impacts for recreational fishermen as it would restrict landings to current levels. In the long-term, this alternative could have minor adverse socioeconomic impacts if the species-specific recreational shark quotas are exceeded and we implement additional management measures. This would have a greater effect on tournaments and charter vessels that target sharks.

**E. Alternative Suite A5**

Alternative Suite A5 would close all commercial and recreational shark fisheries. Alternative Suite A5 would likely have significant adverse economic impacts because recreational and commercial shark fishing in the Atlantic, Gulf of Mexico and Caribbean would be prohibited. Because other alternatives would meet the objectives of this Amendment with less significant adverse socioeconomic impacts, NMFS does not prefer this alternative suite at this time.

*1. Scalloped Hammerhead Sharks*

Currently, scalloped hammerhead sharks provide fishery-wide revenue of $72,404 (as discussed under Alternative Suite A1), which would be lost under this alternative suite. Consequently, the scalloped hammerhead shark portion of Alternative Suite A5 would be expected to only have moderate adverse direct economic impacts.

*2. Large Coastal Sharks*

Closure of the LCS fishery would have significant adverse direct economic impacts. Many fishermen rely on the LCS fishery for a large portion of annual earnings. A closure of the fishery would significantly impact the livelihoods of these fishermen. Currently, commercial landings of non-sandbar LCS generate annual revenues of $1,745,071 (as discussed under Alternative Suite A1), which would be lost under this alternative suite.

*3. Gulf of Mexico Blacktip Sharks*

Currently, Gulf of Mexico blacktip sharks provide fishery-wide revenue of $625,487 (as discussed under Alternative Suite A1), which would be lost under this alternative suite and the annual revenue of the approximately 17 direct and incidental shark permit holders that had blacktip shark landings would be reduced by $36,793 per permit holder. Consequently, the Gulf of Mexico blacktip shark portion of Alternative Suite A5 would be expected to have significant adverse economic impacts.

*4. Blacknose Sharks*

Alternative Suite A5 would close the entire blacknose shark management group, prohibiting the landing of any blacknose sharks. This alternative would have significant, adverse, economic impacts on fishermen with directed and incidental shark permits that fish for blacknose: The 25 directed shark permit holders, and the 3 incidental shark permit holders that had blacknose shark landings during 2008 through 2011. The result would be a loss of average annual gross revenues of $52,941 from blacknose shark landings. While this alternative could reduce blacknose mortality below the commercial allowance required to rebuild blacknose shark stocks, it would also drastically reduce non-blacknose SCS landings, and have the largest social and economic impacts of all the alternatives considered. This action would require fishermen to leave the closed shark fisheries altogether.

*5. Non-Blacknose Small Coastal Sharks*

Alternative Suite A5 would close the entire SCS commercial shark fishery, prohibiting the landing of any SCS, including finetooth, Atlantic sharpnose, and bonnethead. This alternative would have significant, adverse, socioeconomic impacts on fishermen with directed and incidental shark permits that fish for non-blacknose SCS, the 41 directed shark permit holders, and the 13 incidental shark permit holders that had non-blacknose SCS landings since Amendment 3 was implemented in 2010. The result would be a loss of average annual gross revenues of $548,345 from non-blacknose SCS landings. This action would require fishermen to leave the closed shark fisheries altogether.

*6. Quota Linkages*

Alternative Suite A5 would close all federally managed Atlantic recreational and commercial shark fisheries, obviating the need for quota linkages. The quota linkages portion of Alternative Suite A5 would likely result in no additional economic impacts on small entities.

*7. Recreational Measures*

Alternative Suite A5 would have direct significant adverse socioeconomic impacts because it would prohibit the retention of all sharks for recreational anglers. This would have a significant effect on tournaments and charter vessels that target sharks. Thus, NMFS does not prefer this alternative suite at this time.

**F. Alternative Suite A6**

Alternative Suite A6, the preferred alternative, will establish new species management groups by regions, adjust LCS and SCS quotas, link appropriate quotas, and increase the shark minimum recreational size to 78 inches fork length for great, scalloped, and smooth hammerhead sharks. When taken as a whole, Alternative Suite A6 would likely have direct short- and long-term minor adverse economic impacts. These impacts would mostly affect fishermen targeting scalloped hammerhead and blacknose sharks because the quotas would constrain fishing in years of higher than average landings. These fishermen are likely to adapt to the new regulations by fishing in other fisheries, or change their fishing habitats. Recreational management measures will increase the size limit and cause fishermen to catch and release more hammerhead sharks. Neutral economic impacts are expected for fishermen targeting the aggregated LCS and non-blacknose SCS management groups since the preferred quotas are based on the average landings for each species. Furthermore, quota linkages would affect the economic impacts based on the fishing rate of each linked shark quota, and recreational measures would likely have beneficial economic impacts in the long-term. When we compare the economic impacts of Alternative Suite A6 to the other alternative suites, this alternative suite would cause fewer impacts overall to fishermen. For this reason and the ecological reasons previously discussed, we prefer this alternative suite at this time.

*1. Scalloped Hammerhead Sharks*

Under Alternative Suite A6, NMFS will establish an Atlantic and a Gulf of Mexico hammerhead shark quota (including great, scalloped, and smooth hammerhead sharks) using the methodology outlined in Chapter 2 of the FEIS. When comparing average landings of hammerhead sharks from 2008–2011 to the preferred quotas revenue in the Gulf of Mexico region would be increased by $2,005 and increase in the Atlantic region by $1,719. However, because hammerhead sharks are currently counted against the regional non-sandbar LCS quotas, which are much higher than the preferred regional hammerhead shark quotas, the opportunities to land hammerhead

sharks would be reduced in years of higher than average landings. Therefore, there would be minimal impact on the annual revenues of individual vessels actively involved in the fishery most years, but minor adverse impacts in years of higher than average landings.

*2. Large Coastal Sharks*

Alternative Suite A6 will establish new, separate quotas for hammerhead sharks (great, scalloped, and smooth) and Gulf of Mexico blacktip sharks, necessitating removal of these species from the non-sandbar LCS management group (which will then be renamed ''aggregated LCS'' in both the Atlantic and Gulf of Mexico regions). The aggregated LCS quota will be based on average annual landings of the remaining species (see Chapter 2 in the FEIS for annual landings of remaining species); therefore, those species composing the aggregated LCS management group would not experience a change in fishing pressure and landings would be capped at recent levels. For these reasons, economic impacts to small entities resulting from this portion of Alternative Suite A6 are expected to be neutral.

*3. Gulf of Mexico Blacktip Sharks*

This alternative suite's blacktip shark action, to set the commercial quota according to recent average landings, is likely to result in neutral economic impacts to small entities. As discussed in Chapter 1 of the FEIS, based on the SEDAR 29 Gulf of Mexico blacktip shark stock assessment, we have determined that the Gulf of Mexico blacktip shark stock is not overfished and not experiencing overfishing. These results indicate the Gulf of Mexico blacktip shark stock can sustain current fishing levels and should not result in any additional impacts to small entities.

*4. Blacknose Sharks*

Under Alternative Suite A6, we will separate blacknose sharks into the Atlantic and Gulf of Mexico regions as suggested in the SEDAR 21 stock assessment (NMFS 2011). These alternatives will decrease the blacknose shark landings in each region. Average annual gross revenues for the blacknose shark landings for the Atlantic region would increase from $54,113 under the No Action alternative to $54,854 under Alternative Suite A6. We anticipate that these directed and incidental shark permit holders would experience minor adverse economic impacts as blacknose sharks are not the targeted shark species for SCS fishermen. Average annual gross revenues for the blacknose shark landings for the Gulf of Mexico region would decrease from $5,645 under the No Action alternative to $5,641 under Alternative Suite A6. We anticipate that these directed and incidental shark permit holders would experience neutral economic impacts since the new Gulf of Mexico blacknose shark quota is consistent with current landings. In the short-term, lost revenues would be moderate for the 20 directed shark permit and 1 incidental shark permit holders that land blacknose sharks in the Atlantic region, and the 5 directed shark and the 2 incidental shark permits that land blacknose sharks in the Gulf of Mexico region.

*5. Non-Blacknose Small Coastal Sharks*

Alternative Suite A6 will establish regional quotas for non-blacknose SCS based on the landings since Amendment 3 was implemented in 2010 (NMFS 2010). In the Atlantic region, an average of approximately 35 vessels with directed shark permits had non-blacknose shark landings, while approximately 9 vessels with incidental shark permits had non-blacknose SCS landings. In the Gulf of Mexico region, an average of approximately 5 vessels with directed shark permits had non-blacknose shark landings, while approximately 2 vessels with incidental shark permits had non-blacknose SCS landings since Amendment 3 was implemented in 2010. Under the Alternative Suite A6, there would be neutral economic impacts to directed and incidental shark permit holders as the average annual gross revenues from non-blacknose SCS landings would be the same as the status quo in the short- and long- term. Fishermen would be expected to operate in the same manner as the status quo in the short-term. However, this alternative suite could have minor negative economic impacts on fishermen if fishing effort increases for non-blacknose SCS. The fishery has never filled the entire quota established for the fishery in 2010, but that could change with a smaller regional quota and if fishermen are displaced from other fisheries.

*6. Quota Linkages*

The quota linkages preferred under this alternative suite could have short- and long-term moderate adverse economic impacts. Quota linkages are explicitly designed to concurrently close multiple shark management groups, regardless of whether all the linked quotas are filled. This provides protection against incidental capture for species for which the quota has been reached, but it could also preclude fishermen from harvesting the entirety of each of the linked quotas. A quantitative analysis of the economic impact is not possible without comparing the rates of hammerhead shark, blacktip shark, and aggregated LCS catch, and without knowing the extent to which fishermen can avoid hammerhead sharks. However, a qualitative analysis can provide insight on the possibility of adverse socioeconomic impacts. Under Alternative Suite A6, both the Atlantic hammerhead shark and Atlantic aggregated LCS management groups will close when landings of either reaches or is expected to reach 80 percent of the quota, and in the Gulf of Mexico region, the hammerhead shark and Gulf of Mexico aggregated LCS management groups will close when landings of either one reaches or is expected to reach 80 percent of its quota. If the entire aggregated LCS quota has not been harvested, the fishery would not realize the full level of revenues possible under the established quota. However, given that the hammerhead shark quotas for the Atlantic and Gulf of Mexico regions are larger than average landings of hammerhead sharks in each region by a little more than 2,000 lb and that the Atlantic and Gulf of Mexico aggregated LCS quotas are not changing from average landings, we do not expect either quota to reach or be projected to reach 80 percent significantly faster than the other quota in either region as a result of this alternative suite. Additionally, unlike Alternative Suite A2, the Gulf of Mexico blacktip shark quota will not be linked to the hammerhead shark and aggregated LCS quotas under Alternative Suite A6. This will allow Gulf of Mexico fishermen to continue to fish for blacktip sharks following the closures of the hammerhead and LCS quotas. We will also have the ability to transfer hammerhead shark quota between regions to allow for the greatest opportunity to harvest the aggregated LCS quotas while not exceeding the combined regional quotas for hammerhead sharks, which may help to further minimize the likelihood of adverse socioeconomic impacts. The blacknose shark and non-blacknose SCS socioeconomic impacts would be the same as the LCS since there would be similar scenarios with the quota linkage by species and region. In addition, we would allow inseason quota transfers between non-blacknose SCS regions. This would have minor beneficial economic impacts for the fishery as the non-blacknose SCS quota would not be the limiting factor. Consequently, the quota linkages proposed under this Alternative Suite could have moderate

adverse economic impacts in some years with high landings, but are expected to have neutral impacts most years.

*7. Recreational Measures*

Alternative Suite A6 will increase the current recreational size limit for hammerhead shark species to 78 inches fork length, and provide additional outreach to recreational anglers regarding identification of all sharks, including prohibited shark species. Implementation of these management measures would result in minor alterations to the way tournaments and charter vessels operate, and minimal reductions in opportunity and demand for recreational shark fishing, which could create some minor adverse economic impacts in the short-term. However, these measures would help the hammerhead stocks rebuild, reduce accidental harvest of prohibited species, and possibly increase recreational fishing opportunities in the future.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of this final rule and the compliance guide are available upon request from us (see **ADDRESSES**). Copies of the compliance guide will be available from the Highly Migratory Species Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/*.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 27, 2013.

**Alan D. Risenhoover,**

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

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.2:

■ a. Add in alphabetical order the definitions of ''Atlantic Aggregated LCS,'' ''FL (fork length),'' ''Gulf of Mexico Aggregated LCS,'' and ''Hammerhead Shark(s)'';

■ b. Remove the definitions of ''Non-ridgeback large coastal shark'' and ''Non-sandbar LCS'';

■ c. Add in alphabetical order the definition of ''Research LCS''; and

■ d. Remove the definition of ''Ridgeback large coastal shark''.

The additions read as follows:

**§ 635.2 Definitions.**

* * * * *

*Atlantic Aggregated LCS* means one of the following species, or parts thereof, as listed in Table 1 of Appendix A of this part: Atlantic blacktip, bull, lemon, nurse, silky, spinner, and tiger.

* * * * *

*FL (fork length)* means the straight line measurement along the length of the fish from the tip of the upper jaw to the fork of the tail.

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*Gulf of Mexico Aggregated LCS* means one of the following species, or parts thereof, as listed in Table 1 of appendix A of this part: bull, lemon, nurse, silky, spinner, and tiger.

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*Hammerhead Shark(s)* means great, scalloped, and smooth hammerhead shark species, or parts thereof, as listed in Table 1 in Appendix A of this part.

* * * * *

*Research LCS* means one of the species, or part thereof, listed under heading A of Table 1 in Appendix A of this part, other than sandbar sharks.

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■ 3. In § 635.5, paragraph (c)(1) is revised to read as follows:

**§ 635.5 Recordkeeping and reporting.**

* * * * *

(c) * * *

(1) *Bluefin tuna.* The owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all BFT caught under the Angling category quota designated at § 635.27(a) through the NMFS automated catch reporting system within 24 hours of the landing. Such reports may be made by calling a phone number designated by NMFS or submitting the required information electronically in the method designated by NMFS.

* * * * *

■ 4. In § 635.20, paragraphs (a) and (e)(2) are revised, and paragraph (e)(4) is added to read as follows:

**§ 635.20 Size limits.**

(a) *General.* The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas.

* * * * *

(e) * * *

(2) All sharks, except those specified at § 635.20(e)(4), landed under the recreational retention limits specified at § 635.22(c)(2) must be at least 54 inches (137 cm) FL.

* * * * *

(4) All hammerhead sharks landed under the recreational retention limits specified at § 635.22(c)(2) must be at least 78 inches (198.1 cm) FL.

* * * * *

■ 5. In § 635.21, remove the introductory text and revise paragraph (c)(5)(iii)(C) introductory text to read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(C) *Hook size, type, and bait.* Vessels fishing outside of the Northeast Distant gear restricted area, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait, and the following types and sizes of fishing hooks:

* * * * *

■ 6. In § 635.22, paragraph (c)(2) is revised to read as follows:

**§ 635.22 Recreational retention limits.**

* * * * *

(c) * * *

(2) Only one shark from the following list may be retained per vessel per trip, subject to the size limits described in § 635.20(e)(2) and (4): Atlantic blacktip, Gulf of Mexico blacktip, bull, great hammerhead, scalloped hammerhead, smooth hammerhead, lemon, nurse, spinner, tiger, blue, common thresher, oceanic whitetip, porbeagle, shortfin mako, Atlantic sharpnose, finetooth, Atlantic blacknose, Gulf of Mexico blacknose, and bonnethead.

* * * * *

■ 7. In § 635.24, revise paragraphs (a)(2), (a)(3), and (a)(4)(ii) and remove and reserve paragraph (a)(7).

The revisions read as follows:

**§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.**

* * * * *

(a) * * *

(2) A person who owns or operates a vessel that has been issued a directed LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued a directed LAP for sharks and that has been issued a shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 36 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks.

(3) A person who owns or operates a vessel that has been issued an incidental LAP for sharks and does not have a valid shark research permit, or a person who owns or operates a vessel that has been issued an incidental LAP for sharks and that has been issued a valid shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 3 LCS other than sandbar sharks per vessel per trip if the respective LCS management group(s) is open per §§ 635.27 and 635.28. Such persons may not retain, possess, or land sandbar sharks.

(4) * * *

(ii) A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land blacknose and non-blacknose SCS if the respective blacknose and non-blacknose SCS management group is open per §§ 635.27 and 635.28.

* * * * *

■ 8. In § 635.27, paragraph (b) is revised to read as follows:

**§ 635.27 Quotas.**

* * * * *

(b) *Sharks*—(1) *Commercial quotas.* The commercial quotas for sharks specified in this section apply to all sharks harvested from the management unit, regardless of where harvested. The base quotas listed below may be adjusted per paragraph (b)(2) of this section. Sharks taken and landed commercially from state waters, even by fishermen without Federal shark permits, must be counted against the commercial quota. Any sharks landed commercially as ''unclassified'' will be counted against the appropriate quota based on the species composition calculated from data collected by observers on non-research trips and/or dealer data. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D of Table 1 of Appendix A to this part, may be retained except as authorized under § 635.32. For the purposes of this section, the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the east coast of Florida at the mainland at 25°20.4′ N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

(i) *Sandbar sharks.* The base annual commercial quota for sandbar sharks is 116.6 mt dw. This quota, as adjusted per paragraph (b)(2) of this section, is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(ii) *Atlantic aggregated LCS.* The base annual commercial quota for Atlantic aggregated LCS is 168.9 mt dw. The commercial quota for the Atlantic aggregated LCS, as adjusted per paragraph (b)(2) of this section, applies only to those species of sharks that were caught in the Atlantic region, as defined in paragraph (b)(1) of this section.

(iii) *Gulf of Mexico aggregated LCS.* The base annual commercial quota for Gulf of Mexico aggregated LCS is 157.5 mt dw. The commercial quota for the Gulf of Mexico aggregated LCS, as adjusted per paragraph (b)(2), applies only to those species of sharks that were caught in the Gulf of Mexico region, as defined in paragraph (b)(1) of this section.

(iv) *Research LCS.* The base annual commercial quota for Research LCS is 50 mt dw. This quota, as adjusted per paragraph (b)(2) of this section, is available only to the owners of commercial shark vessels that have been issued a valid shark research permit and that have a NMFS-approved observer onboard.

(v) *Hammerhead sharks.* The base annual commercial quota for hammerhead sharks is 52.4 mt dw. This quota is split between the regions defined in paragraph (b)(1) of this section as follows: Atlantic region receives 51.7% of the base quota, except as adjusted per paragraph (b)(2) of this section; Gulf of Mexico region receives 48.3% of the base quota, except as adjusted per paragraph (b)(2) of this section. The commercial quota for Atlantic hammerhead sharks applies only to those species of sharks that were caught in the Atlantic region, as defined in paragraph (b)(1) of this section. The commercial quota for Gulf of Mexico hammerhead sharks applies only to those species of sharks that were caught in the Gulf of Mexico region, as defined in paragraph (b)(1) of this section.

(vi) *Gulf of Mexico blacktip sharks.* The base annual commercial quota for Gulf of Mexico blacktip sharks is 256.6 mt dw. The commercial quota for Gulf of Mexico blacktip sharks, as adjusted per paragraph (b)(2) of this section, applies only to those species of sharks that were caught in the Gulf of Mexico region, as defined in paragraph (b)(1) of this section.

(vii) *Non-blacknose small coastal sharks.* The base annual commercial quota for non-blacknose small coastal sharks across all regions is 221.6 mt dw. This quota is split between the regions defined in paragraph (b)(1) of this section as follows: the Atlantic region receives 79.5% of the base quota, except as adjusted per paragraph (b)(2) of this section; the Gulf of Mexico region receives 20.5% of the base quota, except as adjusted per paragraph (b)(2) of this section. The commercial quota for Atlantic non-blacknose SCS applies only to those species of sharks that were caught in the Atlantic region, as defined in paragraph (b)(1) of this section. The commercial quota for Gulf of Mexico non-blacknose SCS applies only to those species of sharks that were caught in the Gulf of Mexico region, as defined in paragraph (b)(1) of this section.

(viii) *Atlantic blacknose sharks.* The base annual commercial quota for Atlantic blacknose sharks is 18.0 mt dw. The commercial quota for Atlantic blacknose sharks, as adjusted per paragraph (b)(2) of this section, applies only to those species of sharks that were caught in the Atlantic region, as defined in paragraph (b)(1) of this section.

(ix) *Gulf of Mexico blacknose sharks.* The base annual commercial quota for Gulf of Mexico blacknose sharks is 2.0 mt dw. The commercial quota for Gulf of Mexico blacknose sharks, as adjusted per paragraph (b)(2) of this section, applies only to those species of sharks that were caught in the Gulf of Mexico region, as defined in paragraph (b)(1) of this section.

(x) *Pelagic sharks.* The base annual commercial quotas for pelagic sharks are 273.0 mt dw for blue sharks, 1.7 mt dw for porbeagle sharks, and 488.0 mt dw for pelagic sharks other than blue sharks or porbeagle sharks.

(2) *Annual and inseason adjustments of commercial quotas.* NMFS will publish in the **Federal Register** any annual or inseason adjustments to the base annual commercial quotas. The base annual quota will not be available, and the fishery will not open, until any adjustments are published in the **Federal Register** and effective. Within a fishing year or at the start of a fishing year, NMFS may transfer quotas between regions of the same species or management group, as appropriate, based on the criteria in paragraph (b)(2)(iii) of this section.

(i) *Annual overharvest adjustments.* Except as noted in this paragraph, if any of the available commercial base or adjusted quotas as described in this section is exceeded in any fishing year, NMFS will deduct an amount equivalent to the overharvest(s) from the base quota the following fishing year or, depending on the level of overharvest(s), NMFS may deduct from the base quota an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing year or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of five years.

(ii) *Annual underharvest adjustments.* If any of the annual base or adjusted quotas as described in this section is not harvested, NMFS may adjust the annual base quota depending on the status of the stock or management group. If a species or a specific species within a management group is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may not adjust the following fishing year's base quota for any underharvest, and the following fishing year's quota will be equal to the base annual quota. If the species or all species in a management group is not declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS may increase the following year's base annual quota by an equivalent amount of the underharvest up to 50 percent above the base annual quota. Except as noted in (b)(2)(iii) of this section, underharvests are not transferable between regions, species, and/or management groups.

(iii) *Determination criteria for inseason and annual quota transfers between regions.* Inseason and/or annual quota transfers of regional quotas between regions may be conducted only for species or management groups where the species are the same between regions and the quota is split between regions for management purposes and not as a result of a stock assessment. Before making any inseason or annual quota transfer between regions, NMFS will consider the following criteria and other relevant factors:

(A) The usefulness of information obtained from catches in the particular management group for biological sampling and monitoring of the status of the respective shark species and/or management group;

(B) The catches of the particular species and/or management group quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made;

(C) The projected ability of the vessels fishing under the particular species and/or management group quota to harvest the additional amount of corresponding quota before the end of the fishing year;

(D) Effects of the adjustment on the status of all shark species;

(E) Effects of the adjustment on accomplishing the objectives of the fishery management plan;

(F) Variations in seasonal distribution, abundance, or migration patterns of the appropriate shark species and/or management group;

(G) Effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the quota; and/or

(H) Review of dealer reports, daily landing trends, and the availability of the respective shark species and/or management group on the fishing grounds.

(3) *Opening commercial fishing season criteria.* NMFS will file with the Office of the Federal Register for publication notification of the opening dates of the shark fishery for each species and management group. Before making any decisions, NMFS would consider the following criteria and other relevant factors in establishing the opening dates:

(i) The available annual quotas for the current fishing season for the different species/management groups based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons;

(ii) Estimated season length based on available quota(s) and average weekly catch rates of different species and/or management group from the previous years;

(iii) Length of the season for the different species and/or management group in the previous years and whether fishermen were able to participate in the fishery in those years;

(iv) Variations in seasonal distribution, abundance, or migratory patterns of the different species/management groups based on scientific and fishery information;

(v) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas;

(vi) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or,

(vii) Effects of a delayed opening with regard to fishing opportunities in other fisheries.

(4) *Public display and non-specific research quotas.* All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against the following:

(i) The base annual quota for persons who collect LCS other than sandbar, SCS, pelagic sharks, blue sharks, porbeagle sharks, or prohibited species under a display permit or EFP is 57.2 mt ww (41.2 mt dw).

(ii) The base annual quota for persons who collect sandbar sharks under a display permit is 1.4 mt ww (1.0 mt dw) and under an EFP is 1.4 mt ww (1.0 mt dw).

(iii) No persons may collect dusky sharks under a display permit. Collection of dusky sharks for research under EFPs and/or SRPs may be considered on a case-by-case basis and any associated mortality would be deducted from the shark research and display quota.

* * * * *

■ 9. In § 635.28, the section heading and paragraph (b) are revised to read as follows:

**§ 635.28 Fishery closures.**

* * * * *

(b) *Sharks*—(1) Non-linked quotas: The commercial fishery for a species or management group that is not linked to another species or management group will open as specified at § 635.27(b). Except as noted in (b)(4) of this section, when NMFS calculates that the landings for the shark species management group, as specified in § 635.27(b)(1), has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark management group, and/or region that will be

effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years.

(2) Linked Quotas: As specified in paragraph (b)(3) of this section, the quotas of some shark species and/or management groups are linked to the quotas of other shark species and/or management groups. The commercial fishery for all linked species and or management groups will open as specified at § 635.27(b). When NMFS calculates that the landings for any species and/or management group of a linked group has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for all linked species and/or management groups is closed, even across fishing years.

(3) The quotas of the following species and/or management groups are linked:

(i) Atlantic hammerhead sharks and Atlantic aggregated LCS;

(ii) Gulf of Mexico hammerhead sharks and Gulf of Mexico aggregated LCS;

(iii) Atlantic blacknose and Atlantic non-blacknose SCS; and,

(iv) Gulf of Mexico blacknose and Gulf of Mexico non-blacknose SCS.

(4) NMFS may close the Gulf of Mexico blacktip shark management group before landings reach, or are expected to reach, 80 percent of the quota. Before taking any inseason action, NMFS will consider the following criteria and other relevant factors:

(i) Estimated Gulf of Mexico blacktip shark season length based on available quota and average weekly catch rates during the current fishing year and from previous years;

(ii) Variations in seasonal distribution, abundance, or migratory patterns of blacktip sharks, hammerhead sharks, and aggregated LCS based on scientific and fishery information;

(iii) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments;

(iv) The amount of remaining shark quota in the relevant area or region, to date, based on dealer or other reports; and/or,

(v) The catch rates of the relevant shark species/management groups, to date, based on dealer or other reports.

(5) When the fishery for a shark species and/or management group is closed, a fishing vessel, issued a Federal Atlantic commercial shark permit pursuant to § 635.4, may not possess or sell a shark of that species and/or management group, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32, a NMFS-approved observer is onboard, and the sandbar and/or Research LCS fishery is open. A shark dealer, issued a permit pursuant to § 635.4, may not purchase or receive a shark of that species and/or management group from a vessel issued a Federal Atlantic commercial shark permit, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark management group, a shark dealer, issued a permit pursuant to § 635.4 may, in accordance with State regulations, purchase or receive a shark of that species or management group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in State waters and that has not been issued a Federal Atlantic commercial shark permit, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under a closure for a shark species and/or management group, a shark dealer, issued a permit pursuant to § 635.4, may purchase or receive a shark of that species group if the sandbar and/or Research LCS fishery is open and the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had a NMFS-approved observer on board during the trip sharks were collected.

* * * * *

■ 10. In § 635.31, paragraphs (c)(1) and (4) are revised to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

* * * * *

(c) * * *

(1) Persons who own or operate a vessel that possesses a shark from the management unit may sell such shark only if the vessel has a valid commercial shark permit issued under this part. Persons may possess and sell a shark only when the fishery for that species, management group, and/or region has not been closed, as specified in § 635.28(b).

* * * * *

(4) Only dealers who have a valid shark dealer permit and who have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii) may first receive a shark from an owner or operator of a vessel that has, or is required to have, a valid federal Atlantic commercial shark permit issued under this part. Dealers may purchase a shark only from an owner or operator of a vessel who has a valid commercial shark permit issued under this part, except that dealers may purchase a shark from an owner or operator of a vessel who does not have a commercial permit for shark if that vessel fishes exclusively in state waters. Dealers may purchase a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer onboard the vessel for the trip in which the sandbar shark was collected. Dealers may purchase a shark from an owner or operator of fishing vessel who has a valid commercial shark permit issued under this part only when the fishery for that species, management group, and/or region has not been closed, as specified in § 635.28(b).

* * * * *

■ 11. In § 635.71, paragraphs (d)(3) and (4) are revised to read as follows:

**§ 635.71 Prohibitions**

* * * * *

(d) * * *

(3) Retain, possess, or land a shark of a species or management group when the fishery for that species, management group, and/or region is closed, as specified in § 635.28(b).

(4) Sell or purchase a shark of a species or management group when the fishery for that species, management group, and/or region is closed, as specified in § 635.28(b).

* * * * *

■ 12. In Appendix A to Part 635, Sections A, B, and D of Table 1 are revised to read as follows:

## Appendix A to Part 635—Species Tables

Table 1 of Appendix A to Part 635—Oceanic Sharks

A. Large Coastal Sharks

Atlantic and Gulf of Mexico blacktip, *Carcharhinus limbatus*

Bull, *Carcharhinus leucas*

Great hammerhead, *Sphyrna mokarran*

Lemon, *Negaprion brevirostris*

Nurse, *Ginglymostoma cirratum*
Sandbar, *Carcharhinus plumbeus*
Scalloped hammerhead, *Sphyrna lewini*
Silky, *Carcharhinus falciformis*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*
Tiger, *Galeocerdo cuvier*

B. Small Coastal Sharks
Atlantic sharpnose, *Rhizoprionodon terraenovae*
Atlantic and Gulf of Mexico blacknose, *Carcharhinus acronotus*
Bonnethead, *Sphyrna tiburo*
Finetooth, *Carcharhinus isodon*

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D. Prohibited Sharks
Atlantic angel, *Squatina dumeril*
Basking, *Cetorhinus maximus*
Bigeye sand tiger, *Odontaspis noronhai*
Bigeye sixgill, *Hexanchus nakamurai*
Bigeye thresher, *Alopias superciliosus*
Bignose, *Carcharhinus altimus*
Caribbean reef, *Carcharhinus perezii*
Caribbean sharpnose, *Rhizoprionodon porosus*
Dusky, *Carcharhinus obscurus*
Galapagos, *Carcharhinus galapagensis*
Longfin mako, *Isurus paucus*
Narrowtooth, *Carcharhinus brachyurus*
Night, *Carcharhinus signatus*
Sand tiger, *Carcharias taurus*
Sevengill, *Heptranchias perlo*
Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

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Part V

## Bureau of Consumer Financial Protection

12 CFR Part 1091

Procedural Rule To Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Final Rule

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1091**

**[Docket No.: CFPB–2012–0021]**

**RIN 3170–AA24**

## Procedural Rule To Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination

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

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is publishing a final rule that establishes procedures to implement requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. That statutory provision authorizes the Bureau to supervise a nonbank covered person when the Bureau has reasonable cause to determine, by order, after notice to the person and a reasonable opportunity to respond, that such person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services. The Bureau is authorized to, among other things, require reports from, and conduct examinations of, nonbank covered persons subject to supervision under the Act.

**DATES:** Effective August 2, 2013.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Young, Senior Counsel, Office of Supervision Policy, Bureau of Consumer Financial Protection; 1700 G Street NW., Washington, DC 20552, (202) 435–7408.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On May 25, 2012, the Bureau of Consumer Financial Protection (Bureau) published a notice of proposed rulemaking (Proposed Rule) in the **Federal Register** [1] to establish procedures to implement section 1024(a)(1)(C) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) [2] (12 U.S.C. 5514(a)(1)(C)). Under this provision of the Dodd-Frank Act, the Bureau has the authority to supervise any nonbank covered person [3] that the Bureau ''has reasonable cause to determine, by order, after notice . . . and a reasonable opportunity . . . to respond . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.'' The Bureau must base such reasonable-cause determinations on complaints collected by the Bureau under 12 U.S.C. 5493(b)(3), or on information collected from other sources.[4] The Bureau requested comments on all aspects of the Proposed Rule. The comment period ended on July 24, 2012, and the Bureau received 32 comments from industry trade associations, businesses, consumer groups, a regulatory association, and individuals.

In addition to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C), the Bureau has the authority to supervise (1) nonbank covered persons of any size that offer or provide: (a) Origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family or household purposes, or loan modification or foreclosure relief services in connection with such loans, (b) private education loans, and (c) payday loans; [5] and (2) ''larger participant[s] of a market for other consumer financial products or services, as [the Bureau defines] by rule.'' [6] The Bureau is authorized under the Dodd-Frank Act to ensure that ''Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition.'' [7]

The Bureau is authorized to supervise nonbank covered persons subject to 12 U.S.C. 5514 of the Dodd-Frank Act for purposes of: (1) Assessing compliance with the requirements of Federal consumer financial law; (2) obtaining information about such persons' activities and compliance systems or procedures; and (3) detecting and assessing risks to consumers and to markets for consumer financial products and services.[8] Pursuant to 12 U.S.C. 5514(b), the Bureau is authorized to conduct examinations of various scopes of supervised entities. In addition, the Bureau may, as appropriate, request information from supervised entities without conducting examinations.[9]

The Proposed Rule set forth proposed procedures by which the Bureau would bring a nonbank covered person under the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C), and did not propose to impose any new substantive consumer protection requirements on entities subject to the rule. Although a rule is not necessary to implement 12 U.S.C. 5514(a)(1)C), the final rule will establish a consistent procedure applicable to all affected entities for bringing a nonbank covered person under the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C) and thereby provide transparency regarding the procedures the Bureau intends to use prior to commencement of a proceeding under 12 U.S.C. 5514(a)(1)(C). Absent the final rule, the public would lack guidance regarding such procedures. Regardless of whether nonbanks offering or providing consumer financial products or services are subject to the Bureau's supervisory authority, they are subject to the Bureau's regulatory and enforcement authority and any applicable Federal consumer financial law.

### II. Summary of the Final Rule

The final rule establishes the procedures by which a nonbank covered person may become subject to the

[1] 77 FR 31226 (May 25, 2012).

[2] Public Law 111–203 (codified at 12 U.S.C. 5301 *et seq.*).

[3] The provisions of 12 U.S.C. 5514 apply to certain categories of covered persons, described in subsection (a)(1), and expressly exclude from coverage persons described in 12 U.S.C. 5515(a) or 5516(a). ''Covered persons'' include ''(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person.'' 12 U.S.C. 5481(6); *see also* 12 U.S.C. 5481(5) (defining ''consumer financial product or service''). Under 12 U.S.C. 5514(d), subject to certain exceptions, ''to the extent that Federal law authorizes the Bureau and another Federal agency to . . . conduct examinations, or require reports from a [nonbank covered person] under such law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to . . . conduct examinations [and] require reports . . . with regard to a [nonbank covered person], subject to those provisions of law.''

[4] 12 U.S.C. 5514(a)(1)(C).

[5] 12 U.S.C. 5514(a)(1)(A), (D), and (E). In addition, the Bureau has supervisory authority over very large depository institutions and credit unions and their affiliates. 12 U.S.C. 5515(a). Furthermore, the Bureau has certain authorities relating to the supervision of other depository institutions and credit unions. 12 U.S.C. 5516(c)(1), (e).

[6] 12 U.S.C. 5514(a)(1)(B). The Bureau has issued final rules establishing supervisory authority over larger participants of the consumer reporting and the consumer debt collection markets. *See* 77 FR 42874 (July 20, 2012) (consumer reporting); 77 FR 65775 (Oct. 31, 2012) (consumer debt collection). The larger participant rules are codified at 12 CFR part 1090. The Bureau has proposed a rule establishing supervisory authority over larger participants of the student loan servicing market. 78 FR 18902 (March 28, 2013). The Bureau's supervision authority also extends to service providers of those covered persons that are subject to supervision under12 U.S.C. 5514. 12 U.S.C. 5514(e); *see also* 12 U.S.C. 5481(26) (defining ''service provider'').

[7] 12 U.S.C. 5511(b)(5).

[8] 12 U.S.C. 5514(b); *see also* 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'').

[9] *See* 12 U.S.C. 5514(b) (authorizing the Bureau both to conduct examinations and to require reports from entities subject to supervision).

supervisory authority of the Bureau pursuant to 12 U.S.C. 5514(a)(1)(C). The final rule is intended to provide an efficient, expeditious, and fair process by which the Bureau exercises its authority under 12 U.S.C. 5514(a)(1)(C). The final rule generally adopts the Proposed Rule, with certain modifications described in the section-by-section analysis below.

The final rule is divided into four subparts. Subpart A contains general provisions, including provisions regarding scope and purpose and definitions applicable to the entire final rule. Subpart B sets forth the procedures relating to the determination process, including: (1) Issuing a notice commencing a proceeding (Notice or Notice of Reasonable Cause), (2) contents of a Notice of Reasonable Cause, (3) service of a Notice, (4) response to a Notice, (5) conduct of a supplemental oral response, (6) manner of filing and serving papers, (7) issuance of recommended determinations, (8) determinations by the Director, (9) voluntary consent to Bureau's authority, (10) notice and response included in an adjudication proceeding otherwise brought by the Bureau, and (11) relief available sought in a civil action or administrative adjudication. Subpart C sets forth a post-determination process whereby a respondent may petition the Director for the termination of supervision. Subpart D sets forth the rules for the construction of time limits, change of time limits, and effect of deadlines.

Under the final rule, a Notice of Reasonable Cause does not constitute a notice of charges for any alleged violation of Federal consumer financial law or other law. The proceedings under the final rule are informal and do not constitute an adjudication proceeding with a hearing on the record under the Administrative Procedure Act (APA).[10] Accordingly, no discovery is permitted, a supplemental oral response does not constitute a hearing on the record, and no witnesses may be called as part of a supplemental oral response.

## III. Legal Authority

### *A. Rulemaking authority*

The Bureau is issuing this final rule pursuant to its authority under: (1) 12 U.S.C. 5512(b)(1), which grants the Bureau the authority to prescribe rules as may be necessary and appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial law, and to prevent evasions of those laws; (2) 12 U.S.C. 5514(a)(1)(C), which authorizes the Bureau to supervise a nonbank covered person when it has reasonable cause to determine, by order, after notice to the person, and a reasonable opportunity to respond, that such person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services; and (3) 12 U.S.C. 5514(b)(7), which authorizes the Bureau to prescribe rules to facilitate the supervision of nonbank covered persons under 12 U.S.C. 5514(a)(1).

### *B. Effective date*

The final rule relates solely to agency procedure and practice and thus is not subject to the 30-day effective date for substantive rules under the APA.[11] Nevertheless, the Proposed Rule provided that the final rule would be effective 30 days after publication in the **Federal Register**. As discussed below, after considering the comments received, the Bureau adopts the proposed 30-day delayed effective date for the final rule.

#### Request To Extend the Effective Date

One commenter stated that the Bureau's proposed 30-day delayed effective date did not provide a sufficiently long transition period for nonbanks not already subject to supervision to develop compliance and recordkeeping standards to prepare for potential supervision by the Bureau, and urged the Bureau to instead adopt an effective date of six months after publication. The Bureau appreciates that supervision by a Federal agency would be new to many nonbank covered persons potentially subject to the final rule but does not believe that this factor justifies a substantial delay of the effective date of the final rule.

Although certain nonbank covered persons might choose to increase their compliance with Federal consumer financial law in response to the perceived possibility of supervision, entities offering or providing consumer financial products or services are already obligated to comply with applicable Federal consumer financial law. Therefore, nonbank covered persons potentially subject to the final rule should not require additional time to come into compliance with Federal consumer financial law. Moreover, as noted above, the final rule is not necessary to establish the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C). Rather, the final rule merely provides transparency and ensures consistency regarding the procedures that the Bureau intends to use in connection with its preexisting supervisory authority under 12 U.S.C. 5514(a)(1)(C). Thus, delaying the effective date of the final rule would not actually delay the period before which entities may be subject to supervision under 12 U.S.C. 5514(a)(1)(C), and entities need not have waited for the issuance of the final rule to begin taking any measures they may wish to take in anticipation of potential supervision by the Bureau.

The Bureau thus believes that a six-month postponement of the effective date as requested by the commenter is not warranted and adopts the effective date as proposed.

#### Procedural Versus Substantive Rule

Another commenter questioned the Bureau's assertion in the supplementary information to the Proposed Rule that the rule is procedural, rather than substantive. The Bureau regards the final rule as procedural because, as discussed above, the final rule does not impose on nonbank covered persons any new substantive requirements. As noted above, nonbank covered persons already must comply with applicable Federal consumer financial law, and a final rule is not necessary to implement the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C).

In any event, the question whether the final rule is procedural or substantive is generally without consequence because, as a matter of discretion, the Bureau undertook notice and comment rulemaking procedures in promulgating the final rule and is finalizing a 30-day delayed effective date.

## IV. Section-by-Section Analysis of the Final Rule

### *Subpart A—General*

#### Section 1091.100 Scope and Purpose

Proposed § 1091.100 set forth the scope and purpose of the Proposed Rule. It stated that proposed part 1091 establishes procedures to implement 12 U.S.C. 5514(a)(1)(C) and to facilitate the supervision of nonbank covered persons under 12 U.S.C. 5514(b)(7). The Bureau received a few comments that appear to have misinterpreted the scope and purpose of the Proposed Rule.

A commenter asserted that Proposed Rule asserts an ''extremely broad grant of jurisdiction'' that ''appears at odds'' with the structure of the Dodd-Frank Act. The commenter argued that the Dodd-Frank Act lists under 12 U.S.C. 5514(a)(1)(A)-(E) five discrete categories of nonbank entities that the Bureau may

[10] *See* 5 U.S.C. 554, 556, and 557 (setting forth APA procedures for adjudications determined on the record after opportunity for an agency hearing).

[11] 5 U.S.C. 553(d)(1).

supervise. According to the commenter, the Proposed Rule employed 12 U.S.C. 5514(a)(1)(C) to ''supervise any nonbank entity if the [Bureau] determines on its own, and without appeal to any court, that a nonbank entity 'poses a risk' to consumers.'' The commenter maintained that had ''Congress intended to grant the [Bureau] such broad supervisory authority, it is unlikely it would have done so in the negative, limiting the authority to five discrete situations.''

Another commenter stated that the Bureau should explain why the Bureau's existing authorities relating to data collection, and regulatory and enforcement authority, are not sufficient to achieve the Bureau's mission. The commenter also stated that the Bureau should make clear that the final rule will not pertain to mortgage lenders because they are already within the Bureau's supervisory authority. This and another commenter asked the Bureau to clarify whether a law firm may be examined as a service provider.

Assertions Relating to Jurisdiction

The comment asserting that the Proposed Rule claims an extremely broad grant of jurisdiction in contravention of the Dodd-Frank Act misunderstands the purpose of the final rule and the structure of 12 U.S.C. 5514(a)(1). As noted above, the purpose of the final rule is to provide transparency and ensure consistency regarding the procedures the Bureau intends to follow in exercising its authority under 12 U.S.C. 5514(a)(1)(C), not to establish or to define the scope of the Bureau's 12 U.S.C. 5514(a)(1)(C) authority. The Dodd-Frank Act, not the final rule, establishes and defines the scope of that authority. In addition, the commenter's understanding of the Bureau's supervisory authority appears at odds with the language of 12 U.S.C. 5514(a)(1)(C), which defines the covered persons subject to the Bureau's authority under the provision not exclusively by reference to the category of activities in which they engage, but based on whether there is reasonable cause to believe that their conduct—whatever the particular activity involved—poses risks to consumers with regard to the offering or provision of consumer financial products or services.

As to the commenter that requested the Bureau justify the need for 12 U.S.C. 5514(a)(1)(C) in light of the Bureau's other authorities, the Bureau notes that Congress provided the Bureau with various complementing authorities to enable the Bureau to achieve its statutory purposes and objectives relating to consumer financial protection. These authorities, which include supervision, as well as market research and data collection, regulation, and enforcement, are not mutually exclusive, but rather complement and reinforce each other. For example, where the Bureau issues a substantive rule under its regulatory authority, such as Regulation Z,[12] it may also be appropriate to supervise a nonbank covered person to examine whether the person is in compliance with that regulation pursuant to 12 U.S.C. 5514(a)(1)(C), where the Bureau has reasonable cause to determine that the person is engaging, or has engaged, in conduct that poses risks to consumers regarding the offering or provision of consumer financial products or services.

Relatedly, the Bureau notes that if an entity is subject to the Bureau's supervisory authority, the Bureau may examine the entire entity for compliance with all Federal consumer financial law, assess enterprise-wide compliance systems and procedures, and assess and detect risks to consumers or to markets for consumer financial products and services posed by any activity of the entity, not just the activities that initially rendered the entity subject to Bureau supervisory authority. This authority results from the Dodd-Frank Act's conferral of authority on the Bureau to supervise ''covered person[s]'' described in 12 U.S.C. 5514(a)(1)(A)–(E). In addition, the Dodd-Frank Act directs the Bureau to require reports and conduct examinations on a periodic basis of such persons for purposes of (a) assessing compliance with the requirements of Federal consumer financial law, (b) obtaining information about the activities and compliance systems or procedures of such persons, and (c) detecting and assessing risks to consumers and to markets for consumer financial products and services.[13] By granting the Bureau supervisory authority over such ''covered persons,'' as opposed to over particular activities in which they engage, the Dodd-Frank Act establishes that the Bureau's supervisory authority is not limited to the products or services that qualified a person for supervision, but also includes other activities of such a person that involve other consumer financial products or services or are subject to Federal consumer financial law.[14]

Applicability to Mortgage Lenders

The procedures established by the final rule will be used only to assess whether a nonbank covered person will be made subject to the Bureau's supervisory authority based on a reasonable-cause determination. There would ordinarily be no reason to make such a determination and thus invoke the procedures set forth in the final rule with respect to a nonbank covered person already subject to the Bureau's supervisory authority. Potentially, however, if the Bureau believed that a nonbank entity qualified for supervision under another provision of 12 U.S.C. 5514(a), the entity disagreed, and the Bureau believed that there might be reasonable cause to determine that the entity was engaging, or had engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services, the Bureau might use the procedures in the final rule to establish supervisory authority under 12 U.S.C. 5514(a)(1)(C). The Bureau would not be conceding the lack of supervisory authority on another basis by proceeding in this manner. Therefore, the Bureau declines to establish an exclusion from coverage for entities subject to supervision under another provision of 12 U.S.C. 5514.

Attorneys as Service Providers

The Proposed Rule did not address the scope or manner of the Bureau's supervisory authority over service providers to nonbank covered persons pursuant to 12 U.S.C. 5514. The Proposed Rule simply proposed procedures for use by the Bureau to subject a nonbank covered person to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C), and observed that the Dodd-Frank Act vests the Bureau with supervisory authority over service providers to persons described in 12 U.S.C. 5514(a)(1).[15] Consequently, comments regarding which service providers the Bureau may supervise, and how, are beyond the scope of the final rule.[16]

[12] Regulation Z is codified at 12 CFR part 1026 and implements the Truth in Lending Act which is codified at 15 U.S.C. 1601 *et seq.*

[13] 12 U.S.C. 5514(b)(1).

[14] For specific references in the Dodd-Frank Act to supervision authority over ''persons'' rather than particular activities *see, e.g.,* 12 U.S.C. 5514(b)(1) (''The Bureau shall require reports and conduct examinations on a periodic basis of 'persons' described in subsection (a)(1) . . . .'') (emphasis added); 12 U.S.C. 5514(a)(1) (''[T]his section shall apply to any covered 'person' who . . . .'') (emphasis added).

[15] 77 FR 31226, 31227 (May 25, 2012). A service provider is a person that provides a material service to a covered person in connection with a consumer financial product or service. 12 U.S.C. 5481(26)(A). The Dodd-Frank Act provides a non-exhaustive set of examples of such material services. 12 U.S.C. 5481(26)(A)(i)–(ii).

[16] One commenter suggested that the Bureau publish a policy that it will not examine any service provider until after it has examined the entity

For the foregoing reasons, the Bureau adopts § 1091.100 as proposed with minor technical revisions for consistency.

Section 1091.101 Definitions

Section 1091.101 defines terms used in the final rule that are applicable to all of part 1091. If a term is defined in the Dodd-Frank Act, the final rule generally incorporates that definition, with clarifications and modifications as appropriate. The Bureau received comments on several definitions set forth in the Proposed Rule and discusses the comments below in the context of the definition to which they relate.

*Assistant Director.* The Proposed Rule stated that the term ''Assistant Director'' means the Bureau's Assistant Director for Nonbank Supervision or his or her designee. The proposed definition provided that, in the event there is no Assistant Director, the Director of the Bureau may designate an alternative Bureau employee to perform the functions of the Assistant Director under the rule. The Bureau did not receive any substantive comments on this definition.

However, subsequent to the issuance of the Proposed Rule, the Bureau reorganized its supervision offices into the Office of Supervision Policy and the Office of Supervision Examinations, each headed by an Assistant Director. As a result of that restructuring, there is no longer an Office of Nonbank Supervision. The Bureau has therefore revised the Proposed Rule to delete the reference to Nonbank Supervision, but otherwise adopts the proposed definition with only minor technical revisions for consistency. As revised, the term ''Assistant Director'' means an Assistant Director for Supervision, and thus refers to the Assistant Directors for both the Offices of Supervision Policy and Supervision Examinations. The definition under the final rule further provides that if there is no Assistant Director, the Associate Director may designate an alternative Bureau employee to perform the functions of an Assistant Director under part 1091.

*Associate Director.* The Proposed Rule did not define the term ''Associate Director'' in large part because at the time the Proposed Rule was issued, the Bureau did not have an Associate Director of Supervision, Enforcement, and Fair Lending. An Associate Director has since been appointed. The Bureau therefore is revising the Proposed Rule to formally include the Associate Director in the procedures established by the final rule and to provide the Bureau with more flexibility in assigning personnel to handle the key functions under such procedures. As described in greater detail in the section-by-section analysis of §§ 1091.102–.108 below, the functions of the Assistant Director under the Proposed Rule have been transferred to the Associate Director, or his or her designee, under the final rule. Similarly, under the final rule, the functions of the Deputy under the Proposed Rule have been transferred to the Assistant Director or his or her designee, and the term ''initiating official'' is used to identify the Assistant Director or his or her designee as discussed in the section-by-section analysis for the definition of the term ''initiating official'' below.[17] This modification does not change the basic structure of the Proposed Rule, which designated separate Bureau personnel to perform the functions of (1) issuing a notice, (2) considering written and oral responses and issuing a recommended determination, and (3) rendering a final determination.

For the reasons discussed above, the final rule defines the term ''Associate Director'' to mean the Associate Director of the Bureau for Supervision, Enforcement, and Fair Lending, or his or her designee. The definition under the final rule provides that if there is no Associate Director, the Director of the Bureau may designate an alternative Bureau employee to perform the functions of the Associate Director under part 1091.[18]

*Bureau.* The Proposed Rule stated that that the term ''Bureau'' means the Bureau of Consumer Financial Protection. The Bureau did not receive any substantive comments on this section and adopts it as proposed with minor technical revisions for consistency.

*Consumer.* The Proposed Rule incorporated the definition of the term ''consumer'' set forth in 12 U.S.C. 5481(4). That provision defines ''consumer'' as an individual or an agent, trustee, or representative acting on behalf of an individual. The Bureau did not receive any substantive comments on this definition and adopts it as proposed with minor technical revisions for consistency.

*Consumer financial product or service.* The Proposed Rule incorporated the definition of the term ''consumer financial product or service'' set forth in 12 U.S.C. 5481(5). The Proposed Rule provided that the term ''consumer financial product or service'' means any financial product or service as defined in 12 U.S.C. 5481(15) that is described in one or more categories under: (1) 12 U.S.C. 5481(15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or (2) clause (i), (iii), (ix), or (x) of 12 U.S.C. 5481(15)(A)[19] and is delivered, offered, or provided in connection with a consumer financial product or service referred to in (1).

The Bureau received one comment recommending modification to the definition of the term ''consumer financial product or service.'' This commenter asserted that the definition of the term is ambiguous. The commenter stated that, as proposed, the definition fails to provide clear notice as to which products are subject to the definition and which products are not. The commenter explained that some of the financial products it offers are sold for both consumer and business uses. The commenter urged the Bureau to modify the definition of the term ''consumer financial product or service'' to make clear that the Bureau intends to base reasonable-cause determinations solely on risk associated with products that are used exclusively for personal, household, or family purposes.

The Bureau declines to adopt the commenter's request, because the commenter's proposed definition of the term ''consumer financial product or service'' would be narrower than the definition in the Dodd-Frank Act. The definition of that term in the Act includes not only financial products or services ''offered or provided 'for use by' consumers primarily for personal, family or household purposes'' but also, for certain types of financial products or

receiving the services. The Bureau notes that policies regarding the Bureau's supervision of service providers are also beyond the scope of the final rule, which is limited to establishing procedures the Bureau intends to follow in implementing 12 U.S.C. 5514(a)(1)(C).

[17] Unless otherwise noted herein, when discussing the Proposed Rule in this section-by-section analysis, the term ''[initiating official]'' will be used in place of the term ''Deputy.''

[18] Because the Assistant Director's role in the process has been transferred to the Associate Director, this section-by-section analysis of the final rule refers to the ''[Associate Director]'' in place of the Assistant Director in discussing the functions of the Assistant Director under the Proposed Rule.

[19] Under these specified clauses, the term ''financial product or service'' is generally defined to include, subject to certain exclusions: (1) Extending credit and servicing loans, 12 U.S.C. 5481(15)(A)(i); (2) providing real estate settlement services or performing appraisals of real estate or personal property, 12 U.S.C. 5481(15)(A)(iii); (3) collecting, analyzing, maintaining, or providing consumer report information or other account information used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, 12 U.S.C. 5481(15)(A)(ix); and (4) collecting debt related to any consumer financial product or service, 12 U.S.C. 5481(15)(A)(x).

services, those ''delivered, offered, or provided 'in connection with' a consumer financial product or service'' of the first type.[20] The Bureau is not aware of any reason that it should treat as less significant for purposes of determining the scope of its supervisory authority under 12 U.S.C. 5514(a)(1)(C) the risks to consumers that may arise in the offering or provision of the second type of consumer financial product or service.

Accordingly, the Bureau adopts the definition of the term ''consumer financial product or service'' as proposed with minor technical revisions for consistency.

*Decisional employee.* The Proposed Rule stated that the term ''decisional employee'' means any employee of the Bureau who has not engaged in: (1) Assisting the [initiating official] in either determining whether to issue a Notice of Reasonable Cause, or presenting the [initiating official's] position in support of a Notice of Reasonable Cause, either in writing or in a supplemental oral response, to the [Associate] Director; or (2) assisting the [Associate] Director in the preparation of a recommended determination. The Bureau received one comment on this definition expressing appreciation for the Bureau's efforts to separate the functional roles of Bureau employees with respect to the procedures the Bureau will follow under 12 U.S.C. 5514(a)(1)(C). The Bureau adopts the definition as proposed with minor technical revisions for consistency.

*Director.* The Proposed Rule stated that the term ''Director'' means the Director of the Bureau or his or her designee. The Proposed Rule provided that if there is no Director the term shall mean a person authorized to perform the functions of the Director under part 1091, or his or her designee. The Bureau did not receive any substantive comments on this definition and adopts it as proposed with minor technical revisions for consistency.

*Executive Secretary.* The Proposed Rule stated that the term ''Executive Secretary'' means the Executive Secretary of the Bureau. The Bureau did not receive any substantive comments on this definition and adopts it as proposed with minor technical revisions for consistency.

*Initiating official.* As noted in the section-by-section analysis of the term ''Associate Director'' above, the Proposed Rule defined the term ''Deputy,'' which in the final rule is replaced with the term ''initiating official.''

The final rule further revises the definition of the term ''initiating official'' to provide the Bureau with more flexibility in staffing the key functions of the rule with Bureau personnel. As revised, the term ''initiating official'' means an Assistant Director of the Office of Supervision or Office of Examinations, or a Bureau employee designated to act as an ''initiating official'' by an Assistant Director. The final rule states that if there is not an Assistant Director, the Associate Director may designate a Bureau employee to perform the functions of an initiating official under part 1091.

The Bureau adopts the proposed definition with the revisions described above and with other minor technical revisions for consistency.

*Nonbank covered person.* The provisions of 12 U.S.C. 5514 relate to ''covered persons'' as defined in 12 U.S.C. 5481(6) that are not insured depository institutions or credit unions, or, in the case of such entities with assets of more than $10 billion, their affiliates, as set forth in 12 U.S.C. 5515 and 5516. The Proposed Rule therefore excluded from the definition of the term ''nonbank covered persons,'' persons described in 12 U.S.C. 5515(a) and 5516(a), and provided that the term ''nonbank covered person'' means, except for persons described in 12 U.S.C. 5515(a) and 5516(a): (1) Any person that engages in offering or providing a consumer financial product or service; and (2) any affiliate of a person described in (1) if such affiliate acts as a service provider to such person.

The Bureau received a comment asserting that the Bureau's authority to supervise based on reasonable-cause determinations under 12 U.S.C. 5514(a)(1)(C) should not extend to affiliates of nonbank covered persons that act as service providers. The commenter expressed concern about the potential for affiliated service providers being unaware of the possibility that they could be brought under the Bureau's supervisory authority. The commenter asserted that affiliate service providers that do not themselves offer or provide consumer financial products or services would not anticipate that their work for their affiliated nonbank entities could subject them to Bureau supervision.

The Bureau believes that it is appropriate to include affiliated service providers under the definition of the term ''nonbank covered person.'' This definition derives from the definition of the term ''covered person'' provided in 12 U.S.C. 5481(6). By including affiliated service providers in the definition of the term ''covered person,'' Congress expressed its intention that these particular service providers be subject to the Bureau's supervisory authority over covered persons as set forth in the Act.[21] Accordingly, the Bureau declines to revise the definition of ''nonbank covered person'' to exclude affiliated service providers and adopts the definition as proposed with minor technical revisions for consistency.

*Notice of Reasonable Cause and Notice.* The Proposed Rule stated that the terms ''Notice of Reasonable Cause'' and ''Notice'' mean a Notice issued under § 1091.102. The Bureau did not receive any substantive comments on this definition and adopts it as proposed with minor technical revisions for consistency.

*Person.* The Proposed Rule incorporated the definition of the term ''person'' set forth in 12 U.S.C. 5481(19). The Proposed Rule therefore stated that the term ''person'' means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity. The Bureau did not receive any substantive comments on this definition and adopts it as proposed with minor technical revisions for consistency.

*Respondent.* The Proposed Rule stated that the term ''respondent'' means a person who has been issued a Notice of Reasonable Cause by the [initiating official] under § 1091.102. The Bureau did not receive any substantive comments on this definition and adopts it as proposed with minor technical revisions for consistency.

*Response.* The Proposed Rule stated that the term ''response'' means the response to a Notice of Reasonable Cause filed by a respondent with the [Associate] Director under § 1091.105. The Bureau did not receive any substantive comments on this definition and adopts it as proposed with minor technical revisions for consistency.

### *Subpart B—Determination and Voluntary Consent Procedures*

Subpart B sets forth the procedures relating to the Bureau's process for determining, after notice to a person and a reasonable opportunity to respond,

[20] 12 U.S.C. 5481(5).

[21] The Bureau also notes that the treatment of service providers affiliated with nonbank covered persons under the final rule for purposes of 12 U.S.C. 5514(a)(1)(C) is consistent with the treatment of such affiliated service providers for purposes of 12 U.S.C. 5514(a)(1)(A), (B), (D), and (E). The same rationale that applies to treating affiliated service providers as covered persons under 12 U.S.C. 5514(a)(1)(A), (B), (D) and (E) applies equally to the treatment of affiliated service providers under 12 U.S.C. 5514(a)(1)(C).

whether there is reasonable cause to determine, based on complaints and information from other sources, that the respondent is a covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services, and therefore subject to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C). The Bureau received several comments on the Proposed Rule that are generally applicable to subpart B. The Bureau addresses these comments prior to its analysis of the specific sections of subpart B.

A number of commenters urged the Bureau to define the type of ''risks'' posed to consumers that could give rise to supervision under 12 U.S.C. 5514(a)(1)(C). Other commenters asked the Bureau to define what constitutes ''reasonable cause'' for purposes of the rule. A number of commenters requested that the Bureau revise the Proposed Rule to require the Bureau to verify complaints. A few commenters asked the Bureau to identify what ''information from other sources'' it would consider in issuing a Notice of Reasonable Cause. One commenter asserted that the Dodd-Frank Act requires a formal hearing under the Administrative Procedure Act (APA) because determinations under 12 U.S.C. 5514(a)(1)(C) are to be made by ''order'' of the Bureau.

Define Risk

As noted above, several commenters asserted that the Proposed Rule failed adequately to define the types of conduct that pose risks to consumers within the meaning of 12 U.S.C. 5514(a)(1)(C). For example, two commenters urged the Bureau to clarify that prohibited ''risks'' include only inappropriate or undisclosed financial risks to consumers. Another commenter asserted that, although it may be ''impracticable to provide a laundry list'' of products, services, or actions that might pose risks, even a non-exhaustive list would allow businesses to evaluate not only their compliance with existing law, but also compliance with the Bureau's expectations. This commenter stated that, unlike other consumer protection laws and regulations that are codified, the Bureau will be creating new law as it goes along. The commenter argued that, without a clear understanding of what conduct is prohibited under the rule, it will be difficult to understand what conduct would subject nonbank covered persons to supervision.

In a similar vein, another commenter stated that the ''utilization of consumer financial products and services inherently involves risk'' and that to avoid acting in an arbitrary and capricious manner, the Bureau must set forth clear and detailed descriptions of the process that it will follow and the factors that it will consider to determine whether a covered person's conduct poses more risks to consumers than is inherently present in the product or transaction without that conduct.

In objecting to the Bureau's decision not to define or ask for comments regarding whether to define the terms ''risk determination'' or ''risk'' in the Proposed Rule, a commenter asserted that any ''risk paradigm'' must be clarified with respect to the unfair, deceptive, or abusive acts or practices (UDAAP) provisions of the Dodd-Frank Act. This commenter asserted that because the hearing prescribed in this part may deem actions that do not violate Federal law to be risky, the Bureau must define the terms ''unauthorized,'' ''deceptive,'' and ''abusive'' before issuing a final rule. Regarding a related issue, one commenter requested that the Bureau define the term ''risk'' to include a safe harbor from a reasonable-cause determination under the final rule where a respondent can demonstrate reliance upon written reports or judgments issued by the Bureau.

First, the Bureau notes that the phrase ''risks to consumers'' is taken directly from 12 U.S.C. 5514(a)(1)(C). The phrase is not defined by that or any other provision of the Dodd-Frank Act, and neither the Dodd-Frank Act nor any other law requires the Bureau to define the phrase before implementing 12 U.S.C. 5514(a)(1)(C). Second, the Bureau notes that the final rule is not a substantive conduct rule. The final rule neither prohibits any conduct nor requires any disclosures. It merely sets forth the procedures the Bureau intends to use in connection with the exercise of its existing authority under 12 U.S.C. 5514(a)(1)(C). Among other things, the final rule establishes procedures for issuing Notices of Reasonable Cause, responding to such Notices, considering responses, and rendering determinations. Consistent with the narrow purpose of the Proposed Rule, it is beyond the scope of the final rule to establish substantive standards for what constitutes ''risks to consumers.''

The Bureau also believes that the procedures established by the final rule provide sufficient opportunity for respondents to address, and for the Bureau to evaluate, whether, consistent with 12 U.S.C. 5514(a)(1)(C), any particular covered person is subject to the Bureau's risk-based supervision authority. As discussed below, a Notice under the final rule is required to contain a description of the basis for the Bureau's assertion that there may be reasonable cause to determine that a respondent is engaging, or has engaged, in conduct that poses risks to consumers. A reasonable opportunity to respond to such Notice does not necessitate that the Bureau identify in advance of the issuance of a Notice the types of conduct that the Bureau has determined may pose risks to consumers. Accordingly, the Bureau declines commenters' requests that the Bureau define the term ''risks to consumers'' for purposes of the final rule.

For similar reasons, the Bureau declines the commenter's request to include a safe harbor in the final rule from a reasonable-cause determination where a respondent can demonstrate reliance upon written reports or judgments issued by the Bureau. The Bureau believes that the final rule, consistent with 12 U.S.C. 5514(a)(1)(C), provides respondents with a reasonable opportunity to present to the Bureau, in a response, information supporting any asserted reliance on Bureau decisions or guidance. The Bureau observes that a covered person's reliance on written reports or judgments issued by the Bureau would likely be a relevant consideration in evaluating risk.

The Bureau notes that in evaluating risks to consumers for purposes of 12 U.S.C. 5514(a)(1)(C), it expects to consider, consistent with the objectives set forth in the Dodd-Frank Act,[22] whether a nonbank covered person has engaged in conduct that would pose risks to consumers because, for example, it involves potentially unfair, deceptive, or abusive acts or practices, or because the conduct otherwise potentially violates applicable Federal consumer financial law.

Define Reasonable Cause

Several commenters requested that the Bureau define the term ''reasonable cause.'' One commenter asserted that without such a definition, nonbank covered persons would have no guidance on how to comply with the law or how to protect consumers. Another commenter complained that although the term ''reasonable cause'' is vital to a full understanding of the Bureau's authority to subject a nonbank to its supervision authority, this term is not defined by the rule.

The Bureau does not believe that it is necessary to define the term ''reasonable cause'' in the final rule for three

[22] 12 U.S.C. 5511(b).

reasons. First, the Bureau notes that the term ''reasonable cause'' is adopted in the final rule without revision from 12 U.S.C. 5514(a)(1)(C). The term is not defined by that or any other provision of the Dodd-Frank Act, and neither the Dodd-Frank Act nor any other law requires the Bureau to define the term to implement 12 U.S.C. 5514(a)(1)(C). Second, the Bureau disagrees with the commenter that the lack of a definition of the term ''reasonable cause'' results in nonbank covered persons having ''no guidance for compliance with the law and protection of consumers.'' Nonbank covered persons and other persons are required, irrespective of the final rule, to comply with applicable Federal consumer financial law. Third, the purpose of the final rule is not to establish or describe the supervisory authority of the Bureau as it relates to nonbank covered persons described in 12 U.S.C. 5514(a)(1)(C). The Bureau's supervisory authority in this regard is established by 12 U.S.C. 5514(a)(1)(C), and a rule is not necessary to further delineate that authority. Rather, the purpose of the final rule is to provide transparency and ensure consistency regarding the procedures the Bureau intends to follow in exercising its authority under 12 U.S.C. 5514(a)(1)(C).

12 U.S.C. 5514(b)(2)(A)–(E) Risk Criteria

A couple of commenters argued that in making reasonable-cause determinations, the Bureau must consider the criteria enumerated in 12 U.S.C. 5514(b)(2)(A)–(E) relating to risk-based supervision, something these commenters felt the Proposed Rule failed to do.[23] One commenter asserted that the Proposed Rule did not adequately explain the interrelatedness of these criteria to each other and to the Proposed Rule. Another commenter noted that the Proposed Rule made no mention of these factors which, the commenter argued, Congress clearly intended to limit the exercise of the Bureau's authority by focusing the Bureau's efforts on the most problematic issues.

The Bureau believes that these commenters have misinterpreted the scope and purpose of 12 U.S.C. 5514(b)(2). That subsection describes how the Bureau must ''exercise its authority under paragraph [(b)](1),''[24] which in turn authorizes the Bureau to supervise ''persons described in subsection (a)(1).'' The final rule does not address the exercise of the Bureau's supervisory authority under subsection (b)(1). Rather, the final rule establishes procedures for implementing subsection (a)(1)(C) to bring a nonbank covered person under the Bureau's supervisory authority. Nevertheless, although not expressly applicable to an (a)(1)(C) proceeding, the Bureau may consider the (b)(2) factors to the extent applicable in making a reasonable-cause determination.

For the reasons discussed above, the Bureau declines to revise the Proposed Rule to define the term ''reasonable cause'' in the final rule.

Consideration of Past Conduct in Risk Determinations

A commenter stated that any assertion of supervisory authority by the Bureau based upon past (but not ongoing) risk-posing activity should be required clearly to state the basis for the Bureau's belief that such conduct is likely to recur. This commenter also recommended that there should be something akin to a ''statute of limitations'' where past conduct cannot be the basis for a Notice, and that activity more than three years in the past should not be a permissible basis for reasonable cause.

Contrary to the commenter's assertion, the Bureau does not believe that requiring the Bureau to state its belief that the risk-posing conduct giving rise to a proceeding is likely to recur is consistent with the Dodd-Frank Act. The plain language of 12 U.S.C. 5514(a)(1)(C) covers conduct that a nonbank covered person ''is engaging, or has engaged, in'' that poses risks to consumers. The Bureau further believes that past conduct may pose risks to consumers, even if the identical conduct is not likely to recur, to the extent that such conduct indicates weak compliance systems that might lead to other potential law violations or harms to consumers. Additionally, the Dodd-Frank Act does not require, and the Bureau does not believe it is appropriate to adopt, the equivalent of a statute of limitations. Accordingly, the Bureau declines to revise the Proposed Rule to add the language suggested by the commenter regarding recurring activity or to impose a statute of limitations as requested by commenters. The Bureau notes that it intends to consider both past and present conduct of nonbank covered persons in evaluating whether there is reasonable cause to proceed under 12 U.S.C. 5514(a)(1)(C), but that in considering past conduct, it expects to take into account, among other factors, the length of time since conduct occurred.

Verify Complaints and Describe Information From Other Sources

The Bureau received a number of comments requesting that the Bureau verify any complaints used as the basis for issuing a Notice of Reasonable Cause or reaching a final determination under 12 U.S.C. 5514(a)(1)(C). In expressing concerns about the use of complaints, a commenter stated that complaints provide ''anecdotal, unverified, and incomplete accounts of consumer satisfaction with financial products and services.'' This commenter asserted that ''complaints are an unreliable means of targeting supervision of financial institutions, particularly given the small number of complaints typically generated by smaller providers of financial services.'' Another commenter stated that the Proposed Rule does not contain any ''mechanism to ensure that only legitimate and verifiable complaints are considered.'' The commenter stated that without a mechanism to systematically root out ''baseless complaints from legitimate ones,'' businesses will be left defenseless against baseless complaints, and the Bureau will leave itself vulnerable to making decisions based on inaccurate information. The commenter specifically requested that the Bureau revise the Proposed Rule to state that in making reasonable-cause determinations, the Bureau will consider only complaints that, after ''reasonable inquiry'' by the Bureau, are found to have merit.

The Bureau received similar comments questioning the Bureau's reliance on complaints as a basis for issuing reasonable-cause determinations on the ground that complaints do not accurately reflect an entity's compliance with applicable law. A trade association for the debt collection industry stated that reviewing ''consumer inquiries and complaints about the debt collection industry is not a proper, reasonable, or accurate gauge of the industry's level of compliance with consumer protection laws, such as the [Fair Debt Collection Practices Act (FDCPA)].'' This commenter was also concerned that complaints would be treated the same by the Bureau, regardless of their nature. The commenter noted the importance of providing adequate procedural and training measures to ensure that any data gathered at the outset clearly

[23] The factors for exercising the Bureau's supervisory authority on a risk basis include: ''the asset size of the covered person,'' ''the volume of transactions involving consumer financial products or services in which the covered person engages,'' ''the risks to consumers created by the provision of such consumer financial products or services,'' ''the extent to which such institutions are subject to oversight by State authorities for consumer protection,'' and ''any other factors that the Bureau determines to be relevant to a class of covered persons.'' 12 U.S.C. 5514(b)(2).

[24] 12 U.S.C. 5514(b)(2).

distinguishes between complaints of FDCPA violations and complaints that do not assert law violations or simply inquire into the rights and responsibilities of collectors and consumers during the collection process. The commenter urged the Bureau to clarify how consumer complaints will be used in determining ''reasonable cause'' under the rule. Similar comments expressed concern that that the Proposed Rule would not require the Bureau to consider the nature and severity of complaints. A commenter urged the Bureau to look not just at the number of complaints regarding a company, but also at the nature of the complaints submitted against a company. Voicing a related concern, another commenter asserted that there is a danger that consumers might equate the number of complaints against a nonbank covered person with the risks the person actually poses to consumers.

The Bureau also received comments expressing concern that third parties may submit complaints to the Bureau on behalf of consumers. In this regard, a commenter stated that because the Bureau's complaint system permits the submission of complaints by third parties on behalf of consumers, the system runs the risk of being inundated with complaints from ''credit repair organizations, debt settlement companies, advocacy groups, politicians, competitors, and even blog sites dedicated to airing gripes about specific companies.''

In emphasizing the potential for meritless complaints, a commenter noted that ''the federal financial agencies estimated in the Accuracy and Integrity Rule that the percentage of frivolous or irrelevant disputes could range from 25 percent to 94 percent of all disputes [referring to complaints under the Fair Credit Reporting Act].'' The commenter asserted that the procedure the Bureau uses to verify complaints it receives is insufficient, and therefore that the Bureau should not make a determination that a covered person is engaging, or has engaged, in conduct that poses risks to consumers based solely on the number of complaints or on unverified information from other sources. This commenter recommended that, instead, the Bureau should consider risks associated with specific products and acknowledge that the strong financial performance of some products during the recent crisis indicates lower consumer risks.

Several commenters also expressed concern that the Proposed Rule did not adequately describe what may be used as ''information from other sources'' and requested the Bureau to describe these other sources of information, and/or provide examples of such sources. One commenter asked whether information from ''other sources'' might include privileged information. Another raised concern about using internet blogs, which the commenter deemed unreliable. As with complaints, commenters requested that the Proposed Rule be revised to require that information from other sources be verified by the Bureau. Lastly, the Bureau received a comment requesting guidance on how the Bureau will use data sources.

In response to these comments, the Bureau notes that it intends to look at many factors relating to complaints and information from other sources in deciding whether there is a sufficient basis to initiate a proceeding under 12 U.S.C. 5514(a)(1)(C). These factors may include, among others, the nature of the conduct relating to the complaints or other information, the severity of risk alleged, the number of consumers potentially affected, and the number of complaints or amount of information from other sources received. The Bureau is committed to using its limited resources where most needed and intends to consider complaints and information from other sources with the efficient use of Bureau resources in mind.

At the same time, the Bureau notes that the purpose of the final rule is to establish procedures that the Bureau intends to use to exercise its authority under 12 U.S.C. 5514(a)(1)(C) through which a nonbank covered person might become subject to the Bureau's supervisory authority. This process is not intended to determine whether a nonbank covered person has, in fact, violated applicable Federal consumer financial law or harmed consumers. The level of inquiry necessary to make a finding of a violation of law would instead occur, where consistent with Bureau prioritization and resources, in the course of supervisory activity such as an examination. It is not required under, and would defeat the purpose of, 12 U.S.C. 5514(a)(1)(C), to mandate that the Bureau make a finding of a law violation before concluding that there is ''reasonable cause to determine'' that a nonbank covered person's conduct poses risks to consumers with regard to the offering or provision of consumer financial products or services.

Finally, the Bureau notes that ''information from other sources'' may, as the phrase suggests, come from a variety of places. Such information sources might include, among others, judicial opinions and administrative decisions. Given the potential range of sources, the Bureau does not believe it would serve a useful purpose to provide a list (even a nonexclusive list) of such sources in the final rule.

For the reasons stated above, the Bureau declines to revise the Proposed Rule to require the Bureau to verify complaints or to identify ''other sources of information'' that form the basis for a Notice or a determination of reasonable cause.

Request for Formal Adjudication Under the Administrative Procedure Act

In response to the comment that determinations under 12 U.S.C. 5514(a)(1)(C) require a hearing on the record, the Bureau notes that there is no statutory requirement that the process to exercise the Bureau's authority under 12 U.S.C. 5514(a)(1)(C) be a formal adjudication with a hearing on the record under the APA. Rather, 12 U.S.C. 5514(a)(1)(C) states only that the Bureau must provide to a respondent ''notice'' and a ''reasonable opportunity to respond.'' Nor does Due Process necessitate formal adjudication with a hearing on the record in this context. As stated above, the sole consequence of a determination that an entity is a covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of a consumer financial product or service under 12 U.S.C. 5514(a)(1)(C) is that such person becomes subject to Bureau supervisory authority. Supervision alone does not impose any penalty on a person, does not deprive it of any property, and does not restrict its ability to engage in a viable business.

The Bureau has wide discretion in establishing the procedures it will adopt to implement 12 U.S.C. 5514(a)(1)(C). The Bureau has sought to establish a process that meets the statutory requirement of providing a respondent with a notice and a reasonable opportunity to respond and that is also fair and efficient. The Bureau believes that a formal adjudication with a hearing on the record would unnecessarily add complexity to, lengthen, and add to the cost of, the process established by the final rule and declines to revise the Proposed Rule to require a formal adjudication with a hearing on the record.

Confidentiality of Proceedings

The Bureau received several comments regarding the confidentiality of the process established by the final rule. Some commenters expressed the view that all aspects of a proceeding should be confidential, while others urged the Bureau to make information

regarding the entire process available to the public. Preliminarily, the Bureau notes that proposed § 1091.105 relating to responses, stated that ''documents, records or other items submitted by a respondent with a response shall be deemed confidential supervisory information under 12 CFR 1070.2(i)(1)(iv).'' After consideration of the comments regarding confidentiality, the Bureau agrees that all aspects of a proceeding under the final rule relate to the Bureau's supervisory process and should be deemed confidential supervisory information under 12 CFR 1070.2(i)(1).[25] As noted below, the Bureau therefore revises proposed § 1091.115 [26] to add a new paragraph (c), which states: ''In connection with a proceeding under this part, including a petition for termination under § 1091.113, all documents, records or other items submitted by a respondent to the Bureau, all documents prepared by, or on behalf of, or for the use of the Bureau, and any communications between the Bureau and a person, shall be deemed confidential supervisory information under 12 CFR 1070.2(i)(1).''

Section 1091.102 Issuance of Notice of Reasonable Cause

Section 1091.102 relates to the issuance of a Notice of Reasonable Cause, which initiates a proceeding that culminates in a determination by the Director under § 1091.109 of the final rule, or a respondent's voluntary consent to supervision by the Bureau.[27] Section 1091.102 of the Proposed Rule provided that the [initiating official] is authorized to issue a Notice of Reasonable Cause stating that the Bureau may have reasonable cause to determine that a nonbank covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services and, consistent with 12 U.S.C. 5514(a)(1)(C), that such Notice shall be based on complaints collected by the Bureau, or on information from other sources. The Bureau received several comments on proposed § 1091.102 discussed below.

Concerns Regarding Use of ''May Have'' Reasonable Cause To Determine Statement in Notice

The Bureau received a few comments expressing concern that, under the Proposed Rule, a Notice of Reasonable Cause would state that the Bureau ''may have'' reasonable cause to determine that a nonbank covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services. One commenter interpreted this language in the Proposed Rule as not requiring the Bureau to articulate a ''reasonable cause'' in a Notice. This commenter asserted that under the Proposed Rule it is enough that Bureau staff merely ''suppose, surmise, or conjecture'' that there might possibly be a 'reasonable cause' to assume risky conduct.'' Similarly, another commenter argued that the ''may have reasonable cause'' standard is vague and not in accordance with the statute.

In response, the Bureau notes that these commenters appear to be confusing the Bureau's basis for issuing a Notice with the reasonable cause necessary to support a final determination of reasonable cause under 12 U.S.C. 5514(a)(1)(C). The Bureau clarifies that the initiating official issues a Notice indicating that there ''may'' be reasonable cause to determine that a person's activities pose risks to consumers but that a reasonable-cause determination will not be made until the Director makes a final determination. At the final stage of the process set forth in the final rule, the Director will issue a final determination indicating that there ''is'' reasonable cause to determine that a nonbank covered person's activities pose risks to consumers, or a notice stating that the person will not be made subject to the Bureau's authority. The Dodd-Frank Act provides that the Bureau's reasonable-cause determinations under 12 U.S.C. 5514(a)(1)(C) must follow notice and a reasonable opportunity to respond.[28] Accordingly, the Bureau believes it would not be appropriate to state unequivocally in a Notice that the Bureau ''has reasonable cause to determine'' that the respondent's conduct poses risks to consumers. The Bureau therefore declines to revise the proposed content of the Notice to state that the Bureau ''has,'' as opposed to ''may have,'' reasonable cause to determine that an entity's conduct poses risks to consumers.

The Bureau also received a comment requesting that the Bureau meet with a respondent prior to issuing a Notice to that respondent. The commenter recognized that this may not be feasible in every instance. The Bureau agrees with the commenter that meeting with a potential respondent prior to sending out a Notice may not be feasible in some, and perhaps many, instances, and as stated above, one of the purposes of the final rule is to establish uniform procedures applicable to all persons potentially subject to the final rule that the Bureau intends to follow in implementing its authority under 12 U.S.C. 5514(a)(1)(C). Moreover, the Bureau believes that the commenter's suggestion would add an additional layer to the process established by the final rule that would unnecessarily lengthen and complicate the process. Accordingly, the Bureau declines to revise the Proposed Rule to adopt a provision requiring the Bureau to meet with a prospective respondent prior to issuing a Notice.

For the reasons discussed above, the Bureau adopts § 1091.102 as proposed with minor technical revisions for consistency.

Section 1091.103 Contents of Notice

Section 1091.103 details the required contents of a Notice of Reasonable Cause. To ensure that a respondent would have a reasonable opportunity to address the substance of a Notice, proposed § 1091.103 provided that a Notice must set forth, among other things, the basis for the assertion that the Bureau may have reasonable cause to determine that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.

Proposed § 1091.103 further stated that a Notice must contain a statement informing a respondent of how to file a timely response, and of the required contents of a response. Under proposed § 1091.103, a Notice would be required to inform a respondent that he or she may request a supplemental oral response, and that a respondent may, in lieu of filing a response, voluntarily consent to the Bureau's supervisory authority under 12 U.S.C. 5514 by filing an executed form of consent agreement attached to a Notice served on a respondent. Proposed § 1091.103 further provided that a Notice shall inform a respondent that failure to respond, as set forth in a Notice, may result in a determination by the Director without

[25] *See also* 12 CFR 1070.2(q) (defining ''supervised financial institution'' to mean a ''financial institution that is 'or may become' subject to the CFPB's supervisory authority'').

[26] Section 1091.115 of the final rule appeared as § 1091.112 in the Proposed Rule.

[27] A final determination may result in an order bringing a person under the Bureau's supervisory authority based on a reasonable-cause determination, or may result in a notice indicating that a person will not be so brought under the Bureau's supervisory authority.

[28] 12 U.S.C. 5514(a)(1)(C) (''[T]he Bureau has reasonable cause to determine, by order, 'after' notice to the covered person and a reasonable opportunity for such covered person to respond. . . .'' (emphasis added)).

further opportunity for the respondent to respond. As set forth in proposed § 1091.103, a Notice would also inform a respondent of the various timelines associated with the process.

The Bureau received a number of comments on the proposed contents of a Notice and related issues discussed below.

Information in, and Items Accompanying, a Notice

Several commenters recommended that a Notice should include copies of the complaints collected by the Bureau and/or the information from other sources that were used in the decision to issue the Notice. One commenter stated that the Bureau should include in the Notice a statement detailing what specific risk to consumers is under consideration, what conduct the respondent is engaging in, or has engaged in, that the Bureau alleges poses risks to consumers, and how those risks are increased by the respondent's alleged conduct. This commenter asked the Bureau to release a model Notice. Another commenter recommended that the Bureau provide copies of underlying complaints with a Notice, asserting that without a copy of the underlying complaint, ''a respondent wishing to object or to accede to the notice will have limited information upon which to make a reasonably informed decision.''

Some other commenters asked the Bureau to revise the Proposed Rule to provide greater detail regarding the items relied on to issue a Notice of Reasonable Cause. One commenter recommended that the Bureau include detailed information regarding any consumer complaints, in addition to copies of the complaints, together with the Notice of Reasonable Cause. Another commenter urged the Bureau to require that the Notice state with specificity the basis for the Bureau's assertions and include an inventory of any complaints and other information relied upon by the Bureau. This commenter asserted that such a showing is crucial to a respondent's ability to prepare adequately its response and assemble ''documents, records or other evidence'' in support of its position.

Similarly, a commenter requested that the Bureau explain how much detail it expects to provide in the Notice, as well as the level of detail it expects to receive in response. The commenter asked the Bureau to clarify whether it intends to include in the Notice detailed information regarding the consumer complaints, if any, on which the Bureau bases its assertions, and whether it will provide copies of any such complaints together with the Notice of Reasonable Cause. The commenter further asked whether the Bureau expects respondents specifically to address each complaint and any resolution thereof in its response.

The Bureau also received several comments taking issue with proposed § 1091.103(c), which stated that ''[n]othing in this section shall be construed as requiring the Bureau to produce any documents or information to a respondent other items than as set forth in this section.'' One commenter stated that this provision ''seems unreasonable,'' and ''in the interest of open and honest communication,'' urged the Bureau to ''be willing to share any and all relevant information with respondents.'' Another commenter asserted in connection with this provision that the good faith efforts of nonbank covered persons will continue to be frustrated by the lack of clearly defined requirements and expectations in the rule. Similarly, the Bureau received a comment suggesting a specific revision to § 1091.103(c) to require the Bureau to produce to a respondent documents or information ''as otherwise relevant, material and necessary for respondent to prepare its response to the Notice.'' This commenter encouraged the Bureau to include in the final rule a process by which a respondent, upon receiving a Notice of Reasonable Cause, may request additional relevant information from the Bureau and requested the establishment of a reasonable time frame in which the Bureau must provide such additional information or, conversely, state with specificity the reason for its denial of the request.

The Bureau does not believe that a reasonable opportunity to respond requires the Bureau to provide copies of all complaints or information from other sources relied on by the Bureau in issuing a Notice along with a Notice. Respondents should typically already have, or have access to, copies of any complaints, pleadings, judicial opinions, or independent studies on which the initiating official may rely in issuing a Notice.[29] Other information that the initiating official might rely on in issuing a Notice could contain confidential or other personally identifiable information regarding consumers or others.

For the same reasons, the Bureau does not believe it is necessary or appropriate to provide respondents with the right to request additional information from the Bureau. The final rule, moreover, prohibits discovery and permitting such requests would not be consistent with the informal, expeditious nature of the proceedings. Thus, the Bureau rejects the commenter's request that the Bureau add language to § 1091.103(c) requiring the Bureau to produce items ''as otherwise relevant, material and necessary for respondent to prepare its response to the Notice.''

Nevertheless, after consideration of the comments received, the Bureau agrees that it may be helpful to respondents to include in a Notice more information on items that the initiating official relied on in issuing a Notice than was required under the Proposed Rule. Thus, the Bureau revises the Proposed Rule to require under the final rule that the Notice set forth not just a ''description of the basis'' for, but also a ''summary of the documents, records, or other items relied on,'' by the initiating official in issuing a Notice. Accordingly, as finalized, § 1091.103(a)(1) reads: ''A Notice of Reasonable Cause shall contain the following: A description of the basis for the assertion that the Bureau may have reasonable cause to determine that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services, including a summary of the documents, records or other items relied on by the initiating official to issue a Notice. Such summary will be consistent with the protection of sensitive information, including compliance with federal privacy law and whistleblower protections.''

Statement of Verification

Another commenter suggested that a Notice include a ''statement of verification undertaken by the Bureau . . . of . . . the specific harms and risks that the Bureau believes the entity's activities pose to consumers,'' which should also ''state the basis for the Bureau's belief that such conduct will recur if the assertion is based upon past but not ongoing activities.''

Under the final rule, the Notice must describe the basis for the assertion that the Bureau may have a ''reasonable cause to determine'' that the conduct of a nonbank covered person poses risks to consumers and provide a summary of the documents, records, or other items relied on by the initiating official in issuing a Notice. Accordingly, the Notice would describe the risks the Bureau believes the respondent's

[29] It is the Bureau's policy to place complaints in the public database 15 days after forwarding the complaint to the company in question. 77 FR 37558, 37568 (June 22, 2012). Thus, typically the company should already have copies of the complaints that the Bureau might rely on in issuing a Notice.

conduct poses to consumers as requested by the commenter. However, for the reasons discussed in the section-by-section analysis of § 1091.102 above, the Bureau declines to include provisions in the final rule requiring the Bureau to verify specific harms and risks on which a Notice is based, or to conclude where past conduct forms the basis for a Notice that such conduct is likely to recur.

Notice Regarding Parallel Proceedings

Another commenter mistook the Proposed Rule's Notices of Reasonable Cause for notices that might be given at the outset of a civil investigation or examination. Accordingly, this commenter claimed that the Bureau should, in accordance with the commenter's interpretation of the Fifth Amendment and understanding of the approach taken by the SEC, revise the Proposed Rule to require that a Notice of Reasonable Cause ''inform civil investigative targets of their Constitutional rights.'' Contrary to the commenter's assumption, a Notice would not be used to initiate a civil investigation or an examination. A Notice, rather, would commence a proceeding solely to determine whether a nonbank covered person would be made subject to the Bureau's supervisory authority on the basis of a reasonable-cause determination. Moreover, a person receiving a Notice would not be compelled to respond or otherwise act in response to such a Notice. Accordingly, the Fifth Amendment concerns raised by the commenter are not relevant to the issuance of Notices of Reasonable Cause under the Proposed Rule. In any event, nothing in the Proposed Rule would preclude the Bureau from providing additional information to those persons who receive a Notice of Reasonable Cause.[30] The Bureau therefore declines to revise the Proposed Rule as recommended by the commenter.

Revision to Address Confidentiality of Proceedings

As discussed above, after consideration of the comments regarding confidentiality, the Bureau agrees that all aspects of a proceeding under the final rule relate to the Bureau's supervisory process and therefore qualify as confidential supervisory information under 12 CFR 1070.2(i)(1).[31] Consistent with new § 1091.115(c), the Bureau has therefore revised proposed § 1091.103(a) to add a new subparagraph (vii), which states: ''In connection with a proceeding under this part, including a petition for termination under § 1091.113, all documents, records or other items submitted by a respondent to the Bureau, all documents prepared by, or on behalf of, or for the use of the Bureau, and any communications between the Bureau and a person, shall be deemed confidential supervisory information under 12 CFR 1070.2(i)(1).''

Section 1091.104 Service of Notice

Section 1091.104 sets forth the procedures governing service of a Notice of Reasonable Cause. Proposed § 1091.104 provided that a Notice of Reasonable Cause shall be served pursuant to methods including electronic transmission (where a respondent has consented), personal service, First Class U.S. Mail, or commercial courier or express delivery service. Proposed § 1091.104 further required that the [initiating official] submit a copy of a Notice and any attached documents, records or other items to the [Associate] Director, who shall proceed as set forth in the Proposed Rule.

Rule 4 of the Federal Rules of Civil Procedure

The Bureau received several comments pertaining to the proposed service requirements. One commenter recommended that the Bureau use the rules for service set forth in Rule 4 of the Federal Rules of Civil Procedure (FRCP 4). Specifically, this commenter objected to service of notice on an administrative employee or other person at a respondent's office, or through Certified Mail or a third-party commercial carrier. This commenter also asserted that the Bureau should enable entities to designate agents and officers to receive service of notice, which is allowed under FRCP 4.

The Bureau believes that service by the methods set forth in proposed § 1091.104 is reasonably calculated to provide to a respondent the Notice commencing a proceeding under the Proposed Rule. The manner of service proposed incorporates many of the provisions of FRCP 4. For example, in the case of a corporation or other business entity, the Proposed Rule incorporates the provision of FRCP 4 that permits service by delivery to an officer, managing or general agent, or other agent authorized by appointment or law to receive such a notice. In most instances this will mean serving an entity's registered agent.

Where the Proposed Rule differs from FRCP 4, such as by permitting service by Registered Mail or next-day courier, the Proposed Rule is consistent with the procedural rules of practice of other Federal bank regulators.[32] For example, the Federal Deposit Insurance Corporation (FDIC) Rules of Practice and Procedure permit service on a person that has not appeared in a proceeding by the following methods: ''(i) By personal service; (ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works; (iii) If . . . a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service . . . and the statute so requires, by also mailing a copy to the party; (iv) By registered or certified mail addressed to the party's last known address; or (v) By any other method reasonably calculated to give actual notice.''[33]

Service on Persons Registered With the Bureau

Additionally, two commenters requested clarification on what it meant to be registered with the Bureau under § 1091.104(a)(3). The Bureau notes that the provision in the Proposed Rule stating that ''[n]otice may be served on a person currently registered with the Bureau'' by using ''the most recent business address shown on the person's registration form,'' was included to permit such service if the Bureau adopts a rule requiring nonbank covered persons to register with the Bureau. The Bureau anticipates that to the extent a registration rule is adopted, a person required to register with the Bureau would be required to have its business address on file with the Bureau. In such a case, the Bureau believes that it should be able to rely on the address provided by a registrant in serving a Notice. Although a registration rule has not been adopted, the Bureau is including this provision in the final rule to avoid the need to revise the final rule

[30] The Bureau takes no position here whether and in what circumstances it would be obligated under the Fifth Amendment to provide additional information to recipients of notices initiating a civil investigation or supervisory activity.

[31] *See also* 12 CFR 1070.2(q) (defining ''supervised financial institution'' to mean a ''financial institution that is 'or may become' subject to the CFPB's supervisory authority'').

[32] In some instances, FRCP 4, by reference to applicable state law, may allow service by Registered Mail, next-day courier, or other means not explicitly provided for in FRCP 4.

[33] 12 CFR 308.11(c). *See also* 12 CFR 263.11(c)(2) (Federal Reserve System, Rules of Practice); 12 CFR 19.11(c)(2) (Office of the Comptroller of the Currency (OCC), Uniform Rules of Practice and Procedure); 12 CFR 1081.113(d) (Bureau Rules of Practice for Adjudication Proceedings).

to add such a provision should the Bureau adopt a registration rule in the future.

Waiver of Service

The same two commenters also requested clarification on what a waiver of service under § 1091.104(a)(6) would entail and requested that the Bureau require waivers to be in writing and given by persons ''upon whom the Notice would be served.'' First, to clarify what waiver entails under proposed § 1091.104(a)(6), a waiver of service would permit the Bureau to provide a Notice by ''First Class Mail or other reliable means.'' There may be a number of ''other reliable means'' to provide a Notice, but one example would be delivering it to a designated person not otherwise authorized to accept service. Second, the Bureau agrees with the commenters' suggestion that service should be waived only in writing, and by the person ''upon whom the Notice would be served.'' Accordingly, to make this explicit, the Bureau has revised proposed § 1091.104(a)(6) to read: ''In lieu of service as set forth in paragraph (a)(1) or (a)(2) of this section, the person may be provided a copy of a Notice by First Class Mail or other reliable means if a written waiver of service is obtained from the person to be served. In the case of a respondent that is not a natural person, a written waiver may be provided by an officer, managing or general member, or partner authorized to represent the respondent.''

For the reasons discussed above, the Bureau adopts § 1091.104 as proposed, other than the revisions to subsection (a)(6) relating to waiver of service as discussed above and other minor technical revisions for consistency.

Section 1091.105 Response

Section 1091.105 sets forth the requirements for responding to a Notice of Reasonable Cause, including the time limit to respond, content of a response, default for failure to respond, and waiver of the right to submit items or make arguments not included in the response. The Bureau received a number of comments on proposed § 1091.105.

Time Limit

Proposed § 1091.105 provided that any response must be filed within 20 days of service of a Notice. The Bureau received several comments requesting a longer time period to file a response, ranging from a response deadline of 30 to 120 days. Generally these commenters asserted that a 20-day response deadline is not sufficient for a respondent to respond to a Notice. One commenter suggested either using the Federal Rules of Civil Procedure as a model for setting deadlines, or the method prescribed by the Bureau for contesting consumer complaints (20 days to provide notice that the entity will challenge a complaint, and 60 days to provide a complete response). Another commenter stated that 20 days is an unreasonably short time limit given that there is no limit on the content, accuracy, and/or length of a Notice of Reasonable Cause. Another commenter asserted that responding to a Notice of Reasonable Cause would require engaging counsel, locating and reviewing potentially relevant documents, interviewing personnel, drafting a written response, compiling documents to accompany the response, internally approving the response, and submitting the response—activities that the commenter asserted could not be completed in 20 days. One commenter proffered that an extended period is needed to facilitate collection of data and material from remote locations. A few commenters implied that it would be unfair if the Bureau could review a response for longer than a respondent had to prepare the response. One commenter asserted that 20 days is too short given that this period of time would include any intermediate Saturday, Sunday, and Federal holiday. Still other commenters asserted that it would be unfair to set a time limit shorter than the limits for responding to government subpoenas, pre-examination audits, civil discovery requests, or notices of proposed rulemaking. Finally, one commenter asserted that the 20-day window did not provide for an opportunity to be heard at a meaningful time and in a meaningful manner. In a related comment, a commenter requested a mechanism by which the response time could be restarted if the Bureau raised a new material issue or assertion after issuance of a Notice.

In proposing a 20-day response time, the Bureau attempted to ensure a fair process that provides respondents a reasonable opportunity to respond, but that is also efficient and streamlined. The Bureau notes that a 20-day response period is consistent with the rules of practice of other Federal banking regulators for certain administrative actions that impose similar burdens on the respondent in terms of consultation with counsel, review and compilation of documents, and preparation of a written response.[34] The Bureau, however, understands the commenters' concerns that 20 days to respond to a Notice may not be sufficient in some instances and believes that the response time can be moderately increased without undermining the goal that the process be streamlined and efficient. Thus, the Bureau is adopting a revision to the Proposed Rule extending the response time from 20 to 30 days. The Bureau believes that 30 days should generally provide a respondent sufficient time to respond.[35] Moreover, the final rule provides certain flexibility in response time. Section 1091.115(a) of the final rule adopts the proposed provision stating that an extension of a time limit may be granted at the discretion of the Associate Director or Director, as applicable, for good cause shown, and the Bureau has deleted a provision in the Proposed Rule that directed the Associate Director or Director to strongly disfavor extension requests. The Bureau believes that the increase in the response deadline from 20 to 30 days, coupled with the increased flexibility for the Associate Director or Director to grant an extension for good cause shown, should address the commenters' concerns and provide respondents sufficient time to respond to a Notice without undermining the goal of establishing a streamlined and efficient process for making determinations under 12 U.S.C. 5514(a)(1)(C). Finally, the Bureau agrees with the comment that additional time would be warranted were the Bureau to raise a new material basis for issuing a Notice that was not fairly within the scope of the initial Notice. The Bureau believes, however, this result was evident under the Proposed Rule, which contemplates that a response be responsive to the Notice. Thus, the Bureau does not believe that a revision to the Proposed Rule is necessary to address this comment.

Content of Response

Section 1091.105(b) sets forth the requirements relating to the content of a response. Proposed § 1091.105(b) provided that a respondent could

[34] *See* 12 CFR 308.19(a) (FDIC Rules of Practice and Procedure); 12 CFR 263.19(a) (Federal Reserve System Rules of Practice for Hearings); 12 CFR 19.19(a) (OCC Rules of Practice) *see also* 12 CFR 1081.201(a) (Bureau's Rules of Practice for Adjudication Proceedings, providing a 14-day deadline to submit an answer to a notice of charges).

[35] The Bureau notes for example that, as distinguished from its rules of practice, the Board of Governors of the Federal Reserve provides 30 days for submitting a written response to a preliminary ''control'' determination under the Bank Holding Company Act. Control determinations often involve complex issues of fact and law. *See* 12 CFR 225.31(b) (providing that if a person wishes to contest a preliminary control determination the person may file a response within 30 days).

respond to a Notice of Reasonable Cause either by contending that it is not a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services (proposed § 1091.105(b)(1)–(2)), or by voluntarily consenting to the Bureau's supervisory authority under 12 U.S.C. 5514 (proposed § 1091.105(b)(5)). Where a respondent wished to contest the assertions in a Notice, proposed § 1091.105(b) required that the response: (1) Set forth the basis for a respondent's contention that the respondent should not be subject to supervision pursuant to 12 U.S.C. 5514(a)(1)(C); (2) include all records, documents, or other items upon which a respondent relies; (3) include any request for a supplemental oral response to present oral arguments; and (4) include an affidavit signed by the respondent attesting that the information contained in the response is true, accurate, and without any omission that would cause the response to be materially misleading.

One commenter requested that the Bureau permit entities to request a supplemental oral response after submitting the written response but within 14 days of that submission. The Bureau believes that the extension of the written response period from 20 to 30 days sufficiently satisfies the commenter's request for an extension of time to request a supplemental oral response. Under the commenter's requested time frame, a respondent would have 34 days to determine whether it wanted a supplemental oral response, while under the final rule, the respondent will have 30 days to make this determination. Therefore the Bureau declines to revise the final rule to allow respondents to submit a request for a supplemental oral response after submitting a written response.

Additionally, in response to comments relating to the confidentiality of the overall process established by the final rule, as discussed in the section-by-section analysis of § 1091.103(a), the Bureau has added § 1091.115(c), which addresses the issue of confidentiality for the entire rule. Consequently, the Bureau has deleted from the final rule the second sentence of proposed § 1091.105(b)(2) relating to confidential supervisory information, which has been rendered superfluous by the addition of § 1091.115(c) to the final rule.

Further, the Bureau notes that it is revising proposed § 1091.105(b)(3) to permit respondents to request either an in-person or telephonic supplemental oral response in the written response. The Proposed Rule had provided only for a telephonic supplemental oral response unless the [Associate] Director directed that it be conducted in some other manner. The Bureau is making this revision to address comments received regarding proposed § 1091.106 discussed below.

Waiver of Right To File Response

Proposed § 1091.105(c) provided that the failure of a respondent to file a response within the required time period would constitute a waiver of the respondent's right to file a response and would authorize the Director to issue a decision and order.

One commenter asserted that the compressed 20-day time frame to respond and the provision for default for failing to respond could unduly disadvantage persons or entities that least expect to be subject to federal financial services regulation. This commenter urged the Bureau to give appropriate regard to procedural fairness. The Bureau has carefully considered procedural fairness and believes that the waiver provision is appropriate. A key purpose of establishing procedures to implement 12 U.S.C. 5534(a)(1)(C) is to set appropriate deadlines to allow for an efficient resolution of a matter. The Bureau believes that a reasonable and fair way to enforce the Notice-response deadline is to make the consequence of failing to respond within the allotted time the waiver of the right to respond. Moreover, the removal of the waiver provision from the final rule could undermine the process established by the rule by effectively rendering the timing requirements unenforceable. The Bureau further believes that the increase in the response time period under the final rule from 20 to 30 days, as well as the revision to the final rule to give the Associate Director or Director increased flexibility to grant an extension for good cause shown, as discussed above, should alleviate the commenter's concern.

Waiver of Right To Raise an Issue or Submit Items

Proposed § 1091.105(d) stated that the failure to raise timely an issue in, or submit records, documents, or other items with, the response constitutes a waiver of a respondent's right to raise the issue, or submit the records, documents, or other items, at any future stage of consideration of the matter and in any petition for judicial review. Several commenters objected to this waiver provision; one stated that the provision ''violates fundamental fairness,'' another stated that it is ''not equitable.'' A few commenters expressed concern that this provision, coupled with the 20-day response time limit, was too onerous and could have serious consequences for respondents.

One commenter, while generally agreeing with the need for a waiver provision, stated that it is possible that information relevant to the Bureau's evaluation may come to the respondent's attention subsequent to submitting the initial response even when the respondent has, for example, conducted appropriate due diligence in compiling documents, searching electronic databases, and conducting interviews. This commenter urged the Bureau to revise § 1091.105(d) by including a provision stating that ''a respondent shall not be deemed to have waived its right to submit relevant information when a respondent can demonstrate to the satisfaction of the [Associate] Director or the Director that such information could not have reasonably been discovered at the time that petitioner submitted its [response to a Notice].'' Another commenter asked the Bureau to extend the time period for responding and/or permit extensions of time or allow respondents to submit supplemental materials within a reasonable time after a supplemental oral response, if requested. Similarly, one commenter expressed the concern that a respondent failing to raise an issue within the proposed 20-day response deadline would risk waiving the ability to defend itself on the issue. This commenter requested a longer process that would require four, instead of two, steps: the Notice of Reasonable Cause, the response, a Bureau answer setting forth its analysis of the response, and a respondent's reply to that subsequent Bureau answer—together with an additional 20 or 30 days added to the deadline.

As stated earlier, the final rule sets forth a process only for determining whether the Bureau has supervisory authority over a person pursuant to 12 U.S.C. 5514(a)(1)(C). A determination resulting in an order for supervision under the final rule does not constitute a finding of a violation of Federal consumer financial law. As such, the ramifications of the waiver provision are limited. By failing to raise an issue or argument in a response, covered persons do not waive under the final rule any right to use arguments or evidence to rebut a claim of a violation of law during the supervision process or any potential collateral enforcement action.

As stated in the supplementary information to the Proposed Rule, the Bureau continues to believe that the proposed waiver provision is necessary

to remove any incentive for a respondent to wait until after filing a response, such as at a supplemental oral response or during judicial review, to raise an argument or present documents or other information for the first time. The waiver is intended to help ensure that the Bureau is aware of all relevant issues upon which a respondent wishes to rely at the earliest opportunity before reaching a determination.[36] Including the waiver provision is within the Bureau's broad discretion in formulating the informal procedures set forth in the final rule. Consequently, the Bureau declines to delete the waiver provision. The Bureau believes, however, that by increasing the response time limit under the final rule from 20 to 30 days and by revising the final rule to provide increased flexibility for the Associate Director or Director to grant an extension for good cause shown, it has reasonably addressed the commenters' core concerns. Nor is the Bureau persuaded by the commenters' contention that an exception to the waiver provision is necessary where information relevant to the Bureau's evaluation purportedly could not have reasonably been discovered until after the initial response is provided. The documents, records, or other items that respondents may wish to rely on are types that should reasonably be available to respondents, such as product or service information, promotional materials, transactional, account, or financial information, and policies or procedures. Additionally, the Bureau believes that the recommended additional layers of procedure requested by commenters (*i.e.,* a Bureau answer to a response and a respondent's reply to such answer) is not necessary to reduce the risk of waiver and would needlessly complicate and lengthen the informal process set forth in the final rule.

Expressing a different concern, a commenter stated that the waiver provision incentivizes respondents to submit more information than is necessary to preserve arguments, frustrating efficiency. The Bureau believes that the commenter overstates the risks that the waiver provision will cause respondents to submit extraneous or unnecessary information in response to a Notice. The Bureau believes that respondents generally will include with their responses such records, documents, or other items that they believe relevant to supporting their substantive positions; the Bureau believes that documents pertaining to arguments a respondent wishes to preserve will generally be relevant to a determination under the final rule. Also, the Bureau notes that respondents that wish to frustrate the process under the final rule by supplying unnecessary or extraneous information in response to a Notice may do so even in the absence of a waiver provision. Moreover, the Bureau believes that on balance the waiver provision will enhance, rather than frustrate, the efficiency of the process established by the final rule. It would be highly inefficient and disruptive to the process to permit the introduction of additional evidence or arguments at any point during a proceeding.

Another commenter asserted that the waiver provision conflicts with the exhaustion of administrative remedies doctrine because, according to that doctrine, courts deem arguments waived on judicial review that have not first been raised before an administrative agency on ''administrative appeal,'' and the waiver provision under § 1091.105(d) might result in waiver of an argument ''prior to an administrative review of the underlying merits of the claim, well before appeal.''

Contrary to the commenter's contention, the proposed waiver provision is fully consistent with the doctrine of exhaustion of administrative remedies. This doctrine generally requires that ''[o]ne challenging an agency decision must exhaust all administrative remedies before seeking judicial review.'' [37] Moreover, ''[r]elated is the requirement, often included under the exhaustion doctrine, that one must raise issues with the agency or lose the right to challenge those issues on review.'' [38] The doctrine of exhaustion of administrative remedies does not preclude an agency from specifying the time and manner in which issues must be raised before the agency, including prior to any administrative appeal, or from deeming arguments waived that are not raised consistent with such rules, even if this waiver precludes consideration of the issue in any administrative or subsequent judicial review process.[39] Rather, the doctrine provides that any administrative remedy that is available must be exhausted in the manner specified by the agency—and consistent with any rules of that agency—before a litigant resorts to the courts.

The Bureau therefore declines the commenter's request that the waiver provision be deleted or revised.

No Discovery

Proposed § 1091.105(e) stated that there shall be no discovery in connection with the response. A few commenters requested that the Bureau provide for discovery at this point in the process. The Bureau notes that neither the Dodd-Frank Act nor the APA requires discovery as part of the informal process established by the final rule. There are many informal agency procedures that do not allow for discovery. For example, the FDIC's informal exemption hearings under Section 12(H) of the Securities and Exchange Act of 1934 do not permit discovery.[40] Indeed, the final rule provides greater procedural rights to respondents than required by the Dodd-Frank Act, which mandates only that the Bureau provide respondents with notice and a reasonable opportunity to respond.[41] Among other procedural enhancements, the final rule permits a respondent to request a supplemental oral response in addition to filing a written response. The final rule also permits a respondent to petition for termination of supervision after two years, whereas 12 U.S.C. 5514(a)(1)(C) does not expressly provide for termination.

The Bureau believes that permitting discovery would unnecessarily protract the process established by the final rule and increase its costs to the Bureau. A longer process would be contrary to the Bureau's goal of establishing efficient and streamlined procedures. Instead, a Notice under the final rule must contain a description of the basis for the assertions giving rise to the Notice. As revised, under the final rule, a Notice will also include a summary of the consumer complaints and information from other sources relied on by the Bureau in issuing the Notice, as described in the section-by-section analysis of § 1091.103. The Bureau believes that this process will afford a respondent a reasonable opportunity to evaluate the assertions in a Notice and formulate an appropriate response.

For the reasons discussed above, the Bureau adopts § 1091.105 as proposed, other than revisions to: subsection (a), which increases the response time limit from 20 to 30 days, and subsection (b)(3), which provides that a respondent may specify whether it prefers an in-

[36] 77 FR 31230 (May 25, 2012).

[37] 33 Charles Alan Wright & Charles H. Koch, Jr., Federal Practice and Procedure § 8398 (2d ed.).

[38] 33 Charles Alan Wright & Charles H. Koch, Jr., Federal Practice and Procedure § 8398 (2d ed.).

[39] The Bureau notes that the procedures set forth in the final rule do not provide for an administrative appeal process, and that such a process is neither required under the APA nor necessary to provide respondents a reasonable opportunity to respond.

[40] 12 CFR 308.142(b)(2).

[41] 12 U.S.C. 5514(a)(1)(C).

person or telephonic supplemental oral response. Additionally, the Bureau deletes the second sentence of proposed § 1091.105(b)(2) relating to confidential supervisory information because this sentence is redundant in light of new § 1091.115(c) of the final rule.

Section 1091.106 Supplemental Oral Response

Section 1091.106 sets forth the procedures relating to a supplemental oral response. Proposed § 1091.106 provided that a respondent may request in its written response under § 1091.105 to present a supplemental oral response in support of its assertion that it is not a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services. Proposed § 1091.106 also set forth procedures for the conduct of a supplemental oral response.

Option for In-Person Supplemental Oral Response

Proposed § 1091.106(b)(1) provided that a supplemental oral response would be conducted by telephone unless the [Associate] Director directed that it be conducted in some other manner. The Bureau received several comments requesting that the Bureau also grant respondents an option for an in-person supplemental oral response. These commenters asserted that respondents should have the option to take on any level of burden that they wish, and that in-person responses facilitate better communication.

The Bureau proposed that a supplemental oral response generally be held by telephone to minimize burdens on both respondents and the Bureau. The Bureau provided some flexibility in the Proposed Rule to allow for the conduct of supplemental oral responses by other means if directed by the [Associate] Director. In light of the comments received and on further consideration, however, the Bureau agrees that it would be reasonable to provide a respondent with an opportunity for an in-person supplemental oral response where the respondent wishes to take on the additional burden of traveling to the Bureau's headquarters. Thus, the Bureau revises proposed § 1091.106(b)(1) to allow a respondent to request an in-person supplemental oral response to be held at the Bureau's headquarters in Washington, DC. Under the final rule, if a respondent requests in its written response a supplemental oral response but does not specify whether such response shall be conducted via telephone or in person, the supplemental oral response will be conducted by telephone unless otherwise directed by the Associate Director.

Alternatives to Supplemental Oral Response

Raising a different issue, a commenter asserted that it is unclear whether, as proposed, a supplemental oral response would provide any material benefit to a respondent because no discovery is allowed in connection with the response and respondents cannot raise issues in the supplemental response that were not raised in the written response. This commenter recommended that the Proposed Rule be revised either to: (1) permit limited discovery, or (2) replace a supplemental oral response with a supplemental written response that would allow a respondent to present additional relevant issues or documentation related to a matter.

The Bureau notes that a supplemental oral response is optional under the final rule. A respondent that does not believe a supplemental oral response would be beneficial need not request such a response. Contrary to the commenter's contention, however, the Bureau believes that in many instances a supplemental oral response would benefit a respondent by, for example, providing a respondent with the opportunity to present arguments orally directly to the Associate Director and to highlight particular aspects of its written response. Moreover, as discussed above, the Bureau believes that it would unnecessarily lengthen and complicate the final rule to allow for discovery or provide a respondent the opportunity to submit a supplemental written response, and that such measures are not necessary to ensure that respondents have a reasonable opportunity to respond to a Notice. Accordingly, the Bureau declines the commenter's suggestion to replace a supplemental oral response with discovery or a supplemental written response.

Limitations on Conduct of Supplemental Oral Response

Proposed § 1091.106(b)(2) provided that the [Associate] Director may impose limitations on the conduct of a supplemental oral response and set forth a non-exhaustive set of such limitations. The Bureau received several comments pertaining to the [Associate] Director's discretion to set restrictions on the supplemental oral response. Two commenters argued that the [Associate] Director should not be able to set a time limit on the presentation of a supplemental oral response. One of these commenters stated that no time limit was necessary given the Bureau's proposed limitation on subjects that may be addressed. The other stated that there should be no limitation on the submission of additional records, documents, or other items, in addition to no limitation on presentation time. Another commenter requested that the respondent be provided an opportunity to file a written dissent when it believes that the [Associate] Director is imposing unreasonable limitations on the supplemental oral response. Two commenters proffered that the Bureau should set uniform guidelines, similar to the guidelines for a written response that all respondents must follow. One of these commenters asserted that if the previous recommendation is not adopted, limitations should be developed on a case-by-case basis in consultation with the respondent.

The Bureau believes that permitting the Associate Director to impose limitations on the conduct of a supplemental oral response is appropriate in an informal proceeding of the type established by the final rule and will help ensure that a supplemental oral response focuses on a respondent's and initiating official's arguments supporting their respective assertions in the matter. It is important, for example, that the Associate Director have the flexibility to set time limits for these proceedings so that they do not become unwieldy or cumbersome and are appropriate in relation to the issues presented.

At the same time, it would not be consistent with the informal nature of the proceedings under the final rule, or the Bureau's objective to establish an efficient and streamlined process, to permit written dissents or objections on limitations imposed by the Associate Director in connection with a supplemental oral response, or in connection with any other issue relating to the proceedings. The informal procedures under the final rule do not contemplate motions practice or objections, and such motions and objections would undermine the efficiency of the procedures under the final rule.

The Bureau also believes that it would not best serve the interests of the Bureau or respondents to establish uniform guidelines governing the supplemental oral response because the facts and circumstances relating to proceedings—such as the size of the respondents or the complexity of matters under consideration—may vary significantly between matters. The Bureau is concerned that a single approach to

supplemental oral responses would not permit the flexibility needed to efficiently and fairly accommodate the particular circumstances of a matter. The Bureau, however, recognizes the need to ensure that respondents understand what the process of a supplemental oral response will entail. Thus, the Bureau included in proposed § 1091.106(d) a requirement that a notice for a supplemental oral response include ''general information relating to the conduct of an oral response.'' Such information would include, for example, time limitations for presenting a supplemental oral response.

No Discovery or Witnesses

Proposed § 1091.106(b)(3) stated that no discovery will be permitted, and no witnesses will be called, in connection with a supplemental oral response. Several commenters objected to these restrictions. However, as discussed above, the Bureau believes that this limitation is appropriate given the informal nature of the procedures set forth in this Proposed Rule and the Bureau's objective to establish an efficient and streamlined process for making determinations under 12 U.S.C. 5514(a)(1)(C). The prohibition on discovery in this section is consistent with, and supported by, the same considerations as those underlying the prohibition on discovery in connection with the response under § 1091.105, which is discussed in detail in the section-by-section analysis above. The prohibition on the calling of witnesses in connection with a supplemental oral response is consistent with the overall prohibition on submitting additional evidence in connection with a supplemental oral response. If a respondent wishes to submit testimony, it may submit written testimony under affidavit as part of its response under § 1091.105.

Timing and Waiver for Failure To Participate

Proposed § 1091.106(d) prescribed the timing of a supplemental oral response. Under this proposed section, within 14 days of receiving a respondent's request for a supplemental oral response, the [Associate] Director shall serve on a respondent a notice advising the respondent of the date, time, and general information relating to the conduct of a supplemental oral response, with a copy to the [initiating official]. To allow a respondent and the [initiating official] sufficient time to prepare for a supplemental oral response, and to make arrangements to participate, proposed § 1091.106(d) provided that a supplemental oral response shall be scheduled not less than ten days after the date of such service. Finally, proposed § 1091.106(g) stated that if a respondent fails to participate in a scheduled supplemental oral response, such a failure would constitute a respondent's waiver of the opportunity to present a supplemental oral response.

The Bureau received a few comments pertaining to the timing of a supplemental oral response. Several commenters requested that the time and date of the supplemental oral response be scheduled at a time that is convenient for both the Bureau and the respondent. One commenter stated that a respondent that fails to participate in a scheduled supplemental oral response due to extenuating circumstances should not be deemed to have waived the opportunity to participate in a supplemental oral response.

The Bureau believes that it is important that the final rule grant the Associate Director discretion to make final decisions pertaining to the scheduling of a supplemental oral response. To provide otherwise might necessitate burdensome and unwieldy negotiations and would infringe unnecessarily on Bureau prioritization. However, the Bureau notes that under the final rule, in exercising his or her discretion to schedule a supplemental oral response, the Associate Director will take into consideration the availability and convenience of a respondent. A respondent that is unable to participate in a scheduled supplemental oral response for good cause may request an extension. The Associate Director may, at his or her discretion, grant an extension ''for good cause shown.''

Recording of Supplemental Oral Response

Proposed § 1091.106(b)(6) provided that a recording of the supplemental oral response will be made, and that a respondent may purchase a copy or transcript of the recording. The Bureau received a few comments regarding recordings and transcripts of the supplemental oral response. One commenter asked the Bureau to use a court stenographer to reduce the supplemental oral response to writing. Another commenter suggested that the Bureau afford respondents the opportunity to record the supplemental oral response themselves. Additionally, a commenter requested confirmation that the recording of the supplemental oral response would be treated as confidential supervisory information.

In response to the comments received, the Bureau notes that it intends to use court reporters to record supplemental oral responses and has revised § 1091.106(b)(6) of the Proposed Rule to make this explicit. The Bureau does not, however, anticipate that it will have these recordings transcribed in each instance. Under the final rule, if a respondent wishes to purchase a copy of the recording or a transcript from the court reporter, it may do so at its own expense. The Bureau believes that it is important to have only one official recording (and, if produced, transcript) of a supplemental oral response. Thus the Bureau declines to revise the Proposed Rule to permit a respondent to create its own recording of a supplemental oral response. Finally, the Bureau notes that under new § 1091.115(c), transcripts and recordings of supplemental oral responses are deemed confidential supervisory information.

Other Issues

The Bureau also received comments requesting clarification on whether the supplemental oral response will include a question and answer period, or whether the oral responses will simply be a monologue performed by the respondent. The Bureau considers a supplemental oral response an opportunity for a respondent to present oral arguments in support of the respondent's written response. The initiating official may also participate in a supplemental oral response to present oral arguments supporting the assertions set forth in the Notice of Reasonable Cause. The Associate Director may, at his or her discretion, ask questions of the respondent and/or initiating official during the proceeding.

Finally, the Bureau received a comment from a consumer group expressing its concern that, unlike in the written response, there would be no requirement of truthfulness with respect to the supplemental oral response. The Bureau notes that an affidavit or declaration of truthfulness as required under § 1091.105(b)(4) is not warranted in connection with a supplemental oral response because no new evidence or witnesses are permitted as part of such response. Rather, during a supplemental oral response, a respondent is limited to making oral arguments in support of the respondent's written response. Thus, it is sufficient that, under the final rule, only the written response must be submitted pursuant to § 1091.105(b)(4), under affidavit or declaration that it is true and accurate and does not contain any omissions that would cause the response to be materially misleading.

For the reasons discussed above, the Bureau adopts § 1091.106 as proposed,

other than the revisions to 1091(b)(1) and (6) as described above and other minor technical revisions for consistency.

Section 1091.107 Manner of Filing Papers

Proposed 1091.107 provided for filing of papers other than a Notice in a proceeding under the Proposed Rule by electronic transmission under such conditions as specified by the [Associate] Director or Director. Proposed 1091.107 also authorized other methods of filing and service if a respondent demonstrated electronic filing was not practicable and the [Associate] Director or Director permitted an alternative method of filing or service.

The Bureau did not receive any substantive comments on this proposed provision and adopts § 1091.107 as proposed with minor technical revisions for consistency.

Section 1091.108 Recommended Determination

Section 1091.108 sets forth the procedures relating to the issuance of a recommended determination by the [Associate] Director. Proposed § 1091.108 provided that the [Associate] Director shall make a recommended determination and submit to the Director either a proposed order that would bring a respondent within the Bureau's supervisory authority under 12 U.S.C. 5514, or a proposed notification containing a determination that a respondent is not subject to the Bureau's supervisory authority under 12 U.S.C. 5514 on the basis of the proceeding. Under proposed § 1091.108(a), if a respondent had not voluntarily consented to the Bureau's supervisory authority, and had not requested the opportunity to present a supplemental oral response, a recommended determination would be required to be made not later than 45 days from the receipt of a timely-filed response, or not later than 45 days after the service of a Notice of Reasonable Cause when a respondent failed to file a timely response. If a respondent requested the opportunity to present a supplemental oral response, a recommended determination would be required to be made not later than 90 days after the service of a Notice of Reasonable Cause. Proposed § 1091.108(c)–(e) further set forth the required content of the [Associate] Director's recommended determination, and the records, documents, and other items that were required to accompany the recommended determination sent to the Director by the [Associate] Director. Proposed § 1091.108 also provided that if the [Associate] Director recommended that the respondent should not be subjected to the Bureau's supervisory authority based on the proceedings, such recommendation would not have precedential effect and would not prevent the issuance of another Notice of Reasonable Cause or a determination subjecting the respondent to the Bureau's supervisory authority.

Provision of Recommended Determination to Respondent

Several commenters requested that the Bureau provide the respondent with an exact copy of the recommended determination and all accompanying documentation. Some of these commenters recommended that the Bureau allow respondents to file objections to a recommended determination before the Director makes a final determination. Commenters stated that allowing for objections would provide a fairer process, provide the Director with the respondent's position before he or she makes a final determination, resolve claims in advance of judicial review, and correspond with common practice in other informal adjudicatory processes.

The Bureau believes that the procedures for issuing a recommended determination set forth in the proposed rule strike the appropriate balance between fairness and efficiency. In the Bureau's view, if the final rule were to allow a respondent to submit a written objection to a recommended determination for the Director's consideration, as requested by commenters, then to ensure a fair process, the final rule would also need to afford the initiating official the opportunity to rebut the objection. The Bureau believes that such a procedure would be unwieldy and unnecessarily lengthen and increase the costs of the process set forth in the Proposed Rule. The Bureau therefore declines to revise the Proposed Rule to require such a procedure. In addition, given the limited purpose of the Associate Director's recommended determinations under the final rule to guide the final determination of the Director, the Bureau believes that it would serve no purpose to require the Associate Director to provide a respondent with an exact copy of a recommended determination together with all accompanying documents at the time these items are submitted to the Director, or to allow respondents to object to a recommended determination on the record. Accordingly, the Bureau declines to revise the Proposed Rule to include such requirements. However, the Bureau believes that a respondent should receive a copy of the recommended determination (excluding other documents or items transmitted to the Director) at the end of the determination process. Therefore, as discussed in the section-by-section analysis of § 1091.109(b) below, the Bureau is revising that section to add a new subparagraph (5) stating that the Director will send to the respondent a copy of the recommended determination issued by the Associate Director.

Bureau Deadlines

One commenter requested clarification regarding the consequences of a failure by the Bureau to meet the deadlines set forth in proposed § 1091.108. The Bureau addressed this issue in § 1091.112(c) of the Proposed Rule (§ 1091.115 in the final rule), which states that ''[d]eadlines for action by the [initiating official], [Associate] Director, or the Director established in this part confer no substantive rights on respondents.'' This provision reflects the Bureau's desire to balance its commitment to establish an efficient and streamlined process, with the need to maintain flexibility in meeting internal prioritization goals.

Findings of Fact and Conclusions of Law

A commenter stated that the Proposed Rule should be revised to require that recommended determinations set forth specific findings of fact and conclusions of law. Although the Proposed Rule did not mandate the inclusion of findings of fact and conclusions of law in the [Associate] Director's recommended determination, proposed § 1091.108(d)(2) would have required that a recommended determination provide the ''basis'' for a recommendation that the Director issue a final determination that there is reasonable cause to determine that the respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services. The Bureau believes that this proposed requirement is sufficient to achieve a fair process and ensure that the recommended determination contains sufficient information to facilitate a final determination of the Director. On the other hand, the Bureau does not believe that revising the Proposed Rule to impose a requirement that a recommended determination include proposed findings of fact and conclusions of law would be consistent with the informal nature of the

procedures set forth in the final rule, or with the limited purpose of the Associate Director's recommended determinations under the rule to facilitate the final determination of the Director. Such a requirement also is not warranted in light of the limited purposes of a determination of reasonable cause by the Director under the final rule. A proceeding under the final rule would not result in a determination that a person violated the law or is subject to penalty, but would merely subject such person to the Bureau's supervisory authority.

For the reasons discussed above, the Bureau adopts § 1091.108 as proposed with minor technical revisions for consistency.

Section 1091.109 Determination by the Director

Section 1091.109 governs the procedures relating to the Director's issuance of a final determination. Proposed § 1091.109(a) provided that, not later than 45 days after receipt of the [Associate] Director's recommended determination, the Director shall make a final determination by either adopting without revision, modifying, or rejecting the [Associate] Director's recommended determination. Under the proposed subsection, the Director shall issue to a respondent, with copies to the [Associate] Director and [initiating official], a decision and order bringing a respondent within the Bureau's supervisory authority under 12 U.S.C. 5514, or a notification containing the determination that a respondent is not subject to the Bureau's supervisory authority under 12 U.S.C. 5514 on the basis of the proceeding. Proposed § 1091.109(b) described what a decision and order must set forth. Proposed § 1091.109(c) provided that the Director may rely on the assistance and advice only of decisional employees in reaching a final determination.

Written Analysis Relating to Decision

One commenter requested that proposed § 1091.109 be modified to require the Director to include a written and detailed analysis of the reasons supporting his or her final determination, and that the Director's determinations should include a description of how the risky product or practice can be changed in order to conform with Bureau requirements.

First, the Bureau notes that proposed § 1091.109(b)(3) already requires the Director to provide the basis for the Director's decision in his or her final determination. The Bureau does not believe that it is necessary to revise the Proposed Rule to further require the Director to include in a final determination a written and detailed analysis of the reasons supporting his or her decision as requested by the commenter. To the extent the commenter is suggesting that the final rule should be revised to mandate that the Director include in a final determination findings of facts and conclusions of law, the Bureau declines the recommendation for the reasons discussed above with respect to the Associate Director's recommended determination. For the foregoing reasons, the Bureau declines to revise the Proposed Rule to require a final determination to include the level of detail requested by the commenter.

Second, the Bureau notes that, as stated above, the purpose of the final rule is to provide transparency and ensure consistency regarding the procedures the Bureau intends to follow in determining whether to subject a nonbank covered person to supervision under 12 U.S.C. 5514(a)(1)(C). As discussed above, it is beyond the scope of this procedural rule to define ''risks to consumers'' or to establish conduct standards. For similar reasons, it would exceed the scope of the final rule to require the Director to include in a final determination a description of how a risky product or practice can be changed in order to conform to the Bureau's requirements. Moreover, to the extent that the Bureau were to provide guidance to a particular nonbank covered person regarding its activities, it would do so in the context of supervision, not in an order issued by the Director bringing a nonbank covered person under the Bureau's supervisory authority. The Bureau therefore declines to revise the Proposed Rule to require the Director to provide in a final determination a description of how a risky product or practice should be changed.

Deferring to State or Other Federal Determinations

The same commenter also recommended that the final rule allow the Director to defer to State or other official determinations on the same issue addressed by a Notice of Reasonable Cause, or require the Director to explain how the Bureau's position is consistent or inconsistent with such outside determinations.

The Bureau does not believe that requiring the Director to justify a final determination in relation to State or other official determinations on the same issue is in accord with 12 U.S.C. 5514(a)(1)(C), which confers on the Bureau the sole authority to make reasonable-cause determinations. The Bureau notes, however, that under 12 U.S.C. 5514(a)(1)(C), the Bureau may base a final determination on complaints, as well as on ''information from other sources.'' Such information may include, among other things, State or other Federal administrative, civil, or criminal actions taken in connection with a nonbank covered person. The Bureau further observes that in exercising its supervisory authority under 12 U.S.C. 5514(a)(1)(C), it will coordinate with State and other Federal agencies as set forth in 12 U.S.C. 5514(b)(3) and will consider the extent to which the nonbank covered person is subject to oversight by State authorities for consumer protection pursuant to 12 U.S.C. 5514(b)(2).

Final Agency Action and Judicial Review

Another commenter recommended that the Bureau expand on proposed § 1091.109(d), which stated that a determination by the Director is final agency action under 5 U.S.C. 704, and add a separate section to the final rule delineating a respondent's opportunities for review of an order and decision issued by the Director. The commenter further asserted that deeming the final determination of the Director final agency action under proposed § 1091.109(d) was in tension with the Bureau's assertion that the action was informal.

The Bureau included proposed § 1091.109(d) to make clear that a decision and order issued by the Director pursuant to the informal process described in the rule is a final agency action for purposes of judicial review. The Bureau does not believe that the informal nature of the proceedings conflicts in any way with deeming a final determination of the Director final agency action under § 1091.109(d). Also, in the Bureau's view, inclusion of a section in the final rule of procedures relating to judicial review, as requested by the commenter, is unnecessary and beyond the scope of the final rule.

Precedential Effect

Two commenters argued that proposed § 1091.109(a)(2), which provided that the issuance of a notification that the respondent will not be made subject to the Bureau's supervisory authority ''shall have no precedential effect and shall not prevent the issuance of another Notice of Reasonable Cause,'' appears to constitute ''double jeopardy.'' The Bureau disagrees with the commenters' characterization of § 1091.109(a)(2). First, the double jeopardy clause is

wholly inapplicable to the proceedings under the final rule, which are informal administrative proceedings rather than criminal in nature, and do not result in a punitive action against the respondent, but rather merely subject the respondent to Bureau supervision. Second, the Bureau believes that there are good reasons to allow an initiating official to issue a Notice of Reasonable Cause to a respondent even after the Director has issued a final determination not to subject it to supervision under 12 U.S.C. 5514(a)(1)(C) on the basis of a prior Notice. For example, the second Notice may be based on new complaints or sources of information, or while the conduct at issue in the second Notice might be similar to that in the first, the severity of risk to consumers may have significantly increased because of the number of consumers alleged to be affected. Although such circumstances may be rare, the Bureau believes, consistent with the Dodd-Frank Act, that it is necessary and appropriate to preserve the possibility of invoking the procedures under 12 U.S.C. 5514(a)(1)(C) should such circumstances arise. The Bureau therefore declines to revise the Proposed Rule to delete the no precedential effect provision.

Making Information Regarding a Proceeding Publicly Available

The Bureau received one comment requesting that the Bureau publicly release information on the entities that receive a Notice of Reasonable Cause, the entities under the Bureau's supervision, and the reasoning underlying the Bureau's final determinations. The commenter argued that such publicity would mitigate the risk that a future Director could neglect the obligations of the Bureau. As set forth in § 1091.115(c), information relating to a proceeding shall be deemed confidential supervisory information under 12 CFR 1070.2(i)(1), and the Bureau declines to depart from the limitations on public disclosure set forth in that provision of the final rule.

For the reasons discussed above, the Bureau adopts § 1091.109 as proposed with a revision to specify that the Director will provide the Associate Director's recommended determination along with the Director's final determination to a respondent, as explained in the section-by-section analysis of § 1091.108 above, and with minor technical revisions for consistency.

Section 1091.110 Voluntary Consent to Bureau's Authority [42]

Proposed § 1091.113(a) provided that nothing in the Proposed Rule shall affect a person's ability to voluntarily consent, at any time, to the Bureau's supervisory authority under 12 U.S.C. 5514 as mutually agreed to by the parties. As proposed, voluntary consent under this provision would be an alternative to consenting voluntarily to the Bureau's supervision under proposed § 1091.103(b), which provided that a respondent could execute and file a consent-agreement form in lieu of filing a written response to a Notice. The Bureau did not receive any substantive comments on proposed § 1091.113(a) and therefore adopts § 1091.113(a) as proposed with minor technical revisions for consistency, including renumbering this section as § 1091.110(a).

Length of Supervision Period Under Consent Agreement; Waiver of Judicial Review

Proposed § 1091.113(b) provided that a person entering into a consent agreement waives any right to judicial review of that agreement. Additionally, proposed § 1091.113(b) provided that a consent agreement that specifies the period during which the person will be subject to the Bureau's supervisory authority precludes such a person from petitioning for the termination of the consent order during the agreed-to supervisory period. The Bureau received several comments regarding proposed § 1091.113(b). A few commenters addressed the appropriate length of the supervision period required under a voluntary consent, or similarly, how much time should pass before a consenting nonbank may petition to terminate supervision. One commenter stated that consent agreements should require a supervision period lasting at least two examination cycles. Another commenter asserted that respondents entering into consent agreements should have the right to petition for termination of supervision after two years. A commenter asked that nonbanks be able to reconsider and void consent agreements upon discovering additional evidence. The Bureau received one comment stating that requiring respondents to waive their right to judicial review of a voluntary consent agreement is not equitable or reasonable. Finally, two commenters suggested that proposed § 1091.113 be revised to require the inclusion of a confidentiality provision and corrective-action plans that, if adhered to, would allow for early termination of supervision.

First, the Bureau notes that a consent agreement is voluntary and that, under proposed § 1091.113, most terms of such agreements are negotiable. Respondents do not have to enter into a consent agreement if they do not wish to accept its terms. Benefits of consent agreements include, among others, providing certainty of outcome to the parties and reducing the potential burden of going through the full informal process established by the final rule.

Second, proposed § 1091.113 is intended to provide flexibility to allow the parties to establish terms acceptable to each. One of the negotiable terms under proposed § 1091.113 is the length of the supervision period to which a respondent will be subject. This differs from the consent agreement form described in § 1091.103(b), which automatically establishes a two-year supervision period. The Bureau does not believe that it is appropriate to limit this flexibility by mandating under proposed § 1091.113 a minimum supervision period, such as requiring two examination cycles, or by mandating that a respondent be permitted to petition for termination of supervision earlier than agreed. For the same reason, the Bureau declines to revise proposed § 1091.113 to require correction action plans that, if adhered to, would allow for early termination of supervision.

Third, as discussed above, the Bureau has added § 1091.115(c) to the final rule, which provides that information relating to a proceeding shall be deemed confidential supervisory information under 12 CFR 1070.2(i)(1). The Bureau believes that this provision adequately addresses the issue of confidentiality and therefore declines to revise the Proposed Rule to require the inclusion of a confidentiality provision in a consent agreement.

Fourth, since one of the purposes of entering into a consent agreement is to provide certainty to the parties and reduce potential burden, the Bureau believes that it is reasonable to require that the respondent waive the right to judicial review of the terms of a consent agreement, thereby ensuring that the parties do not litigate an agreement after it is executed. A respondent that does not want to relinquish any possible opportunity for judicial review need not enter into a consent agreement. For clarity, the Bureau revises proposed § 1091.113(b) to add that a consent agreement ''shall state'' that a

[42] Proposed § 1091.113 has been renumbered § 1091.110 in the final rule. All references to proposed § 1091.113 in this analysis correspond to § 1091.110 of the final rule.

respondent entering into a consent agreement waives any right to judicial review of such consent agreement.

For the reasons discussed above, the Bureau adopts § 1091.113 as proposed with the revision to proposed § 1091.113(b) to clarify the waiver provision described in the preceding paragraph and with other minor technical revisions for consistency, including renumbering this section as § 1091.110(b).

Section 1091.111 Notice and Response Included in Adjudication Proceeding Otherwise Brought by the Bureau [43]

Proposed § 1091.114 provided that if the Bureau issues a notice of charges against a person under 12 CFR 1081.200,[44] the Bureau may, in its discretion, also provide the notice and opportunity to respond required by 12 U.S.C. 5514(a)(1)(C) in the notice of charges. In such a circumstance, the procedures set forth in § 1091.102–§ 1091.110 would not apply to the proceedings. Under the Proposed Rule, the Bureau could use the administrative adjudication proceedings set forth in 12 CFR 1081.200 to provide notice and a reasonable opportunity to respond as required by 12 U.S.C. 5514(a)(1)(C) only in certain cases where the Bureau has otherwise brought an administrative action against a respondent. The Bureau believes that the flexibility provided by this section would enhance efficiency and reduce burdens on respondents and the Bureau by allowing a determination under 12 U.S.C. 5514(a)(1)(C) and an adjudicative proceeding to be handled in a single forum. The Bureau received two comments suggesting that supervision authority should be established before bringing an enforcement action. One commenter asserted that simultaneous risk-determination proceedings and enforcement actions could penalize a company for conduct that it previously had no reason to know was illegal. This commenter recommended that the risk determinations set forth in this rule be used to put a company on notice that certain activities are deemed to pose risks to consumers before any enforcement action is initiated. The other commenter asserted that simultaneous risk determinations and enforcement actions would give rise to enforcement actions regarding otherwise lawful conduct that poses risks to consumers, which the commenter believed would be an expansion of Bureau authority.

The Bureau believes that the commenters may have misconstrued the purpose of proposed § 1091.114. Under this provision, the Bureau would provide the notice required under 12 U.S.C. 5514(a)(1)(C) in a notice of charges only when the Bureau has ''otherwise'' brought an administrative action against a respondent.[45] The Bureau further notes that, under the Dodd-Frank Act, supervision is not a necessary precursor to an enforcement action. The Bureau may, however, wish to bring a person subject to an enforcement action under the Bureau's supervisory authority, in addition to seeking other relief through an administrative action. Proposed § 1091.114 is intended to provide administrative convenience and efficiency both for respondents and the Bureau by handling what would otherwise be two separate processes in a single administrative forum.

For the reasons discussed above, the Bureau adopts proposed § 1091.114 substantially as proposed with minor technical revisions for consistency, including renumbering this section as § 1091.111. The Bureau has also made one change to proposed § 1091.114 to clarify that a person may submit to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C) by agreeing to a consent order in connection with an adjudication proceeding or civil action.

Section 1091.112 No Limitation on Relief Sought in Civil Action or Administrative Adjudication [46]

Proposed § 1091.115 clarified that nothing in proposed part 1091 shall be construed to limit the relief the Bureau may seek in any civil action or administrative adjudication, including seeking an order to have a person deemed subject to the Bureau's supervisory authority under 12 U.S.C. 5514, for the reasons set forth in 12 U.S.C. 5514(a)(1)(C) or otherwise. Two commenters discussing this proposed section recommended that the Bureau provide respondents the option to proceed using a formal adjudication, instead of the informal hearing process prescribed in this part. In response, the Bureau notes that proposed § 1091.115 does not relate to the procedures established by the final rule, but rather merely makes clear that the final rule does not limit the relief the Bureau might seek in another forum. The Bureau's authority to adopt informal procedures rather than formal adjudication procedures, as requested by the commenter, and its rationale for so doing is discussed in the introductory paragraphs to subsection B above. The Bureau therefore adopts proposed § 1091.115 as proposed with minor technical revisions for consistency, including renumbering to § 1091.112.

*Subpart C—Post-Determination Procedures*

Section 1091.113 Petition for Termination of Order [47]

Proposed § 1091.110 provided that a respondent may petition the Director for the termination of an order bringing a respondent within the Bureau's supervisory authority under 12 U.S.C. 5514, and set forth the required contents of such a petition. Under proposed § 1091.110, a respondent could petition for termination no sooner than two years after the issuance of the order, and no more frequently than annually thereafter, except that in the case of a voluntary consent to supervision, a respondent could not petition for early termination of the supervisory authority period set forth in the consent agreement. A petition is a respondent's opportunity to inform the Bureau of the actions taken and the progress made to reduce risk to consumers after the issuance of an order subjecting the entity to supervision under 12 U.S.C. 5514(a)(1)(C). Under proposed § 1091.110(b), a petition was required to set forth the reasons supporting a termination of an order, including any actions taken by a respondent since issuance of an order to address the conduct that led to the order. Under proposed § 1091.110(d), the [initiating official] would be permitted to file a response to a petition for termination setting forth the [initiating official's] recommendation to terminate or modify the order, or to deny the petition, and the reasons supporting such a recommendation, within 30 days of his or her receipt of a copy of a petition. Proposed § 1091.110(e) further provided that within 90 days of a respondent's submission of a petition for termination, the Director could either terminate or modify the order, or deny the petition. This proposed section also specified the

[43] Proposed § 1091.114 has been renumbered § 1091.111 in the final rule. All references to proposed § 1091.114 in this analysis correspond to § 1091.111 of the final rule.

[44] 12 CFR 1081.200 sets forth the procedures for the commencement of an adjudicative proceeding by the Bureau under 12 U.S.C. 5563, and also the contents of the notice of charges in such a proceeding.

[45] 77 FR 31231.

[46] Proposed § 1091.115 has been renumbered § 1091.112 in the final rule. All references to proposed § 1091.115 in this analysis correspond to § 1091.112 of the final rule.

[47] Proposed § 1091.110 has been renumbered § 1091.113 in the final rule. All references to proposed § 1091.110 in this analysis correspond to § 1091.113 of the final rule.

manner in which a petition for termination must be filed.

Time Periods Related to Petitions To Terminate

The Bureau received a number of comments discussing the termination-petition process generally and the prohibition on filing a petition prior to two years after an order establishing supervisory authority under 12 U.S.C. 5514(a)(1)(C) has been issued. Several commenters believe that allowing petitions to terminate an order only after two years is excessively harsh, and that respondents should either be allowed to petition for termination of the order immediately after the respondent has remedied the behavior that the Bureau deemed risky, or respondents should be allowed to petition after one year. One commenter asserted that orders should automatically terminate after one year unless the Bureau can show good cause for continuation, eliminating the need to petition for termination of an order. Many of these commenters argued that supervision would be unfair or unnecessary if the respondent terminated the practice for which the Bureau established supervisory authority. Taking a different view, one commenter asserted that the two-year period was not long enough because the Bureau might only finish one examination cycle within the two-year period. This commenter suggested setting a time limit for the first petition to terminate an order after two examination cycles.

After consideration of the comments, the Bureau continues to believe that allowing a respondent to petition for termination of supervision no sooner than two years after the issuance of a decision and order by the Director subjecting an entity to supervision under 12 U.S.C. 5514(a)(1)(C) is appropriate. This period is intended to provide the Bureau with sufficient time to conduct an initial set of supervision activities, such as requesting reports and/or undertaking an examination, and to conduct follow-up supervision activities so the Bureau can assess whether a nonbank covered person corrected any deficiencies identified by the Bureau and maintained any required corrective actions. A minimum two-year supervision period reflects the reality that after supervisory jurisdiction is established, it will take two years to meaningfully examine, and possibly re-examine, an entity. In essence, the Bureau believes that the proposed supervision period will permit two examination cycles as one commenter asserted was necessary. Allowing termination after one year or immediately after a nonbank covered person purportedly remediated any deficiencies would not permit enough time for the needed follow-up supervision activity. Permitting termination on an ad hoc basis at any time would engender a disorderly supervision program where a supervised person could demand an evaluation of its activities at any time, regardless of Bureau resource constraints or supervision priorities.

For all of the foregoing reasons the Bureau declines to revise the Proposed Rule to alter the process for petitioning for termination of supervision.

Administrative Appeal

A few commenters suggested that the Bureau adopt an administrative appeals process instead of the petition process. The Bureau believes that an administrative appeals process is not necessary and would significantly add to the complexity and length of the process established by the final rule.

Require Initiating Official To File a Recommendation Regarding a Petition To Terminate

A commenter argued that the Bureau should revise proposed § 1091.110(d)(1) to require the [initiating official] to file a response to a petition to terminate. The Bureau made the filing of a recommendation regarding a petition by the initiating official permissive rather than mandatory because the Bureau recognized that the initiating official may not feel the need to provide a recommendation in all instances. If the initiating official were to choose not to file a response to a petition to terminate, the result would be that the petition would be unopposed. The Bureau does not believe that this result would prejudice a petitioner. Moreover, the Bureau believes that it is important that under the final rule the initiating official have flexibility in determining how to expend Bureau resources. The Bureau does not believe that it would be appropriate to require the initiating official to prepare and file a recommendation where the initiating official has determined that this is not a necessary or useful allocation of Bureau resources. The Bureau therefore declines to revise the Proposed Rule to require the initiating official to file a response to a petition to terminate.

Add Requirement That the Director Terminate Supervision Under Certain Circumstances

Another commenter requested that the Bureau include a requirement that the Director approve petitions to terminate where the respondent provides clear and convincing evidence that the respondent has eliminated any reasonable prospect of consumer risk.

The purpose of proposed § 1091.110 was to permit the Director to grant a petition and terminate supervision if the Director believed that it was appropriate to do so. The Bureau believes that adding to the final rule a requirement that the Director grant a petition as recommended by the commenter would impose a standard not consistent with 12 U.S.C. 5514(a)(1)(C), which does not require that the Bureau consider petitions to terminate. Therefore the Bureau declines to revise the Proposed Rule as suggested by the commenter.

Clarification on Whether Petitions To Terminate Are Public Information

Another commenter urged the Bureau to make the Bureau's response to a petition for termination publicly available.

The Bureau has added to the final rule § 1091.115(c), which provides that ''[i]n connection with a proceeding under this part, including a petition for termination under § 1091.113, all documents, records or other items submitted by a respondent to the Bureau, all documents prepared by, or on behalf of, or for the use of the Bureau, and any communications between the Bureau and a person, shall be deemed confidential supervisory information under 12 CFR 1070.2(i)(1).'' In light of this provision, a petition to terminate supervision is confidential supervisory information, subject to the confidentiality requirements of 12 CFR part 1070.

For the reasons discussed above, the Bureau is adopting § 1091.110 as proposed with minor technical revisions for consistency, including renumbering that section as § 1091.113.

*Subpart D—Time Limits and Confidentiality*

Section 1091.114 Construction of Time Limits [48]

Proposed § 1091.111(a) provided common rules for computing time limits, taking into account the effect of weekends and holidays on time periods that are ten days or less. This section also sets forth when filing or service is effective. Proposed § 1091.111(b) established when papers are deemed to be served. With regard to time limits for responsive papers, proposed § 1091.111(c) incorporated a three-day extension for mail service, and a one-

[48] Proposed § 1091.111 has been renumbered § 1091.114 in the final rule. All references to proposed § 1091.111 in this analysis correspond to § 1091.114 of the final rule.

day extension for overnight delivery and electronic transmission. A one-day extension for service by electronic transmission reflects that electronic transmissions may result in delays in actual receipt by the person served.

The Bureau received two comments pertaining to the construction of time limits. Both of these comments requested the Bureau to provide clear deadline dates in the Notice of Reasonable Cause, asserting that the time limit framework provided may be confusing to respondents. The Bureau adopted the language used in § 1091.111 from the Bureau's rules for adjudication proceedings in 12 CFR 1081.114, which in turn incorporates rules similar to the Federal Rules of Civil Procedure and some agencies' existing rules.[49]

The Bureau understands the commenters' desire for exact dates on which filings are required, but is concerned that providing specific dates as requested would be difficult in many circumstances and might result in increased operational costs or inaccuracy. For example, the Bureau may need to put Notices into production sometime in advance of when they will be served and might not know the exact date that a Notice will be served. The Bureau believes that it is important to specify dates in the Notice in relation to the date of service to ensure the accuracy of the time periods disclosed.

For the reasons discussed above, the Bureau adopts § 1091.111 as proposed with minor technical revisions for consistency, including renumbering this section as § 1091.114.

Section 1091.115 Change of Time Limits and Confidentiality of Proceedings [50]

Proposed § 1091.112(a) provided that requests for an extension of time may be granted where good cause is shown. Proposed § 1091.112(b) provided that requests for extensions of time are strongly disfavored and may be granted only when a party makes a strong showing that the denial of the request would substantially prejudice the party. Finally, proposed § 1091.112(c) stated that deadlines for action by the [Associate] Director or Director established in this Proposed Rule confer no substantive rights on respondents.

The Bureau received several comments requesting a more flexible extension policy. One commenter suggested allowing time extensions where it would prevent prejudice and do substantial justice. Another commenter asserted that providing Bureau staff the discretion to grant extensions would alleviate its concerns regarding the abbreviated response time of 20 days provided in the Proposed Rule. A few commenters objected to the language used in proposed § 1091.112(b), which stated that extensions are ''strongly disfavor[ed].'' Additionally, one commenter asserted that granting extensions only to prevent substantial prejudice was excessively stringent and requested instead that the Bureau decide requests for extensions based on the ''good cause shown'' standard set forth in proposed § 1091.112(a).

Although many of the concerns regarding time limits should be alleviated with the extension of the written-response deadline in § 1091.105(a) from 20 to 30 days, the Bureau agrees that the [Associate] Director and Director should have reasonable flexibility to permit extensions of time limits at their discretion and for good cause shown. The Proposed Rule granted some flexibility in this regard—permitting extensions for good cause shown—but, as noted above, it also stated a policy of strongly disfavoring requests for extensions and permitting them only where a denial would substantially prejudice a requesting party's case. The Bureau is concerned that the language in the Proposed Rule stating that extensions are strongly disfavored and should be permitted only where there would be substantial prejudice may result in less flexibility to allow extensions than the Bureau intended. The Bureau therefore revises the Proposed Rule by deleting proposed § 1091.112(b). The Bureau believes that this will provide the Associate Director and Director with greater flexibility to permit, at their discretion, extensions of time limits where good cause is shown.

One commenter requested that the Bureau provide an automatic extension where a respondent did not receive a Notice. Such a revision to the Proposed Rule is unnecessary, however, because the 30-day time limit begins upon service of a Notice.

The Bureau adopts § 1091.112 with the revision deleting proposed § 1091.112(b), and adding a new paragraph (c) on confidentiality of proceedings (for the reasons discussed in the section-by-section analysis of subpart B above) and with other minor technical revisions for consistency, including renumbering this section as § 1091.115.

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

### *A. Overview*

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including with regard to consistency with any prudential market, or systemic objectives administered by such agencies.[51]

Under 12 U.S.C. 5514(a)(1)(C), the Bureau has the authority to supervise any nonbank covered person that it ''has reasonable cause to determine, by order, after notice . . . and a reasonable opportunity . . . to respond . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.'' The Bureau must base such reasonable-cause determinations on complaints collected by the Bureau under 12 U.S.C. 5493(b)(3), or on information collected from other sources.[52] The final rule is intended to provide an efficient, streamlined, and fair process to implement 12 U.S.C. 5514(a)(1)(C).[53] Although a rule is not necessary to implement this statutory provision, the final rule establishes a consistent procedure applicable to all affected entities, and provides transparency regarding the applicable procedures prior to commencement of a proceeding.

[49] 77 FR 39058, 39065 (June 29, 2012).

[50] Proposed § 1091.112 has been renumbered § 1091.115 in the final rule. All references to proposed § 1091.112 in this analysis correspond to § 1091.115 of the final rule.

[51] Specifically, 12 U.S.C. 5512(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in 12 U.S.C. 5516, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer. The manner and extent to which the provisions of 12 U.S.C. 5512(b)(2) apply to a procedural rule of this kind, and to benefits, costs and impacts that are compelled by statutory changes rather than discretionary Bureau action, is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analysis and consultations described in those provisions of the Dodd-Frank Act.

[52] 12 U.S.C. 5514(a)(1)(C).

[53] The Bureau notes that there is little publicly available data with which to effectively measure or quantify the benefits, costs, and impacts of the Proposed Rule. Where benefits or costs are not readily quantifiable or where data is not reasonably available, the Bureau will conduct qualitative analyses relying on information from available sources.

*B. Potential Benefits and Costs to Consumers and Covered Persons*

The analysis considers the benefits, costs, and impacts of the final rule against a statutory baseline. That is, the analysis evaluates the benefits, costs, and impacts of the final rule as compared to the statute without an implementing rule.[54] Absent the final rule, the public would lack any guidance regarding the Bureau's process under 12 U.S.C. 5514(a)(1)(C). Nonbank covered persons will incur certain costs in considering and responding to a Notice from the Bureau under the final rule, but these costs would generally exist in the absence of the rule.

For major provisions of the final rule, the Bureau considered the benefits and costs of certain alternatives. For example, the final rule provides respondents an opportunity to participate in a supplementary oral response, which would generally be conducted via telephone, but permits respondents to request an in-person supplemental oral response at the Bureau's headquarters in Washington, DC. The Bureau believes that this approach will benefit covered persons by offering an additional method of responding to a Notice compared with the alternative of not permitting any oral response. At the same time, the Bureau believes that this approach will be less costly than the alternative of requiring that all oral responses be conducted in person at a designated location. Also in connection with supplemental oral responses, the final rule permits, but does not require, a respondent to be represented by counsel. The Bureau considered requiring representation by counsel, but opted to provide respondents with the opportunity to receive the benefits of representation, while not mandating that respondents incur the costs of such representation.

The final rule also permits respondents to consent to the Bureau's supervisory authority under standard terms in lieu of filing a response to a Notice of Reasonable Cause, or to enter into a negotiated agreement at any time consenting to the Bureau's supervisory authority. The Bureau believes that this approach provides a streamlined resolution process that will reduce the costs to the Bureau and those respondents that wish to consent to the Bureau's supervisory authority, compared to the alternative of permitting only negotiated consent agreements.

Several industry commenters discussed the potential costs of the rule; however, only one directly commented on the Bureau's consideration of benefits, costs and impacts under Section 1022. Commenters argued that the rule may subject firms to new regulations or that they may bear the burden of increased compliance with existing Federal consumer laws. However, as discussed above, the final rule only establishes procedures the Bureau intends to use to implement 12 U.S.C. 5514(a)(1)(C) to bring a nonbank covered person under the Bureau's supervisory authority when the Bureau has made a reasonable-cause determination; it does not subject any entities to new substantive regulation or require increased compliance with existing law; nor is the final rule necessary for the Bureau to exercise its supervisory authority under 12 U.S.C. 5514(a)(1)(C).

Commenters also asserted that the possibility of supervision and/or the actual initiation of supervision would prove costly to firms. Regarding the costs of changing business practices in preparing for possible supervision, the Bureau notes that nonbank covered persons are required to comply with existing law and with any current record-retention requirements to document such compliance even in the absence of this final rule. The Bureau recognizes, as the commenters do, that entities will incur some costs in responding to Notices and participating in examinations; however, those costs would also exist in the absence of the final rule since a rule is not necessary to implement 12 U.S.C. 5514(a)(1)(C).

Going even further, one commenter asserted that the Bureau must also gather more data and quantify the costs related to the rule. This commenter noted the Bureau's claim that data are quite limited, but then offered several citations to studies about the costs of regulation. As noted however, the costs of regulation writ large are not relevant here. Rather the relevant data must describe the costs of adhering to particular informal administrative procedural frameworks in establishing reasonable cause. The studies mentioned include estimates of all regulation, including environmental regulations, and from the Bureau's reading, do not discuss or mention the costs to financial institutions of adherence with informal administrative procedural frameworks.

The final rule will have no impact on insured depository institutions or insured credit unions with $10 billion or less in assets as described in 12 U.S.C. 5516(a). Nor will the final rule have a unique impact on rural consumers.

## VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[55] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[56]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[57]

As discussed above in section V, a notice of proposed rulemaking was not required for this rulemaking. Because no notice of proposed rulemaking was required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[58]

In the alternative, a FRFA would not otherwise be required because the final rule would not have a significant economic impact on any small entities. The final rule sets forth only procedures by which a nonbank covered person may become subject to the Bureau's current supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C). The final rule establishes a transparent and streamlined process by which the Bureau would exercise its existing legal authority and would not impose new substantive requirements.

[54] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and the appropriate baseline.

[55] 5 U.S.C. 601 *et seq.* The term '' 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition after notice and comment].'' 5 U.S.C. 601(4). The term '' 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].'' 5 U.S.C. 601(5).

[56] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment.

[57] 5 U.S.C. 609.

[58] 5 U.S.C. 603(a), 604(a).

As noted, the Bureau opted to issue a notice of proposed rulemaking to receive public comment including comment on the analysis under the RFA. One commenter argued that smaller institutions could bear substantial costs in responding to a Bureau notice, but did not provide any specific data regarding those costs. The Bureau had noted in its proposal that such responses will require firm resources: however, the Bureau maintains that those costs will not be substantial nor, given any reasonable expectation of the scope of supervision under this provision, will they be borne by a significant number of small entities.

Accordingly, the undersigned certifies that this final rule will not have a significant impact on a substantial number of small entities.

## VII. Paperwork Reduction Act

The Bureau has determined that the final rule does not impose any new recordkeeping, reporting or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

## List of Subjects in 12 CFR Part 1091

Administrative practice and procedures, Consumer protection, Credit, Trade practices.

## Authority and Issuance

For the reasons set forth in the preamble, the Bureau adds part 1091 to Chapter X in Title 12 of the Code of Federal Regulations to read as set forth below.

# PART 1091—PROCEDURAL RULE TO ESTABLISH SUPERVISORY AUTHORITY OVER CERTAIN NONBANK COVERED PERSONS BASED ON RISK DETERMINATION

### Subpart A—General

Sec.
1091.100 Scope and purpose.
1091.101 Definitions.

### Subpart B—Determination and Voluntary Consent Procedures

1091.102 Issuance of Notice of Reasonable Cause.
1091.103 Contents of Notice.
1091.104 Service of Notice.
1091.105 Response.
1091.106 Supplemental oral response.
1091.107 Manner of filing and serving papers.
1091.108 Recommended determination.
1091.109 Determination by the Director.
1091.110 Voluntary consent to Bureau's authority.
1091.111 Notice and response included in adjudication proceeding otherwise brought by the Bureau.
1091.112 No limitation on relief sought in civil action or administrative adjudication.

### Subpart C—Post-Determination Procedures

1091.113 Petition for termination of order.

### Subpart D—Time Limits and Deadlines

1091.114 Construction of time limits.
1091.115 Change of time limits and confidentiality of proceedings.

**Authority:** 12 U.S.C. 5512(b)(1), 5514(a)(1)(C), 5514(b)(7).

## Subpart A—General

### § 1091.100 Scope and purpose.

This part sets forth procedures to implement section 1024(a)(1)(C) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203 (12 U.S.C. 5514(a)(1)(C)) (Dodd-Frank Act), and establishes rules to facilitate the Bureau's supervisory authority over certain nonbank covered persons pursuant to section 1024(b)(7) of the Dodd-Frank Act (12 U.S.C. 5514(b)(7)).

### § 1091.101 Definitions.

For the purposes of this part, the following definitions apply:

*Assistant Director* means an Assistant Director for Supervision. If there is no Assistant Director, the Associate Director may designate an alternative Bureau employee to perform the functions of an Assistant Director under this part.

*Associate Director* means the Associate Director of the Bureau's Division of Supervision, Enforcement, and Fair Lending, or his or her designee. If there is no Associate Director, the Director may designate an alternative Bureau employee to perform the functions of the Associate Director under this part.

*Bureau* means the Bureau of Consumer Financial Protection.

*Consumer* means an individual or an agent, trustee, or representative acting on behalf of an individual.

*Consumer financial product or service* means any financial product or service, as defined in 12 U.S.C. 5481(15), that is described in one or more categories under:

(1) 12 U.S.C. 5481(15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(2) Clause (i), (iii), (ix), or (x) of 12 U.S.C. 5481(15)(A) and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (1) of this paragraph.

*Decisional employee* means any employee of the Bureau who has not engaged in:

(1) Assisting the initiating official in either determining whether to issue a Notice of Reasonable Cause, or presenting the initiating official's position in support of a Notice of Reasonable Cause, either in writing or in a supplemental oral response, to the Associate Director; or

(2) Assisting the Associate Director in the preparation of a recommended determination.

*Director* means the Director of the Bureau or his or her designee. If there is no Director, the term shall mean a person authorized to perform the functions of the Director under this part, or his or her designee.

*Executive Secretary* means the Executive Secretary of the Bureau.

*Initiating official* means an Assistant Director or a Bureau employee designated to act as an ''initiating official'' by an Assistant Director. If there is not an Assistant Director, the Associate Director may designate a Bureau employee to perform the functions of an initiating official under this part.

*Nonbank covered person* means, except for persons described in 12 U.S.C. 5515(a) and 5516(a):

(1) Any person that engages in offering or providing a consumer financial product or service; and

(2) Any affiliate of a person described in subparagraph (1) of this paragraph if such affiliate acts as a service provider to such person.

*Notice of Reasonable Cause and Notice* mean a Notice issued under § 1091.102.

*Person* means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

*Respondent* means a person who has been issued a Notice of Reasonable Cause under § 1091.102.

*Response* means the response to a Notice of Reasonable Cause filed by a respondent with the Associate Director under § 1091.105.

## Subpart B—Determination and Voluntary Consent Procedures

### § 1091.102 Issuance of Notice of Reasonable Cause.

(a) An initiating official is authorized to issue a Notice of Reasonable Cause to a person stating that the Bureau may have reasonable cause to determine that the respondent is a nonbank covered person that is engaging, or has engaged,

in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.

(b) A Notice of Reasonable Cause shall be based on:

(1) Complaints collected through the system under 12 U.S.C. 5493(b)(3); or

(2) Information from other sources.

(c) Except as provided in § 1091.111, a Notice of Reasonable Cause shall contain the information set forth in § 1091.103, and be served on respondent as described in § 1091.104.

**§ 1091.103 Contents of Notice.**

(a) A Notice of Reasonable Cause shall contain the following:

(1) A description of the basis for the assertion that the Bureau may have reasonable cause to determine that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services, including a summary of the documents, records, or other items relied on by the initiating official to issue a Notice. Such summary will be consistent with the protection of sensitive information, including compliance with federal privacy law and whistleblower protections; and

(2) A statement informing a respondent that:

(i) A respondent may file with the Associate Director a written response to a Notice of Reasonable Cause no later than 30 days after the Notice is served on the respondent;

(ii) The written response shall include the elements addressed in § 1091.105(b);

(iii) A respondent may request in its written response to a Notice an opportunity to present an in-person or telephonic supplemental oral response to the Associate Director as set forth in § 1091.106;

(iv) A failure timely to file a response to a Notice shall constitute a waiver of a respondent's right to respond, and may result in a default determination by the Director, based on the Notice, that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services and the issuance of a decision and order subjecting a respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C);

(v) The Associate Director shall serve a respondent with a notice of the date and time of a supplemental oral response, if a respondent has requested the opportunity to present a supplemental oral response, within 14 days of the Associate Director's receipt of a timely-filed response;

(vi) If a respondent has not requested the opportunity to present a supplemental oral response, the Associate Director shall, not later than 45 days after receiving a timely-filed response, or not later than 45 days after the service of a Notice of Reasonable Cause when a respondent fails to file a timely response, provide a recommended determination to the Director including either a proposed decision and order subjecting a respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C), or a proposed notification that the Bureau has determined not to subject a respondent to the Bureau's supervisory authority at that time, pursuant to § 1091.108; and

(vii) In connection with a proceeding under this part, including a petition for termination under § 1091.113, all documents, records or other items submitted by a respondent to the Bureau, all documents prepared by, or on behalf of, or for the use of the Bureau, and any communications between the Bureau and a person, shall be deemed confidential supervisory information under 12 CFR 1070.2(i)(1).

(b) A Notice shall be accompanied by a form of consent agreement by which a respondent may voluntarily consent to the Bureau's authority to supervise a respondent under 12 U.S.C. 5514. A completed and executed form of consent agreement under this paragraph:

(1) Shall not constitute an admission that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services;

(2) Shall result in an order by the Director that a respondent is subject to the Bureau's supervisory authority under 12 U.S.C. 5514 for a period of two years from the date of such order; and

(3) Shall include a provision that a respondent entering into a consent agreement waives any right to judicial review of such consent agreement.

(c) Nothing in this section shall be construed as requiring the Bureau to produce any documents or other information to a respondent other than as set forth in this section.

**§ 1091.104 Service of Notice.**

(a) A Notice of Reasonable Cause shall be served on a respondent as follows:

(1) *To individuals.* A Notice shall be served on a respondent that is a natural person by delivering a copy of the Notice to the individual or to an agent authorized by appointment or by law to receive such a Notice. Delivery, for purposes of this paragraph, means handing a copy of a Notice to the individual; or leaving a copy at the individual's office with a clerk or other person in charge thereof; or leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending a copy of a Notice addressed to the individual through the U.S. Postal Service by Registered Mail, Certified Mail or Express Mail delivery, or by third-party commercial carrier, for overnight delivery and obtaining a confirmation of receipt.

(2) *To corporations or entities.* Notice shall be served on a person other than an individual by delivering a copy of a Notice to an officer, managing or general agent, or any other agent authorized by appointment or law to receive such a Notice, by any method specified in paragraph (a)(1) of this section.

(3) *Upon persons registered with the Bureau.* In addition to any other method of service specified in paragraph (a)(1) or (2) of this section, Notice may be served on a person registered with the Bureau by sending a copy of a Notice addressed to the most recent business address shown on the person's registration form by U.S. Postal Service Certified, Registered, or Express Mail and obtaining a confirmation of receipt or attempted delivery.

(4) *Upon persons in a foreign country.* Notice may be served on a person in a foreign country by any method specified in paragraph (a)(1) or (2) of this section, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country.

(5) *Record of service.* The Bureau shall maintain a record of service of a Notice on a respondent, identifying the party given Notice, the method of service, the date of service, the address to which service was made, and the person who made service. If service is made in person, the certificate of service shall state, if available, the name of the individual to whom a Notice was given. If service is made by U.S. Postal Service Registered Mail, Certified Mail, or Express Mail, the Bureau shall maintain the confirmation of receipt or attempted delivery.

(6) *Waiver of service.* In lieu of service as set forth in paragraph (a)(1) or (2) of this section, a person may be provided a copy of a Notice by First Class Mail or other reliable means if a written waiver of service is obtained from the person to be served. In the case of a respondent that is not a natural person,

a written waiver may be provided by an officer, managing or general member, or partner authorized to represent the respondent.

(b) The initiating official shall promptly submit a copy of a Notice and a copy of the certificate of service to the Associate Director.

**§ 1091.105 Response.**

(a) *Timing.* Within 30 days of service of a Notice, a respondent shall file any response with the Associate Director according to the instructions set forth in a Notice.

(b) *Content of the response.* (1) The response shall set forth the basis for a respondent's contention that the respondent is not a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.

(2) The response shall include all documents, records, or other evidence a respondent wishes to use to support the arguments or assertions set forth in the response.

(3) Any request to present a supplemental oral response, including the respondent's preference for a telephonic or in-person supplemental oral response, must be included in the response. A respondent's failure to request to present a supplemental oral response shall constitute a waiver of the opportunity to present a supplemental oral response.

(4) A response shall include an affidavit or declaration, made by the individual respondent if a natural person, or, if a corporate or other entity that is not a natural person, by an officer, managing or general member, or partner authorized to represent the respondent, affirming that the response is true and accurate and does not contain any omissions that would cause the response to be materially misleading.

(5) Notwithstanding any other provisions of this paragraph, a respondent may respond to a Notice of Reasonable Cause by voluntarily consenting to the Bureau's authority to supervise the respondent under 12 U.S.C. 5514 by completing and executing the consent agreement form provided to the respondent with a Notice of Reasonable Cause in accordance with § 1091.103(b).

(c) *Default.* Failure of a respondent to file a response within the time period set forth in paragraph (a) of this section shall constitute a waiver of the respondent's right to respond, and shall, based on the Notice, authorize the Associate Director, without further notice to the respondent, to issue a proposed decision and order as provided in § 1091.108(c)(1) and the Director to issue a decision and order as provided in § 1091.109(a)(1).

(d) *Waiver.* A respondent shall be deemed to have waived the right, at any future stage of an Associate Director's or the Director's consideration of a matter, and in any petition for judicial review of an order issued pursuant to § 1091.109(a)(1), to rely on any argument, record, document, or other information that the respondent does not raise or include in its response.

(e) *No Discovery.* There shall be no discovery in connection with a response.

**§ 1091.106 Supplemental oral response.**

(a) A respondent may request in a response under § 1091.105 the opportunity to present to the Associate Director a supplemental oral response in support of a respondent's assertion that the respondent is not a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.

(b) The conduct of a supplemental oral response shall be subject to the following procedures:

(1) A supplemental oral response shall be, at the respondent's preference, by telephone or in person at the Bureau's headquarters in Washington, DC. If a respondent requests in its written response a supplemental oral response but does not specify whether such response shall be conducted via telephone or in person, the supplemental oral response will be conducted by telephone unless otherwise directed by the Associate Director;

(2) The Associate Director may impose any limitations on the conduct of a supplemental oral response, including but not limited to establishing a time limit for the presentation of a supplemental oral response, and limiting the subjects to be addressed in a supplemental oral response;

(3) There shall be no discovery permitted or witnesses called in connection with a supplemental oral response;

(4) If a respondent is a corporate or other entity, and not a natural person, the respondent shall be represented in any supplemental oral response by:

(i) An officer, managing or general member, or partner authorized to represent the respondent; or

(ii) An attorney in good standing of the bar of the highest court of any State.

(5) If a respondent is a natural person, the respondent shall be represented in any supplemental oral response by:

(i) Himself or herself; or

(ii) An attorney in good standing of the bar of the highest court of any State.

(6) The Associate Director shall cause an audio recording of a supplemental oral response to be made by a court reporter. A respondent may purchase a copy or transcript of the recording at the respondent's own expense.

(c) The initiating official may participate in any supplemental oral response conducted under this section.

(d) The Associate Director shall serve on a respondent, within 14 days after the Associate Director receives the respondent's timely-filed response requesting a supplemental oral response, a notice setting forth the date, time, and general information relating to the conduct of a supplemental oral response. The date of a supplemental oral response shall be scheduled not less than ten days after the date the respondent is served with the notice of supplemental oral response.

(e) The notice of supplemental oral response shall be served on a respondent pursuant to § 1091.107.

(f) The Associate Director shall send a copy of the notice of supplemental oral response to the initiating official.

(g) A respondent's failure to participate in a supplemental oral response scheduled by the Associate Director shall constitute the respondent's waiver of the opportunity to present a supplemental oral response.

**§ 1091.107 Manner of filing and serving papers.**

Unless otherwise specified by the Associate Director or Director, a respondent shall file the response and any other paper with the Executive Secretary at the mailing or electronic address provided by the Bureau, and the Associate Director and Director shall serve any paper, other than a Notice as set forth in § 1091.104, on a respondent, by:

(a) Electronic transmission upon any condition specified by the Associate Director or Director; or

(b) Any of the following methods if a respondent demonstrates electronic filing is not practicable and the Associate Director or Director permits:

(1) Personal delivery;

(2) Delivery through a reliable commercial courier service or overnight delivery service; or

(3) Mailing the papers by U.S. Postal Service First Class, Registered, Certified, or Express Mail.

**§ 1091.108 Recommended determination.**

(a) If a respondent did not voluntarily consent to the Bureau's supervision authority, and did not request the opportunity to present a supplemental oral response, not later than 45 days after receipt of a timely-filed response, or not later than 45 days after the service of a Notice of Reasonable Cause when a respondent fails to file a timely response, the Associate Director shall make a recommended determination whether there is reasonable cause for the Bureau to determine that the respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services which should result in an order subjecting the respondent to the Bureau's authority under 12 U.S.C. 5514(a)(1)(C).

(b) If a respondent did request the opportunity to present a supplemental oral response, not later than 90 days after service of a Notice of Reasonable Cause, the Associate Director shall make a recommended determination whether there is reasonable cause for the Bureau to determine that the respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services which should result in an order subjecting the respondent to the Bureau's authority under 12 U.S.C. 5514(a)(1)(C).

(c) Upon making the recommended determination described in paragraphs (a) or (b) of this section, the Associate Director shall submit to the Director either:

(1) A proposed decision and order that would subject a respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C) if adopted by the Director; or

(2) A proposed notification that a respondent should not be subjected to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C) based on the proceedings. Such a notification shall have no precedential effect and shall not prevent the issuance of another Notice of Reasonable Cause pursuant to either § 1091.102, or the procedures set forth in § 1091.111, at any time, or from issuance of a decision and order based on another Notice recommending that a respondent be subject to the Bureau's authority pursuant to either of those sections.

(d) Any proposed decision and order issued by the Associate Director pursuant to paragraph (c)(1) of this section shall set forth:

(1) A statement that the Associate Director has preliminarily determined based on reasonable cause that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services;

(2) The basis for the Associate Director's determination; and

(3) A proposed order directing that, pursuant to this determination, as of a specified date a respondent shall be subject to the Bureau's supervisory authority under 12 U.S.C. 5514.

(e) The Associate Director shall include with the recommended determination submitted to the Director copies of the following:

(1) The Notice of Reasonable Cause;

(2) The record of service of a Notice of Reasonable Cause;

(3) A respondent's response and any documents, records, or other items filed with the written response;

(4) Any document, record, or other item considered by the Associate Director to be material in making a recommended determination; and

(5) An audio recording of a supplemental oral response, if a supplemental oral response was conducted, and/or a transcript if a transcript was prepared at a respondent's request or if requested by the Director.

(f) The requirement that the Associate Director provide to the Director the items described in paragraph (e) of this section shall confer no substantive rights on a respondent and any omission of an item may be cured by the Associate Director to the extent applicable.

**§ 1091.109 Determination by the Director.**

(a) Not later than 45 days after receipt of the Associate Director's recommended determination, the Director shall, after considering the recommended determination and all documents, records, and other items submitted therewith by the Associate Director, make a determination either adopting without revision, modifying, or rejecting the Associate Director's recommended determination, and shall issue to respondent, with copies to the Associate Director and the initiating official:

(1) A decision and order subjecting the respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C); or

(2) A notification that the Director has determined that the respondent is not subject to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C) as a result of the proceedings. Such notification shall have no precedential effect and shall not prevent the issuance of another Notice of Reasonable Cause pursuant to either § 1091.102, or the procedures set forth in § 1091.111, at any time, or the issuance of an order based on another Notice subjecting the respondent to the Bureau's authority pursuant to either of those sections.

(b) Any decision and order issued by the Director pursuant to paragraph (a)(1) of this section shall include:

(1) A statement that the Director adopts the Associate Director's proposed decision and order without revision as the Director's decision and order, or that the Director rejects or modifies the Associate Director's proposed determination for reasons set forth by the Director;

(2) A statement that the Director has determined that the Bureau has reasonable cause to determine that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services;

(3) The basis for the Director's determination, which may be an adoption of the basis set forth in the Associate Director's proposed decision;

(4) An order directing that, pursuant to this determination, as of a specified date a respondent shall be subject to the Bureau's supervisory authority under 12 U.S.C. 5514 and informing a respondent that the respondent may petition for termination of the Bureau's supervisory authority no sooner than two years from the date of the order, and no more than annually thereafter; and

(5) A copy of the recommended determination issued by the Associate Director.

(c) Only decisional employees may advise and assist the Director in the consideration and disposition of a proceeding under this part.

(d) A decision and order issued pursuant to paragraph (a)(1) of this section shall constitute final agency action under 5 U.S.C. 704.

(e) Any item required to be served on a respondent under this section shall be served pursuant to § 1091.107.

**§ 1091.110 Voluntary consent to Bureau's authority.**

(a) Notwithstanding any other provision, pursuant to a consent agreement agreed to by the Bureau, a person may voluntarily consent to the Bureau's supervisory authority under 12 U.S.C. 5514, and such voluntary consent agreement shall not be subject to any right of judicial review.

(b) The consent agreement of any person, pursuant to paragraph (a) of this section, that specifies the duration of time that such person will be subject to the Bureau's authority under 12 U.S.C. 5514 shall not be eligible for a petition for termination of order pursuant to § 1091.113, and a consent agreement shall state that a respondent entering into a consent agreement waives any right to judicial review of such consent agreement.

**§ 1091.111 Notice and response included in adjudication proceeding otherwise brought by the Bureau.**

(a) Notwithstanding §§ 1091.102 through 1091.106, the Bureau may, in its discretion, provide the notice and opportunity to respond required by 12 U.S.C. 5514(a)(1)(C) in a notice of charges otherwise brought by the Bureau pursuant to 12 CFR 1081.200 and the adjudication proceedings pursuant to part 1081. Also, a person may agree to submit to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C) as part of a consent order entered into in connection with an adjudication proceeding or civil action.

(b) If the Bureau chooses to proceed in the manner described in paragraph (a) of this section, it shall so indicate in the notice of charges, and any order of the Director resulting from the notice of charges shall constitute the order referred to in 12 U.S.C. 5514(a)(1)(C).

(c) If the Bureau proceeds pursuant to paragraph (a) of this section, the provisions of §§ 1091.101 through 1091.110, and 1091.113 through 1091.115 will be inapplicable to such proceeding.

**§ 1091.112 No limitation on relief sought in civil action or administrative adjudication.**

Nothing in this part shall be construed to limit the relief the Bureau may seek in any civil action or administrative adjudication, including but not limited to, seeking an order to have a person deemed subject to the Bureau's supervisory authority under 12 U.S.C. 5514, including for the reasons set forth in 12 U.S.C. 5514(a)(1)(C).

## Subpart C—Post-Determination Procedures

**§ 1091.113 Petition for termination of order.**

(a) Any person subject to an order issued pursuant to § 1091.109(a)(1) may, no sooner than two years after issuance of such an order and no more frequently than annually thereafter, petition the Director for termination of the order.

(b) A petition for termination submitted pursuant to paragraph (a) of this section shall set forth the reasons supporting termination of the order, including any actions taken by a respondent since issuance of the order to address the conduct that led to issuance of the order, and may include any supporting information or evidence that the petitioner believes is relevant to the Director's determination of the matter.

(c) A petition for termination shall be filed by the petitioner with the Executive Secretary at the mailing or electronic address provided by the Bureau.

(d) The Director shall, promptly upon receipt of a petition for termination, send a copy of the same to the initiating official.

(1) The initiating official may, within 30 days of his or her receipt of a copy of a petition for termination, file with the Director a response to the petition stating whether the initiating official recommends that the order be terminated, or modified, or that the petition for termination be denied and the basis for such recommendation.

(2) The initiating official shall serve a copy of the response to a petition for termination on the petitioner pursuant to § 1091.107 at the time of filing it with the Director.

(e) Not later than 90 days after submission of a petition under paragraph (a) of this section, the Director shall issue a written decision either terminating or modifying the order, or denying the petition. If the Director modifies the order or denies the petition, the Director shall explain the basis for his or her decision with respect to the petition and send the written decision to the petitioner and the initiating official.

(1) The Director shall serve the written decision on a petition for termination of order on a respondent pursuant to § 1091.107.

(2) The Director shall send a copy of the written decision on a petition for termination of order to the Associate Director and initiating official promptly upon issuing the written decision.

(3) The decision of the Director made pursuant to paragraph (e) of this section shall constitute final agency action under 5 U.S.C. 704.

## Subpart D—Time Limits and Deadlines

**§ 1091.114 Construction of time limits.**

(a) *General rule.* In computing any period of time prescribed by this part, or by order of the Associate Director or Director, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday as set forth in 5 U.S.C. 6103(a). When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except when the time period within which an act is to be performed is ten days or less, not including any additional time allowed for in paragraph (c) of this section.

(b) *Filing or service of papers.* Filing and service are deemed to be effective:

(1) In the case of personal service or same day commercial courier delivery, upon actual receipt by the person served;

(2) In the case of overnight commercial delivery service, U.S. Postal Service Express Mail delivery, or First Class, Registered, or Certified Mail, upon deposit in or delivery to an appropriate point of collection; or

(3) In the case of electronic transmission, including email, upon transmission.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by U.S. Postal Service First Class, Registered, or Certified Mail, add three calendar days to the prescribed period;

(2) If service is made by Express Mail or overnight delivery service, add one calendar day to the prescribed period; or

(3) If service is made by electronic transmission, add one calendar day to the prescribed period.

**§ 1091.115 Change of time limits and confidentiality of proceedings.**

(a) Except as otherwise provided by law, the Associate Director until the issuance of a recommended determination, or the Director at any time thereafter, at their respective discretion, may extend the time limits prescribed by this part or by any notice or order issued pursuant to this part. Any request for an extension of a time limit by a respondent must be for good cause shown, in writing, and filed with the Associate Director or Director, as appropriate. The mere filing of a written request for an extension does not alleviate a respondent of the obligation to meet an applicable time limit absent written confirmation that an extension has been granted.

(b) Deadlines for action by the initiating official, Associate Director, or the Director established in this part confer no substantive rights on respondents.

(c) In connection with a proceeding under this part, including a petition for termination under § 1091.113, all documents, records or other items submitted by a respondent to the Bureau, all documents prepared by, or on behalf of, or for the use of the Bureau, and any communications between the Bureau and a person, shall be deemed confidential supervisory information under 12 CFR 1070.2(i)(1).

Dated: June 17, 2013.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

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