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## Proclamation 9224 of December 31, 2014

## The President

## National Mentoring Month, 2015

## By the President of the United States of America

## A Proclamation

In a Nation of limitless possibility, every child deserves the chance to unlock his or her potential. When young Americans have the support they need to make the most of themselves, they can achieve their dreams and strengthen our country, which has always moved forward by extending ladders of opportunity to the next generation. Every day, mentors play a vital role in this national mission by helping to broaden the horizons for our daughters and sons. This month, we celebrate these individuals who make it their cause to bring out the best in our young people, and we salute their spirit of service.

Mentors and caring adults serve as essential sources of inspiration, lifting up young people and positioning them to build the America of tomorrow. That is why my Administration continues to expand opportunities for mentoring and support the individuals who enable our future leaders. We are working with businesses to increase apprenticeship programs and connect groups traditionally underrepresented in science, technology, engineering, and math fields with role models in STEM careers. First Lady Michelle Obama's Reach Higher initiative is encouraging campus groups and college students to connect with high schoolers and other near-peers who do not always see themselves completing higher education. Earlier this year, I also launched *My Brother's Keeper*, an initiative that recognizes our responsibility to reach every young person regardless of who they are or where they come from.

Every American shares in the obligation to widen the circle of opportunity for our young people. Our neighbors' children are our children—and our country must show them we care about and value their boundless potential. At the White House, the First Lady and I started mentoring initiatives, pairing local students with accomplished and caring professionals, and I am proud that members of my Administration are leading by example. To find ways to give back in your local community and participate in these critical, life-changing moments, I encourage all Americans to visit [www.Serve.gov/Mentor](http://www.Serve.gov/Mentor).

The sense of dedication displayed by all those who invest their time and energy in mentoring reminds us that if we work together, we can ensure there are no limits to what young Americans can achieve. During National Mentoring Month, we honor all those who give of themselves to guide our young people, and we renew our commitment to realizing a future of opportunity for all.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2015 as National Mentoring Month. I call upon public officials, business and community leaders, educators, and Americans across the country to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of December, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a vertical line through it, and a horizontal line extending to the right.

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## Presidential Documents

Proclamation 9225 of December 31, 2014

### National Slavery and Human Trafficking Prevention Month, 2015

By the President of the United States of America

#### A Proclamation

For more than two centuries, the United States has worked to advance the cause of freedom. Stained from a history of slavery and shaped by ancestors brought to this country in chains, today, America shines as a beacon of hope to people everywhere who cherish liberty and opportunity. Still, our society remains imperfect, and our Nation has more work to do to uphold these values. At home and around the globe, we must continue to fight for human dignity and the inalienable rights of every person.

Today, millions of men, women, and children are victims of human trafficking. This modern-day slavery occurs in countries throughout the world and in communities across our Nation. These victims face a cruelty that has no place in a civilized world: children are made to be soldiers, teenage girls are beaten and forced into prostitution, and migrants are exploited and compelled to work for little or no pay. It is a crime that can take many forms, and one that tears at our social fabric, debases our common humanity, and violates what we stand for as a country and a people.

Founded on the principles of justice and fairness, the United States continues to be a leader in the global movement to end modern-day slavery. We are working to combat human trafficking, prosecute the perpetrators, and help victims recover and rebuild their lives. We have launched national initiatives to help healthcare workers, airline flight crews, and other professionals better identify and provide assistance to victims of trafficking. We are strengthening protections and supporting the development of new tools to prevent and respond to this crime, and increasing access to services that help survivors become self-sufficient. We are also working with our international partners and faith-based organizations to bolster counter-trafficking efforts in countries across the globe.

As we fight to eliminate trafficking, we draw strength from the courage and resolve of generations past—and in the triumphs of the great abolitionists that came before us, we see the promise of our Nation: that even in the face of impossible odds, those who love their country can change it. Every citizen can take action by speaking up and insisting that the clothes they wear, the food they eat, and the products they buy are made free of forced labor. Business and non-profit leaders can ensure their supply chains do not exploit individuals in bondage. And the United States Government will continue to address the underlying forces that push so many into the conditions of modern-day slavery in the first place.

During National Slavery and Human Trafficking Prevention Month, we stand with the survivors, advocates, and organizations dedicated to building a world where our people and our children are not for sale. Together, let us recommit to a society where our sense of justice tells us that we are our brothers' and sisters' keepers, where every person can forge a life equal to their talents and worthy of their dreams.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2015 as National Slavery and Human Trafficking Prevention Month, culminating in the annual celebration of National Freedom Day on February 1. I call upon businesses, national and community organizations, families, and all Americans to recognize the vital role we can play in ending all forms of slavery and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of December, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style. The signature is positioned to the right of the text.

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## Presidential Documents

**Proclamation 9226 of December 31, 2014**

**National Stalking Awareness Month, 2015**

**By the President of the United States of America**

### **A Proclamation**

In every State across our Nation, stalking is a crime. It is unacceptable behavior that violates the most basic principles of respect and decency, infringing on our fundamental right to feel safe and secure. At some point in their lives, 1 in 6 American women will be stalked. This abuse creates distress and takes a profound toll on its victims and our communities. This month, we extend our support to all those who have experienced stalking, and we renew our commitment to shine a light on this injustice.

Stalking is a pattern of unwanted contact—which can include text messages, emails, and phone calls—that causes an individual to fear for their safety or the safety of loved ones. While young women are disproportionately at risk, anyone can be a victim, including children and men. Individuals who are stalked often know the perpetrator, but stalkers can also be acquaintances or strangers. Stalking is a serious offense with significant consequences. It is often detrimental to the physical and emotional well-being of the victim, and some are forced to move or change jobs. This behavior often escalates over time, and is sometimes followed by sexual assault or homicide.

Addressing this hidden crime is part of my Administration's comprehensive strategy to combat violence against women, and stalking is one of the four areas addressed by the Violence Against Women Act. When I proudly signed the reauthorization of this historic law, we bolstered many of its provisions, including expanding safeguards against cyberstalking and protections for immigrants who have been victims of stalking. Across the Federal Government, we are building strong partnerships with those working to break the cycle of this abuse, and we remain dedicated to ending violence against women and men in all its forms.

Our homes, schools, offices, and neighborhoods should be places where Americans feel secure and confident. During National Stalking Awareness Month, we join with the advocates, families, professionals, and survivors to amplify their refrain: If you are a victim of stalking, you are not alone. Together, let us continue to raise awareness of this violence and recommit to being part of the solution.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2015 as National Stalking Awareness Month. I call upon all Americans to recognize the signs of stalking, acknowledge stalking as a serious crime, and urge those affected not to be afraid to speak out or ask for help. Let us also resolve to support victims and survivors, and to create communities that are secure and supportive for all Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of December, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B', a cursive 'a', and a stylized 'O' with a vertical line through it, followed by a horizontal flourish.

[FR Doc. 2015-00077  
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# Rules and Regulations

Federal Register

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Wednesday, January 7, 2015

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2013–1063]

RIN 1625–AA11

#### Regulated Navigation Area; Arthur Kill, NY and NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a Regulated Navigation Area (RNA) on the navigable waters of the Arthur Kill in New York and New Jersey. This RNA will allow the Coast Guard to enforce speed and wake restrictions and limit vessel traffic through the RNA during bridge replacement operations on the Goethals Bridge and during drilling, blasting, and dredging operations in support of the U.S. Army Corps of Engineers channel deepening project, both planned and unforeseen, which could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during construction on the Goethals Bridge and the channel deepening project.

**DATES:** This rule is effective without actual notice from January 7, 2015 until October 31, 2018. For the purposes of enforcement, actual notice will be used from the date the rule was signed, December 2, 2014, until January 7, 2015.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–1063. 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 LT Hannah Eko, Waterways Management, U.S. Coast Guard; telephone 718–354–4114, email [hannah.o.eko@uscg.mil](mailto:hannah.o.eko@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl Collins, 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  
RNA Regulated Navigation Area

#### A. Regulatory History and Information

On September 25, 2013, a Bridge Permit was issued approving the location and plans for new construction of the Goethals Bridge, which spans the Arthur Kill.

On April 14, 2014, we published a Notice of Proposed Rulemaking (NPRM) with respect to this rule (79 FR 20851) entitled Regulated Navigation Area; Arthur Kill, NY and NJ in the **Federal Register**. We received one comment on the proposed rule. The comment was sent on behalf of the American Waterways Operators (AWO), a national trade association for the U.S. tugboat, towboat, and barge industry. AWO made two recommendations concerning the proposed rule.

The Coast Guard also held five navigational safety meetings concerning Arthur Kill 4 (AK–4) dredging and Goethals Bridge construction activities and navigational safety. The last meeting was held July 9, 2014.

No public meeting was requested and none was held.

#### B. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The Goethals Bridge spans the Arthur Kill at mile 11.5. The current structure of the Goethals Bridge will be replaced with a twin span south of the existing bridge. Work on the bridge commenced in December 2013. New westbound construction has been underway since April 2013 and is expected to continue until December 2017. Substantial completion of both bridges is expected to occur in December 2017. Demolition of the main span of the currently existing bridge is expected to occur within the December 2016 to October 2018 timeframe.

Currently, it is unknown whether explosives will be utilized for demolition purposes or whether the existing span will be lowered in increments into barges moored in the Arthur Kill. Final completion of the bridge project is expected to occur in October 2018.

Dredging activities will resume in a portion of the Arthur Kill from December 2014 until December 2015. These activities may potentially involve drilling and underwater blasting of bedrock in the Arthur Kill navigable channel. Dredging operations may encroach on portions of the navigable channel, require the relocation of lateral aids to navigation, and create a reduction in the width of the navigational channel.

The Coast Guard First District Commander has determined that this construction project poses dangers to the maritime public and this rule is necessary to ensure the safe transit of vessels in the area, and to protect all persons, vessels, and the marine environment.

#### C. Discussion of Comments, Changes and the Final Rule

For the reasons discussed above, The Coast Guard is establishing a RNA on the navigable waters of the Arthur Kill from Port Ivory to the charted Graselli High Wires north of Pralls Island from December 2014 through October 2018.

Construction operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, the RNA will limit vessel speed and wake of all vessels operating in the vicinity of the bridge and dredging construction zone. This will be achieved by implementing a five (5)

knot speed limit and “NO WAKE” zone in the vicinity of the construction as well as providing a means to suspend all vessel traffic for emergent situations that pose imminent threat to waterway users in the area. The RNA will also protect vessels desiring to transit the area by ensuring that vessels are only permitted to transit when it is safe to do so.

The Coast Guard may close the RNA described in this rule to all vessel traffic during any circumstance that poses an imminent threat to waterway users operating in the area. Complete waterway closures will be made with as much advanced notice as possible.

Further, the speed limit of five (5) knots will be in effect at all times within the RNA and all vessels must proceed through the area with caution and operate in such a manner as to produce no wake unless a higher minimum speed is necessary to maintain bare steerage. The Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public of the time and duration of any closure of the RNA.

The Coast Guard received one comment during the 60-day NPRM comment period. The comment was authored by a representative of the American Waterway Operators and contained two recommendations. The first recommendation concerned notifying mariners at least 48 hours in advance of waterway closures on the Arthur Kill and ensuring that waterway closures last only as long as needed to ensure safe navigation. The second recommendation requested that the Coast Guard set up a vessel queue system that would allow vessels moving with the flood tide to access the right-of-way in the restricted portion of the Arthur Kill. AWO recommended that Vessel Traffic Service New York (VTSNY) administer the proposed queue system.

The Coast Guard agrees with early notifications and will make every effort to notify mariners 48 hours or more in advance of waterway closures. We participated in five initial planning meetings with the USACE, NY and NJ Port Authorities, harbor and docking pilots, tug boat operators, and construction and dredge contractors between March and July 2014. The results of the meetings determined that there may be times when the Coast Guard will be unable to provide 48 hours notice to the public. However, this waterway is within the VTSNY area and, as such, VTSNY will serve to communicate waterway closures and impacts with as much notice as possible. The Coast Guard’s decision to close the waterway will be influenced

by the dynamic nature of the bridge construction, dredging process, and multitude of construction, drilling, and blasting equipment associated with the project. The associated hazardous conditions necessitate that all mariners comply with this RNA, as the conditions surrounding the construction, drilling, and blasting may change on a daily basis. Moreover, the Coast Guard will continue to meet with the USACE, harbor and docking pilots, tug boat operators, and the contractors to assess the need for a vessel queue system when the dredging and bridge contractors submit work plans to the Coast Guard. All waterway users have 24 hour access to VTSNY for immediate access to the Coast Guard, and there is ample time for the “Harbor Safety, Navigation, and Operations Committee of New York,” which is composed of all waterway users, to address waterway closure or traffic management concerns that may arise. If a vessel queue system is needed, it will be administered on a case-by-case basis by the VTSNY. As such, the Coast Guard made no changes to the rule proposed in the NPRM based on comments received.

#### 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 to be minimal because this RNA only enforces a speed and wake restriction through a limited portion of the Arthur Kill, and will have limited traffic restrictions during operations involving bridge construction and dredging, both planned and unforeseen therefore causing only a minimal delay to a vessel’s transit.

##### 2. Impact on Small Entities

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

entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. 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 would 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 Arthur Kill from December 2014 to October 2018.

The Coast Guard expects no significant economic impact on a substantial number of small entities, as mentioned in the Regulatory Planning and Review section above, because this rule only requires vessels to reduce their speed through a limited portion of the Arthur channel and will have limited traffic restrictions during operations involving bridge construction, both planned and unforeseen therefore causing only a minimal delay to a vessel’s transit.

##### 3. Assistance for Small Entities

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

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

##### 4. Collection of Information

This rule 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.ID, 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 an RNA on portions of the Arthur Kill. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 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. 1226, 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.

■ 2. Add § 165.T01–1063 to read as follows:

#### § 165.T01–1063 Regulated Navigation Area; Arthur Kill, NY and NJ.

(a) *Location.* The following area is a Regulated Navigation Area (RNA): All navigable waters from Port Ivory to Grasselli High Wires north of Pralls Island in the Arthur Kill; bounded in the northeast by a line drawn from position 40°38′43.260″ N, 074°10′47.208″ W; to a point in position 40°38′52.152″ N, 074°10′47.748″ W; and bounded in the southwest by a line drawn from position 40°37′8.940″ N, 074°12′19.116″ W; to a point in position 40°37′03.252″ N, 074°12′02.052″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA.

(2) Any vessel transiting through the RNA must make a direct passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless they are working on the bridge construction. Movement within the RNA is subject to a “Slow-No Wake” speed limit. All vessels may not produce a wake and may not attain speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain bare steeage.

(3) There may be times that the First District Commander or the Captain of the Port (COTP) finds it necessary to close the RNA to vessel traffic. During times of limited closure, persons and vessels may request permission to enter the RNA by contacting the COTP or the COTP’s on-scene representative on VHF–16 or via phone at 718–354–4353.

(4) Any vessels transiting in the RNA must comply with all directions given to them by the COTP or the COTP’s on-scene representative. The “on-scene representative” of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP’s behalf. The on-scene representative may be on a Coast Guard vessel; or other designated craft; or on shore and communicating with a VTSNY Watchstander or vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(5) All other relevant regulations, including but not limited to the Rules of the Road, as codified in 33 CFR subchapter E, Inland Navigational Rules, remain in effect within the RNA and must be strictly followed at all times.

(6) Vessel Movement Reporting System (VMRS) users are prohibited from meeting or overtaking other vessels when transiting alongside an active work area where dredging and drilling equipment are being operated.

(c) *Effective and enforcement period.* This regulation is effective and enforceable 24 hours a day from 12:01 a.m. on December 2, 2014 until 11:59 p.m. on October 31, 2018.

(d) *Notification.* The Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public of the time and duration of any closure of the RNA. Violations of this RNA may be reported to the COTP at 718-354-4353 or on VHF-Channel 16.

Dated: December 2, 2014.

**L.L. Fagan,**

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2014-29856 Filed 1-6-15; 8:45 am]

BILLING CODE 9110-04-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2014-0753; FRL-9921-40-Region 10]

### Approval and Promulgation of Implementation Plans; Alaska: Nonattainment New Source Review

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Alaska State Implementation Plan (SIP) submitted by the Commissioner of the Alaska Department of Environmental Conservation (ADEC) on December 11, 2009, November 29, 2010, December 10, 2012, January 28, 2013, July 1, 2014, and October 24, 2014, to meet Clean Air Act (CAA) requirements. These revisions update Alaska's adoption by reference of the Federal preconstruction permitting regulations for large industrial (major source) facilities located in designated nonattainment areas, referred to as the Nonattainment New Source Review (major NNSR) program. The major NNSR program is designed to ensure that major stationary sources of air pollution are constructed or modified in a manner that is consistent with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

**DATES:** This final rule is effective on February 6, 2015.

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification No. EPA-R10-OAR-2014-0753. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT-150, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen at (206) 553-6706, [deneen.donna@epa.gov](mailto:deneen.donna@epa.gov), or by using the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us" or "our" is used, it is intended to refer to the EPA.

### Table of Contents

- I. Background
- II. Response to Comments
- III. Final Action
- IV. Statutory and Executive Order Reviews

### I. Background

The EPA proposed action on revisions to the Alaska SIP related to major NNSR in a notice of proposed rulemaking published on November 4, 2014 (79 FR 65366). In general, the revisions update the adoption by reference of 40 CFR 51.165 in 18 AAC 50.040(i), which is relied on as part of Alaska's nonattainment area major stationary source permit provisions in 18 AAC 50.311. The revisions were submitted by ADEC on December 11, 2009, November 29, 2010, December 10, 2012, January 28, 2013, July 1, 2014, and October 24, 2014. Please see EPA's November 4, 2014 proposed rulemaking (79 FR 65366) for further explanation of the revisions and the basis for our approval.

### II. Response to Comments

The EPA received one comment letter on the November 4, 2014 (79 FR 65366), proposed rule. The comment letter, submitted by ADEC, states that it supports the EPA's proposed action.

The EPA acknowledges ADEC's support of this action.

### III. Final Action

#### *Provisions the EPA Is Approving and Incorporating by Reference*

Consistent with the discussion and analysis in the proposed rulemaking published on November 4, 2014, the EPA is approving into the SIP at 40 CFR part 52, subpart C, 18 AAC 50.040(i) and 18 AAC 50.990, as in effect on November 9, 2014. Where the same provision has been amended on multiple occasions and submitted in more than one submittal, we are approving the most recently submitted amendment to any particular provision.

### IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 this action does not involve technical standards; and

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 9, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide,

Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: December 23, 2014.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart C—Alaska**

- 2. In § 52.70, the table in paragraph (c) is amended by revising entries “18 AAC 50.040” and “18 AAC 50.990” to read as follows:

**§ 52.70 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED ALASKA REGULATIONS AND STATUTES**

State citation	Title/subject	State effective date	EPA approval date	Explanations
<b>Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50)</b>				
<b>18 AAC 50 Article 1. Ambient Air Quality Management</b>				
* * * * *				
18 AAC 50.040 .....	Federal Standards Adopted by Reference.	11/9/14	1/7/15 ..... [Insert <b>Federal Register</b> citation];	except (a), (b), (c), (d), (e), (g), (h)(21), (j), and (k).
* * * * *				
<b>18 AAC 50 Article 9. General Provisions</b>				
* * * * *				
18 AAC 50.990 .....	Definitions .....	11/9/14	1/7/15 ..... [Insert <b>Federal Register</b> citation].	
* * * * *				

\* \* \* \* \*

[FR Doc. 2014-30956 Filed 1-6-15; 8:45 am]

**BILLING CODE 6560-50-P**

# Proposed Rules

Federal Register

Vol. 80, No. 4

Wednesday, January 7, 2015

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.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2014-0477, FRL-9921-41-Region 10]

### Approval and Promulgation of Implementation Plans; Idaho

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to partially approve the May 22, 2014, State Implementation Plan (SIP) submittal from Idaho to revise the SIP to update the incorporation by reference of Federal air quality regulations into the SIP. In addition, the EPA is proposing to partially disapprove Idaho's incorporation by reference of certain provisions of the Federal prevention of significant deterioration (PSD) permitting rules that have been vacated by a Federal Court. Upon final action, the Idaho SIP would incorporate by reference certain Federal regulations as of July 1, 2013.

**DATES:** Comments must be received on or before February 6, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2014-0477, by any of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *Email*: [R10-Public\\_Comments@epa.gov](mailto:R10-Public_Comments@epa.gov).
- *Mail*: Heather Valdez, EPA Region 10, Office of Air, Waste and Toxics (AWT-150), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery*: EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Heather Valdez, Office of Air, Waste and Toxics, (AWT-150). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information

**Instructions:** Direct your comments to Docket ID No. EPA-R10-OAR-2014-0477. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through [www.regulations.gov](http://www.regulations.gov) your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Heather Valdez at: (206) 553-6220, [valdez.heather@epa.gov](mailto:valdez.heather@epa.gov), or the above EPA, Region 10 address.

## SUPPLEMENTARY INFORMATION:

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

### Table of Contents

- I. Background
- II. Analysis of State Submittal
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  - B. Effect of Court Decisions Vacating and Remanding Certain Federal Rules
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    - 2. PM<sub>2.5</sub> PSD Provisions
    - 3. PSD Deferral of Certain Emissions From Biogenic Sources
    - 4. PSD Greenhouse Gas Tailoring Rule
- III. Proposed Action
- IV. Statutory and Executive Order Reviews

### I. Background

Section 110 of the Clean Air Act (CAA) specifies the general requirements for states to submit SIPs to implement, maintain and enforce the National Ambient Air Quality Standards (NAAQS) and the EPA's actions regarding approval of those SIPs. On May 22, 2014, the State of Idaho (the State) submitted a SIP revision to the EPA to account for regulatory updates adopted by the Idaho Board of Environmental Quality on October 17, 2013. Idaho incorporates by reference (IBR) various portions of Federal regulations codified in the Code of Federal Regulations (CFR) into the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01). Idaho then submits parts of IDAPA 58.01.01 to the EPA for approval into the Federally-approved Idaho SIP (generally those provisions that relate to the criteria pollutants regulated under section 110 of the CAA for which the EPA has promulgated NAAQS or other specific requirements of section 110). To ensure that its rules remain consistent with the EPA requirements, Idaho generally updates the IBR citations in IDAPA 58.01.01 on an annual basis and submits a SIP revision to reflect any changes made to the Federal regulations during that year. Idaho's current SIP includes the approved incorporation by reference of specific Federal regulations, revised as of July 1, 2012, at IDAPA 58.01.01.107 "Incorporation by Reference."

### II. Analysis of State Submittal

#### A. Summary and Analysis of Submittal

On May 22, 2014, the State submitted for approval into the Idaho SIP updates

to the incorporation by reference of specific Federal regulations revised as of July 1, 2013. The submitted provisions are found in IDAPA 58.01.01.107 “Incorporations by Reference.” A description of the submitted provisions and how they meet the requirements of section 110 of the CAA is provided below.

In IDAPA 58.01.01.107.02 “Availability of Reference Materials,” paragraph (b) was revised to include a reference to the State of Idaho statutes. This is an informational provision describing where documents that are incorporated by reference elsewhere in the rules are available. This revision to IDAPA 58.01.01.107.02(b) is consistent with CAA requirements as the revision merely identifies where reference materials can be obtained and does not itself impose any regulatory requirements.

IDAPA 58.01.01.107.03 “Documents Incorporated by Reference” updates the citation dates of specific Federal provisions incorporated by reference. Paragraph (a) incorporates by reference the Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51, with the exception of certain visibility-related provisions, as of July 1, 2013. This updated incorporation by reference of Federal regulations makes paragraph (a) consistent with Federal law. The incorporation by reference date of July 1, 2013, includes the portion of 40 CFR part 51 relating to nonattainment New Source Review (NSR) requirements at 40 CFR 51.165, which is relied on as part of Idaho’s nonattainment area major stationary source permit provisions in IDAPA 58.01.01.204. On January 4, 2013, the U.S. Court of Appeals for the District of Columbia issued a decision related to 40 CFR 51.165. The effect of this decision is discussed below in Section II.B.1. For the reasons above and for the reasons provided in Section II.B.1 relating to 40 CFR 51.165, the EPA proposes to find that paragraph (a) is consistent with CAA requirements.

Paragraph (c) of IDAPA 58.01.01.107.03 incorporates by reference the Approval and Promulgation of Implementation Plans, 40 CFR part 52 subparts A and N and appendices D and E, including the Federal PSD permitting rules in part 52 subpart A at 40 CFR 52.21, as of July 1, 2013. This updated incorporation by reference, except for the incorporation by reference of 40 CFR 52.21(i)(5)(i)(c) (relating to the PM<sub>2.5</sub> significant monitoring level) and 40 CFR 52.21(k)(2) (relating to the PM<sub>2.5</sub> significant impact level), make the Idaho SIP consistent with Federal law.

The excepted provisions, 40 CFR 52.21(i)(5)(i)(c) and 52.21(k)(2), are the subject of a Court decision and the effect of that decision is discussed in Section II.B.2 below. Idaho’s incorporation by reference of 40 CFR 52.21(b)(49)(ii)(a) related to a deferral of permitting requirements from bioenergy and other biogenic stationary sources and 40 CFR 52.21 related to greenhouse gas (GHG) emissions are also the subject of recent court decisions and are discussed in Sections II.B.3 and II.B.4, respectively, below. For the reasons above and for the reasons provided in Section II.B.2, II.B.3 and II.B.4, the EPA proposes to determine that paragraph (c) is consistent with CAA requirements, except for the portion of paragraph (c) that incorporates by reference 40 CFR 52.21(i)(5)(i)(c) and 52.21(k)(2), which the EPA proposes to disapprove as inconsistent with CAA requirements.

Paragraphs (b), (d), (e), and (q) of IDAPA 58.01.01.107.03 incorporate by reference the following provisions revised as of July 1, 2013: (b) National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; (d) Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; (e) Ambient Air Quality Surveillance, 40 CFR part 58; and (q) Determining Conformity of Federal Actions to State or Federal Implementation Plans, 40 CFR part 93, subpart A, sections 93.100 through 93.129, although certain subsections are specifically excluded from the State’s incorporation by reference. The EPA proposes to determine that paragraphs (b), (d), (e), and (q) are consistent with CAA requirements.

### *B. Effect of Court Decisions Vacating and Remanding Certain Federal Rules*

#### 1. PM<sub>2.5</sub> Nonattainment NSR Provisions

On January 4, 2013, the U.S. Court of Appeals for the District of Columbia, in *Natural Resources Defense Council (NRDC) v. EPA*,<sup>1</sup> issued a decision that remanded the EPA’s 2007 and 2008 rules implementing the 1997 PM<sub>2.5</sub> NAAQS. Relevant here, the EPA’s 2008 implementation rule addressed by the Court decision, “Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)” (the 2008 NSR PM<sub>2.5</sub> Rule),<sup>2</sup> promulgated NSR requirements for implementation of PM<sub>2.5</sub> in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). The Court concluded that the EPA had improperly

<sup>1</sup> 706 F.3d 428 (D.C. Cir.).

<sup>2</sup> 73 FR 28321 (May 16, 2008).

based the implementation rule for the 1997 PM<sub>2.5</sub> NAAQS solely upon the requirements of part D, subpart 1 of the CAA, and had failed to address the requirements of part D, subpart 4, which establishes additional provisions for particulate matter nonattainment areas. The Court ordered the EPA to “repromulgate these rules pursuant to subpart 4 consistent with this opinion.” *Id.* at 437. As a result of the Court’s decision, the EPA withdrew its guidance for implementing the 2006 PM<sub>2.5</sub> NAAQS<sup>3</sup> because the guidance was based largely on the remanded rule promulgated to implement the 1997 PM<sub>2.5</sub> NAAQS.<sup>4</sup> In response to the Court decision, on June 2, 2014, the EPA promulgated the Identification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) and 2006 PM<sub>2.5</sub> NAAQS (79 FR 31566). This rule promulgated classifications and deadlines under subpart 4, part D, title I of the CAA for 2006 PM<sub>2.5</sub> nonattainment areas, including the only PM<sub>2.5</sub> nonattainment area in Idaho, Franklin County (Logan UT–ID 2006 PM<sub>2.5</sub> nonattainment area). In light of the EPA’s response to the Court decision, we are proposing to approve into the Idaho SIP Idaho’s incorporation by reference at IDAPA 58.01.01.107.03(a) of the Federal nonattainment NSR requirements at 40 CFR 51.165 for purposes of meeting the subpart 1 requirements. Because the EPA has not yet proposed revisions to the nonattainment NSR permitting requirements in response to the remand, the EPA is not evaluating at this time whether Idaho’s submittal for Franklin County will require additional revisions to satisfy the subpart 4 requirements.<sup>5</sup>

#### 2. PM<sub>2.5</sub> PSD Provisions

As discussed above, IDAPA 58.01.01.107.03(c) incorporates by reference the Federal PSD permitting

<sup>3</sup> Memorandum from Stephen D. Page, Implementation Guidance for the 2006 24-Hour Fine Particulate (PM<sub>2.5</sub>) National Ambient Air Quality Standards (Mar. 2, 2012).

<sup>4</sup> Memorandum from Stephen D. Page, Withdrawal of Implementation Guidance for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (Jun. 6, 2013).

<sup>5</sup> As discussed above, Idaho’s submittal also includes revisions to the Idaho SIP to update the incorporation by reference of the Federal PSD permitting rule at 40 CFR 52.21. Because the requirements of subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 NSR PM<sub>2.5</sub> Rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas (including PSD permitting rules) to be affected by the Court’s decision in *NRDC v. EPA*.

rules at 40 CFR 52.21. The current Idaho SIP incorporates 40 CFR 52.21 by reference as of July 1, 2012. Idaho's submittal updates the incorporation by reference date of the PSD permitting rules to July 1, 2013 and includes revisions to 40 CFR 52.21(i) (relating to the significant monitoring concentration (SMC)) and 40 CFR 52.21(k) (relating to the significant impact level (SIL)) that added a SMC and SIL for PM<sub>2.5</sub> as part of the 2010 PSD PM<sub>2.5</sub> Implementation Rule (October 20, 2010, 75 FR 64864).

On January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*,<sup>6</sup> issued, with respect to the SMC, a judgment that, inter alia, vacated the provisions adding the PM<sub>2.5</sub> SMC to the Federal regulations at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c). In its decision, the Court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for PM<sub>2.5</sub> be included in all PSD permit applications. Thus, although the PM<sub>2.5</sub> SMC was not a required element of a state's PSD program, where a state PSD program contains such a provision and allows issuance of new permits without requiring ambient PM<sub>2.5</sub> monitoring data, such application of the vacated SMC would be inconsistent with the Court's opinion and the requirements of section 165(e)(2) of the CAA.

At the EPA's request, the decision also vacated and remanded to the EPA for further consideration the portions of the 2010 PSD PM<sub>2.5</sub> Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to SILs for PM<sub>2.5</sub>. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for PM<sub>2.5</sub> because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the **Federal Register** publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. We also note that the Court's decision does not affect the PSD increments for PM<sub>2.5</sub> promulgated as part of the 2010 PSD PM<sub>2.5</sub> Implementation Rule. The EPA has amended its regulations to remove the vacated PM<sub>2.5</sub> SILs and SMC provisions from the PSD regulations (December 9, 2013, 78 FR 73698). The EPA will initiate a separate rulemaking in the future regarding the PM<sub>2.5</sub> SILs that will address the Court's remand. In

the meantime, the EPA is advising states to begin preparations to remove the vacated provisions from state PSD regulations.

In response to the vacatur of the EPA regulations as they relate to the PM<sub>2.5</sub> SMC and the PM<sub>2.5</sub> SILs, Idaho stated in the Idaho 2013 IBR Update submittal cover letter dated May, 22, 2014 that the State will not apply either the PM<sub>2.5</sub> SMC provisions at 40 CFR 52.21(i)(5)(i)(c) or the PM<sub>2.5</sub> SIL provisions at 40 CFR 52.21(k)(2) in Idaho's implementation of the PSD program. In addition, the May, 22, 2014, cover letter stated that Idaho intends to remove the vacated provisions to ensure consistency with Federal law as soon as practicable. Therefore, consistent with our action on Idaho's most recent IBR update (March 3, 2014, 79 FR 11712), we are proposing to partially disapprove the Idaho submittal with respect to the incorporation by reference at IDAPA 58.01.01.107.03(c) of the vacated provisions of 40 CFR 52.21 (namely, 40 CFR 52.21(i)(5)(i)(c) and 40 CFR 52.21(k)(2)).

### 3. PSD Deferral of Certain Emissions From Biogenic Sources

In 2011, the EPA revised the definition of "subject to regulation" at 40 CFR 52.21(b)(49)(ii)(a) to defer for three years (until July 21, 2014) PSD permitting requirements to carbon dioxide (CO<sub>2</sub>) emissions from bioenergy and other biogenic stationary sources (Deferral for CO<sub>2</sub> Emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs; Final Rule (July 20, 2011, 76 FR 43490) (Biogenic CO<sub>2</sub> Deferral Rule)). Idaho's update to incorporate by reference the EPA's PSD permitting rules as of July 1, 2013, includes this revision to 40 CFR 52.21(b)(49)(ii)(a).

On July 12, 2013 the U.S. Court of Appeals for the District of Columbia, in *Center for Biological Diversity v. EPA*,<sup>7</sup> vacated the provisions of the Biogenic CO<sub>2</sub> Deferral Rule. While the opportunity to seek rehearing of this D.C. Circuit decision remains open and thus the ultimate disposition of the Federal regulations implementing the Biogenic CO<sub>2</sub> Deferral Rule has not yet been determined, the deferral expired on July 21, 2014, and by its terms is no longer in effect.

### 4. PSD Greenhouse Gas Tailoring Rule

As discussed above, IDAPA 58.01.01.107.03(c) incorporates by reference the Federal PSD permitting rules at 40 CFR 52.21. The current Idaho

SIP incorporates 40 CFR 52.21 by reference as of July 1, 2012. Idaho's submittal updates the incorporation by reference date of the PSD permitting rules to July 1, 2013. Therefore Idaho's submittal includes revisions to 40 CFR 52.21(b)(49)(v) (relating to the application of PSD permitting requirements to GHG emissions) promulgated under the Greenhouse Gas Tailoring Rule (June 3, 2010, 75 FR 31514) (Tailoring Rule).

On June 23, 2014, the United States Supreme Court, in *Utility Air Regulatory Group v. Environmental Protection Agency*,<sup>8</sup> issued a decision addressing the application of PSD permitting requirements to GHG emissions. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or modification thereof) required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action before the U.S. Court of Appeals for the District of Columbia to effectuate the decision, the EPA is not continuing to apply the EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, the EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (e.g. 40 CFR 51.166(b)(48)(v)).

The EPA anticipates a need to revise Federal PSD rules in light of the Supreme Court decision. In addition, the EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to the EPA regulations is expected to be informed by additional legal processes before the D.C. Circuit. The EPA is not expecting states to have revised their existing PSD program regulations at this juncture, before the D.C. Circuit has addressed these issues and before the EPA has revised its

<sup>6</sup> 703 F.3d 458 (D.C. Cir. 2013).

<sup>7</sup> 722 F.3d 401 (D.C. Cir. 2013).

<sup>8</sup> 134 S.Ct. 2427 (2014).

regulations at 40 CFR 51.166 and 52.21. However, the EPA is evaluating PSD program submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

Idaho's existing approved SIP contains the GHG permitting requirements reflected in 40 CFR 52.21, as amended in the Tailoring Rule. As a result, the PSD permitting program in Idaho previously approved by the EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT when sources emit or increase GHGs in the amount of 75,000 tons per year (measured as carbon dioxide equivalent). Although the approved Idaho PSD permitting program may also currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not prevent the EPA from approving this SIP submission. Idaho's May 22, 2014, SIP submission does not add any GHG permitting requirements that are inconsistent with the Supreme Court decision. While Idaho's submission incorporates all of 40 CFR 52.21 for completeness, the submission mostly reincorporates PSD permitting requirements for GHGs that are already in the Idaho SIP.

This revision does add to the Idaho SIP the elements of the EPA's 2012 rule implementing Step 3 of the phase-in of PSD permitting requirements for GHGs described in the Tailoring Rule. 77 FR 41051 (July 12, 2012). This rule became effective on August 13, 2012. Specifically, the incorporation of the Step 3 rule provisions will allow GHG-emitting sources to obtain plantwide applicability limits (PALs) for their GHG emissions on a carbon dioxide equivalent (CO<sub>2</sub>e) basis. The GHG PAL provisions, as currently written, include some provisions that may no longer be appropriate in light of the Supreme Court decision. Since the Supreme Court has determined that sources and modifications may not be defined as "major" solely on the basis of the level of GHGs emitted or increased, PALs for GHGs may no longer have value in some situations where a source might have triggered PSD based on GHG emissions alone. However, PALs for GHGs may still have a role to play in determining whether a modification that triggers PSD for a pollutant other than GHGs should also be subject to BACT for GHGs. These provisions, like the other GHG provisions discussed previously, will likely be revised pending further legal action. However, these provisions do

not add new requirements for sources or modifications that only emit or increase GHGs above the major source threshold or the 75,000 tons per year GHG level in 40 CFR 52.21(b)(49)(iv). Rather, the PALs provisions provide increased flexibility to sources that wish to address their GHG emissions in a PAL. Since this flexibility may still be valuable to sources in at least one context described above, we believe that it is appropriate to approve these provisions into the Idaho SIP at this juncture.

### III. Proposed Action

The EPA is proposing to partially approve the May 22, 2014, submittal from Idaho to update the incorporation by reference of Federal air quality regulations into the SIP. Specifically, we are proposing to approve the revisions to IDAPA 58.01.01.107.02 "Availability of Reference Materials" and IDAPA 58.01.01.107.03 "Incorporations by Reference," except that we are proposing to partially disapprove the revision to IDAPA 58.01.01.107.03(c) as it relates to the incorporation by reference of specific vacated provisions at 40 CFR 52.21 (namely, 40 CFR 52.21(i)(5)(i)(c) and 40 CFR 52.21(k)(2)) for the reasons discussed in Section II.B.2 of this proposal. Upon final action, the Idaho SIP would incorporate by reference specific Federal regulations as of July 1, 2013.

### IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and

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

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

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

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

Dated: December 23, 2014.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 2015-00014 Filed 1-6-15; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2014-0755; FRL-9921-20-Region 10]

#### Approval and Promulgation of Implementation Plans; Washington: Prevention of Significant Deterioration and Visibility Protection

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Washington State Implementation Plan (SIP) that were submitted by the Department of Ecology (Ecology) on January 27, 2014. These revisions implement the preconstruction permitting regulations for large industrial (major source) facilities in attainment and unclassifiable areas, called the Prevention of Significant Deterioration (PSD) program. Currently, the PSD program in Washington is operated under a Federal Implementation Plan (FIP). If finalized, the EPA's proposed approval of Ecology's PSD program would narrow the current FIP to include only those few facilities, emission categories, and geographic areas for which Ecology does not have PSD permitting jurisdiction. The EPA is also proposing to approve Ecology's visibility protection permitting program which overlaps significantly with the PSD program in most cases.

**DATES:** Comments must be received on or before February 6, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2014-0755, by any of the following methods:

A. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

B. *Mail*: Jeff Hunt, EPA Region 10, Office of Air, Waste and Toxics (AWT-150), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

C. *Email*: R10-Public\_Comments@epa.gov.

D. *Hand Delivery*: EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Jeff Hunt, Office of Air, Waste and Toxics, AWT-150. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R10-OAR-2014-0755. The EPA's policy is that all

comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt at (206) 553-0256, *hunt.jeff@epa.gov*, or by using the above EPA, Region 10 address.

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

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#### I. Background for Proposed Action

On January 27, 2014, Ecology submitted revisions to update the general air quality regulations contained in Chapter 173-400 of the Washington Administrative Code (WAC) that apply to sources within Ecology's jurisdiction, including minor new source review, major source nonattainment new source review (major NNSR), PSD, and the visibility protection (visibility) program. On October 3, 2014, the EPA finalized approval of provisions contained in Chapter 173-400 WAC that apply generally to all sources under Ecology's jurisdiction, but stated that we would act separately on the major source-specific permitting programs in a phased approach (79 FR 59653). On November 7, 2014, the EPA finalized the second phase in the series, approving the major NNSR regulations contained in WAC 173-400-800 through 173-400-860, as well as other parts of Chapter 173-400 WAC that support major NNSR (79 FR 66291).

In this proposal, the third and final phase in the series, the EPA is proposing to approve the remainder of Ecology's January 27, 2014 submittal, covering the PSD and visibility requirements for major stationary sources under Ecology's jurisdiction.

Because the State of Washington does not currently have a SIP-approved PSD program, the EPA is currently the Clean Air Act (CAA) PSD permitting authority in the State, although Ecology has issued most CAA PSD permits in the State since 1983 under a delegation agreement with the EPA. See Agreement for Partial Delegation of Source Review under the Federal Prevention of Significant Deterioration (PSD) Regulations by the United States Environmental Protection Agency, Region 10, to the Washington Department of Ecology, dated December 10, 2013 (2013 Delegation Agreement). Approval of Ecology's PSD rules into the SIP will transfer CAA PSD permitting authority from the EPA to Ecology except for those few facilities, emissions categories, and geographic areas for which Ecology does not have permitting jurisdiction, as described in Section IV below. The EPA is also currently the visibility permitting authority in the State although Ecology has issued the visibility permits to sources in attainment or unclassifiable areas under its delegation from the EPA. However, the EPA is currently the only visibility permitting authority for new and modified major stationary sources in nonattainment areas pursuant to 40 CFR 52.2498(b). Approval of Ecology's visibility permitting rules into the SIP will also transfer to Ecology CAA visibility permitting authority, consistent with the exceptions described in Section IV below. The EPA is also proposing to narrow the current PSD FIP contained in 40 CFR 52.2497 and the visibility permitting FIP contained in 40 CFR 52.2498 to be consistent with the scope of this SIP approval, as also described in Section IV below. The EPA will retain an oversight role with respect to Ecology's PSD and visibility permitting program if this SIP approval is finalized as proposed.

## II. Washington SIP Revisions

The specific requirements applicable to SIP-approved PSD programs are set forth in 40 CFR 51.166. The EPA's FIP for implementing PSD in areas where states do not have SIP-approved PSD programs is set forth in 40 CFR 52.21. As explained in more detail below, Ecology has, with limited exceptions, incorporated by reference the EPA's PSD FIP at 40 CFR 52.21 as in effect on August 13, 2012, to meet the requirements of 40 CFR 51.166.

*A. WAC 173-400-110, New Source Review (NSR) for Sources and Portable Sources; WAC 173-400-111, Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources; WAC 173-400-112, Requirements for New Sources in Nonattainment Areas—Review for Compliance With Regulations; and WAC 173-400-113 New Sources in Attainment or Unclassifiable Areas—Review for Compliance With Regulations*

As described in more detail in the EPA's July 10, 2014 proposal (79 FR 39351) and October 3, 2014 final action (79 FR 59653), WAC 173-400-110 through WAC 173-400-113 are the starting points for any source seeking to construct a new source or modify an existing source under Ecology's rules, whether major or minor. Specific provisions in these sections direct sources constructing a "major" source or making a "major modification" to a "major" source in an attainment or unclassifiable area to also comply with the PSD requirements of WAC 173-400-700 through WAC 173-400-750. WAC 173-400-110 through WAC 173-400-113 also require major sources and major modifications to comply with the visibility permitting requirements of WAC 173-400-117 for all areas, including nonattainment areas. See, for example, WAC 173-400-110(1)(d) for PSD and WAC 173-400-111(1)(c) for visibility. As discussed in the EPA's July 2014 proposal, the EPA's review of WAC 173-400-110 through 173-400-113 expressly did not include a determination that these revised regulations meet requirements for approval of a SIP-approved PSD or visibility permitting program. In this action, we are proposing to approve WAC 173-400-110 through 173-400-113 for purposes of implementing the PSD and visibility permitting programs because these provisions require compliance with WAC 173-400-700 through 173-400-750 (which, as discussed below, are consistent with the CAA requirements for a PSD permitting program) and WAC 173-400-117 (which, as discussed below, is consistent with the CAA requirements for visibility).<sup>1</sup>

<sup>1</sup> This proposed approval for PSD purposes is subject to the exceptions and explanations described in the EPA's July 10, 2014 proposal (79 FR 39351) and October 3, 2014 final action (79 FR 59653) of WAC 173-400-110, 173-400-111, and 173-400-113.

*B. WAC 173-400-700, Review of Major Stationary Sources of Air Pollution*

As described in more detail in the EPA's July 10, 2014 proposal and October 3, 2014 final action, Ecology shares permitting jurisdiction with seven local clean air agencies and one other state agency, the Energy Facilities Site Evaluation Council (EFSEC). WAC 173-400-700, in conjunction with WAC 173-400-020, describes how Ecology's regulations apply in the local and EFSEC jurisdictions with respect to PSD. WAC 173-400-700 states that Ecology's PSD regulations contained in WAC 173-400-700 through 173-400-750 apply statewide except where a local clean air agency has received delegation of the Federal PSD program from the EPA or has a SIP-approved PSD program. WAC 173-400-700 also states that Ecology's PSD program, under WAC 173-400-700 through 173-400-750, excludes projects under the jurisdiction of the EFSEC pursuant to Chapter 80.50 Revised Code of Washington (RCW). At this time, no local clean air agencies in Washington have a delegated or SIP-approved PSD program. Therefore, the EPA proposes to approve Ecology's PSD program, contained in WAC 173-400-700 through 173-400-750, as applying statewide except for those facilities under EFSEC jurisdiction and other emission categories and geographic areas for which Ecology does not have jurisdiction, as discussed below in Section IV.C. *Scope of Proposed Action.*

*C. WAC 173-400-710, Definitions*

WAC 173-400-710(a) states that for purposes of WAC 173-400-720 through 173-400-750 the definitions in 40 CFR 52.21(b), adopted by reference in WAC 173-400-720(4)(a)(vi), shall apply, except for the definition of "secondary emissions." In the case of secondary emissions, Ecology uses the general definition contained in WAC 173-400-030, which is consistent with the court decision in *Natural Resources Defense Council v. U.S. EPA*, 725 F.2d 761 (D.C. Cir. 1984) and which the EPA approved as part of the Washington SIP on October 3, 2014 (79 FR 59653). WAC 173-400-710(b) makes clear that the term "source" in WAC 173-400-710 through 173-400-750, and in 40 CFR 52.21 as adopted by reference in Ecology's regulations, is to be interpreted to mean "stationary source" as defined in 40 CFR 52.21(b)(5). Under this definition, a stationary source (or source) does not include emissions resulting directly from an internal combustion engine for transportation purposes, from a nonroad engine, or a

nonroad vehicle as defined in CAA section 216.

There are also several important distinctions between the applicability of Ecology's minor NSR program and its PSD program that arise from the State's definitions of the terms "modification" in WAC 173-400-030(48) and "major modification" in WAC 173-400-710 and -720, which adopt the federal definitions in 40 CFR 52.21(b)(2) for Ecology's PSD program. First, the applicability test for "modifications" under Ecology's minor NSR program is based on the definition of modification in CAA section 111(a)(4) and the EPA's implementing rules at 40 CFR 60.14, specifically, that a modification is an increase in the emission rate of an existing facility in terms of kilograms per hour. See WAC 173-400-030(48). In contrast, the applicability test for Ecology's PSD program is based on a "major modification" which is, consistent with the Federal PSD program, based on a comparison of "baseline actual emissions" before the change to "projected actual emissions" after the change in terms of tons per year. See WAC 173-400-710(a) and 400-173-720(4)(a)(iv), which adopt by reference the definitions in 40 CFR 52.21(b)(2). Thus, for any physical or operational change at an existing stationary source, regulated sources and permitting authorities will need to calculate emission changes in terms of both kilograms per hour and tons per year to determine whether changes are subject to minor NSR, PSD, or both. Second, under Ecology's minor NSR program, new source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. See WAC 173-400-110(1)(d) ("New source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification."). In contrast, under Ecology's PSD program, as under the Federal PSD program, Ecology must determine whether the sum of increases in emissions from new and modified units is "significant" and if so, whether there is a net significant emissions increase from all contemporaneous emissions increases and decreases at the major stationary source. See WAC 173-400-110(1)(d) ("Review of a major modification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.") and WAC 173-400-720

(adopting by reference 40 CFR 52.21(a)(2), 52.21(b)(2), and 52.21(b)(3)).

The EPA reviewed Ecology's submission and is proposing to approve the definitions contained in WAC 173-400-710 as consistent with the CAA requirements for a SIP-approved PSD program.

#### D. WAC 173-400-720, *Prevention of Significant Deterioration (PSD)*

WAC 173-400-720 generally incorporates by reference the Federal PSD program contained in 40 CFR 52.21, in effect as of August 13, 2012. Exceptions to the incorporation by reference are listed in WAC 173-400-720(4)(b). First, WAC 173-400-720(4)(b)(i) clarifies when use of the word "Administrator" as part of the incorporation by reference refers to Ecology versus those specific provisions where "Administrator" continues to refer to the EPA Administrator. Second, WAC 173-400-720(4)(b)(ii) excludes the PSD Class I area variance provisions contained in 40 CFR 52.21(p)(5) through (8), making the Ecology program more stringent than the Federal PSD program. WAC 173-400-720(4)(b)(ii) also reflects Ecology's use of the state public participation procedures in WAC 173-400-740, *PSD Permitting Public Involvement Requirements* rather than incorporating by reference the Federal public participation requirements in 40 CFR 52.21(q). Third, WAC 173-400-720(4)(b)(iii)(A) reflects the size threshold in CAA section 169(1) for municipal waste incinerators of 50 tons of refuse per day, rather than incorporating by reference the threshold contained in 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(h) of 250 tons of refuse per day, which has not been revised in the EPA's regulations to reflect the CAA statutory change. Fourth, WAC 173-400-720(4)(b)(iii)(B) modifies the definition of "significant" contained in 40 CFR 52.21(b)(23)(i) to include a threshold for ozone depleting substances of 100 tons per year consistent with EPA guidance. See, e.g., Letter dated March 19, 1998 from John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards, to Mr. Kevin Tubbs, Director of Environmental Technology, American Standard. Fifth, WAC 173-400-720(4)(b)(iii)(D) and (E) modify the incorporation by reference of 40 CFR 52.21(r) *Source Obligation* to reflect state reporting requirements which are more stringent than the Federal PSD program. Sixth, WAC 173-400-720(4)(b)(iii)(F) through (J) modify the incorporation by reference of 40 CFR 52.21(aa) *Actuals PALs* to reflect state procedures but make no changes less stringent than the Federal PSD program.

Lastly, in WAC 173-400-720(4)(b)(iv) Ecology does not incorporate by reference 40 CFR 52.21(r)(2) because state construction time limitation procedures consistent with the Federal PSD program are contained in WAC 173-400-730, *Prevention of Significant Deterioration Application Processing Procedures*. The EPA reviewed these exceptions to the incorporation by reference of the Federal regulations and is proposing to approve them as consistent with the CAA.

In addition to these exceptions to Ecology's incorporation by reference of 40 CFR 52.21, two other issues merit further discussion. First, in response to recent court decisions, Ecology has not included in, or has withdrawn from, its SIP submittal, incorporation by reference of 40 CFR 52.21(i)(5)(i)(c), 52.21(k)(2), and 52.21(b)(49)(v). These provisions, therefore, are not before the EPA for approval and would not be part of the Washington SIP if this action is finalized. Please refer to Section III below for a detailed discussion of the court decisions and why the exclusion of these provisions from Ecology's SIP-approved PSD program is consistent with CAA requirements.

Second, WAC 173-400-720(4)(b)(iii)(C) contains an inadvertent typographical error. Ecology intended to reference the concentrations listed in WAC 173-400-116(3) rather than WAC 173-400-116(2). To avoid confusion, the EPA is excluding WAC 173-400-720(4)(b)(iii)(C) from our proposed approval. However, exclusion of WAC 173-400-720(4)(b)(iii)(C) from the SIP has no substantive effect because it was merely a pointer to the provisions of WAC 173-400-116(3) which are consistent with the CAA and proposed for approval into the SIP, as discussed in Section II.H below. Ecology has advised the EPA correction of this error will be made as soon as practicable.

In addition to incorporating by reference pertinent portions of 40 CFR 52.21, WAC 173-400-720 also contains provisions relating to enforcement authority. Subparagraph (3) provides that both Ecology and any local air permitting authority with jurisdiction over a source are authorized to enforce the requirement to apply for a PSD permit if one is required and the conditions of a PSD permit. The EPA is proposing to approve WAC 173-400-720 as consistent with the CAA requirements for a SIP-approved PSD program.

*E. WAC 173-400-730, Prevention of Significant Deterioration Application Processing Procedures*

This section contains Ecology's permit application and processing procedures. These procedures are based on the EPA requirements contained in 40 CFR 51.166(q) and includes requirements for the processing of permit applications, completeness determinations, issuance of final permits, and permit appeals. This section also includes procedures for permit extensions. As discussed above, Ecology has excluded from adoption by reference in WAC 173-400-720 the extension provision of 40 CFR 52.21(r)(2). That provision authorizes the EPA to grant extensions to the 18-month construction time limitation in 40 CFR 52.21(r)(2) "upon a satisfactory showing that an extension is justified," but that provision does not provide any specific criteria or required process that must be satisfied before the EPA can exercise its discretion to determine that a permit extension should be granted. The EPA has recently issued guidance for the EPA and states with delegated PSD programs to clarify the EPA's views on what constitutes an adequate justification for an extension of the 18-month timeframe under 40 CFR 52.21(r)(2) for commencing construction of a source that has been issued a PSD permit. See Memorandum from Stephen D. Page, Director of EPA's Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region 1-10, Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2), dated January 31, 2014 (Extension Guidance).

Similar to the Federal PSD regulations at 40 CFR 52.21(r)(2), Ecology's PSD regulations provide that approval to construct or modify a major stationary source becomes invalid if construction is not commenced within eighteen months of the effective date of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. Ecology has also included in WAC 173-400-730(5)(b) provisions setting forth the criteria and procedures that apply to sources requesting and Ecology in granting extensions to the 18-month time period. These provisions are generally consistent with, but in some respects more stringent than, EPA's Extension Guidance. The EPA reviewed Ecology's permit application processing procedures, including the extension provisions, and is proposing to approve them as consistent with the CAA.

*F. WAC 173-400-740, PSD Permitting Public Involvement Requirements and WAC 173-400-171, Public Notice and Opportunity for Public Comment*

WAC 173-400-740 sets out the public participation procedures for Ecology's PSD program based on the EPA requirements contained in 40 CFR 51.166(q). The SIP-approved provisions of WAC 173-400-171, which apply to Ecology minor source and major NNSR permitting actions, do not apply to permits issued under the PSD program. Instead, WAC 173-400-171(1)(a) refers all actions regulated by WAC 173-400-700 through 173-400-750 to the public participation procedures of WAC 173-400-740. That regulation requires Ecology to, among other things, provide an opportunity for public comment and hearing, make relevant information regarding a PSD permit application and Ecology's preliminary determination on an application available to the public, send a copy of the notice of public comment to the applicant, the EPA, and other identified entities, consider all timely public comments in issuing a final determination, and provide notice of the final determination to specified entities.

WAC 173-400-171 does apply, however, to any visibility-related elements for permits subject to major NNSR requirements under WAC 173-400-800 through WAC 173-400-860. The EPA is proposing to find that WAC 173-400-740 and WAC 173-400-171 meet the CAA requirements for public participation for both the PSD and visibility permitting programs.

*G. Section 173-400-750, Revisions to PSD Permits*

WAC 173-400-750 contains procedures for revisions to PSD permits. Under this regulation, except in the case of certain categories of revisions identified as "administrative," revisions to PSD permits are subject to the same public participation requirements that apply to initial issuance of PSD permits. In addition, prior to revising a PSD permit, Ecology must find, among other things, that no ambient air quality standard or PSD increment will be exceeded as a result of the change, the change will not adversely impact the ability of Ecology to determine compliance with an emissions standard, and the revised PSD permit will continue to require Best Available Control Technology (BACT) for each new or modified emission unit approved by the original PSD permit. Revisions that qualify as "administrative" under Ecology's regulation are subject to the same

substantive requirements as non-administrative revisions but are not subject to Ecology's public involvement requirements. The changes Ecology has characterized as administrative are similar to the changes the EPA has characterized as administrative or minor under the Title V permit program and for which public notice and comment is not required. See 40 CFR 70.7(d) and (e)(2).

Neither the EPA's PSD FIP at 40 CFR 52.21, nor the EPA's regulations for SIP-approved PSD programs at 40 CFR 51.166, has explicit provisions for revisions to PSD permits. The authority to revise permits, however, is a necessary function of administering a permitting program, and Ecology's regulations contain appropriate safeguards on such revisions. The EPA reviewed WAC 173-400-750 and is proposing to approve it as consistent with the CAA.

*H. WAC 173-400-116, Increment Protection*

WAC 173-400-116 establishes Ecology's PSD increment protection criteria. In particular, WAC 173-400-116(3) establishes the exclusions from increment consumption allowed under 40 CFR 51.166(f). These exclusions include concentrations of particulate matter, PM<sub>10</sub> or PM<sub>2.5</sub> attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by a revision to the SIP approved by the EPA, if certain criteria are met. All three of these exclusions mirror the language contained in 40 CFR 51.166. Therefore, the EPA is proposing to approve WAC 173-400-116 as consistent with the CAA.

*I. WAC 173-400-117, Special Protection Requirements for Federal Class I Areas*

WAC 173-400-117 consolidates in one section many of the requirements for new or modified major sources that would impact Federal Class I areas, including the visibility permitting program. This includes the air quality related values (including visibility) requirements that support implementation of 40 CFR 52.21(p)(1) through (4) for PSD actions in attainment and unclassifiable areas, as

incorporated by reference in WAC 173–400–720. WAC 173–400–117 also includes the new source review visibility permitting requirements of 40 CFR 51.307 that cover all areas, including attainment, unclassifiable, and nonattainment areas. The EPA reviewed WAC 173–400–117 and has determined that these provisions are consistent with the requirements for state plans in 40 CFR 51.166(p) and 40 CFR 51.307. Therefore, the EPA proposes to approve WAC 173–400–117 as applying statewide except for those facilities under EFSEC jurisdiction and other emission categories and geographic areas for which Ecology does not have jurisdiction, as discussed below in Section IV.C. *Scope of Proposed Action*.

#### J. Personnel, Funding, and Authority

Section 110(a)(2)(E)(i) of the CAA requires that states have adequate personnel, funding, and authority under state law to carry out a SIP. Ecology's authority under state law to carry out the PSD program is discussed above. With respect to personnel and funding, Ecology has been issuing CAA PSD permits under a full or partial delegation agreement with the EPA since 1983. The staff of engineers and air quality modelers who supported Ecology in its issuance of PSD permits under a delegation agreement with the EPA will continue to support Ecology's issuance of PSD permits under a SIP-approved PSD program. The EPA therefore proposes to find that Ecology has adequate personnel, funding, and authority to implement the PSD program in Washington.

### III. Effect of Recent Court Decisions Vacating and Remanding Certain Federal Rules

#### A. *Sierra Club v. EPA*

As discussed in Section II above, Ecology's PSD program generally incorporates by reference the Federal PSD permitting provisions in 40 CFR 52.21, in effect as of August 13, 2012. This version of 40 CFR 52.21 includes 40 CFR 52.21(i) (relating to the significant monitoring concentration (SMC)) and 40 CFR 52.21(k) (relating to the significant impact level (SIL)) that added a SMC and SIL for fine particulate matter as part of the EPA's final rule *Prevention of Significant Deterioration for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels and Significant Monitoring Concentration* (2010 PSD PM<sub>2.5</sub> Implementation Rule) (75 FR 64864, October 20, 2010).

On January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*, 703 F.3d 458 (D.C. Cir. 2013), issued, with respect to the SMC, a judgment that, inter alia, vacated the provisions adding the PM<sub>2.5</sub> SMC to the Federal regulations at 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c). In its decision, the Court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for PM<sub>2.5</sub> be included in all PSD permit applications. Thus, although the PM<sub>2.5</sub> SMC was not a required element of a state's PSD program, where a state PSD program contains such a provision and allows issuance of new permits without requiring ambient PM<sub>2.5</sub> monitoring data, such application of the vacated SMC would be inconsistent with the Court's decision and the requirements of section 165(e)(2) of the CAA.

At the EPA's request, the decision also vacated and remanded to the EPA for further consideration the portions of the 2010 PSD PM<sub>2.5</sub> Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to SILs for PM<sub>2.5</sub>. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for PM<sub>2.5</sub> because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the **Federal Register** publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. We also note that the Court's decision does not affect the PSD increments for PM<sub>2.5</sub> promulgated as part of the 2010 PSD PM<sub>2.5</sub> Implementation Rule. The EPA recently amended its regulations to remove the vacated PM<sub>2.5</sub> SILs and SMC provisions from the PSD regulations (78 FR 73698, December 9, 2013). The EPA will initiate a separate rulemaking in the future regarding the PM<sub>2.5</sub> SILs that will address the Court's remand. In the meantime, the EPA is advising states to begin preparations to remove the vacated provisions from state PSD regulations.

In response to the vacatur of the EPA regulations as they relate to the PM<sub>2.5</sub> SMC and the PM<sub>2.5</sub> SILs, Washington's January 27, 2014 submittal clarified that Ecology was not including those vacated provisions for approval into the SIP, nor will Ecology apply either the PM<sub>2.5</sub> SMC provisions at 40 CFR 52.21(i)(5)(i)(c) or the PM<sub>2.5</sub> SIL provisions at 40 CFR 52.21(k)(2) in implementation of its PSD

program. In addition, the submittal states that Ecology intends to remove the vacated provisions to ensure consistency with Federal law as soon as practicable. Therefore, the EPA proposes to determine that Ecology's January 27, 2014 SIP submittal is consistent with CAA requirements with respect to PM<sub>2.5</sub> SILs and SMC.

#### B. *Utility Air Regulatory Group v. EPA*

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to greenhouse gas (GHG) emissions. See *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or major modification thereof) required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of BACT. In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply the EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, the EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (e.g. 40 CFR 51.166(b)(48)(v) and the analogous definition in 40 CFR 52.21(b)(49)(v) for the Federal PSD program). The EPA anticipates a need to revise Federal PSD rules in light of the Supreme Court's decision. In addition, the EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to EPA regulations and state PSD program approvals are expected to be informed by additional legal process in Federal court.

On September 5, 2014, Ecology submitted a letter withdrawing from its January 27, 2014 submittal the portion of WAC 173–400–720(4)(a)(vi) that incorporates 40 CFR 52.21(b)(49)(v) by reference. Ecology notes in its letter that it was not including this provision for

approval into the SIP to align with the Supreme Court decision and to prevent delay in the EPA’s proposed action on Ecology’s SIP submittal.

Ecology’s letter does not discuss the fact that, because it adopted EPA’s PSD regulations as of August 13, 2012, its rules include the elements of the EPA’s 2012 rule implementing Step 3 of the phase-in of PSD permitting requirements for greenhouse gases described in the Tailoring Rule, which became effective on August 13, 2012 (77 FR 41051, July 12, 2012). The incorporation of the Step 3 rule provisions into Washington’s SIP will allow GHG-emitting sources to obtain plantwide applicability limits (PALs) for their GHG emissions on a carbon dioxide equivalent (CO<sub>2</sub>e) basis. The Federal GHG PAL provisions, as currently written, include some provisions that may no longer be appropriate in light of the Supreme Court decision. Because the Supreme Court has determined that sources and modifications may not be defined as “major” solely on the basis of the level of greenhouse gases emitted or increased, PALs for greenhouse gases may no longer have value in some

situations where a source might have triggered PSD based on greenhouse gas emissions alone. However, PALs for GHGs may still have a role in determining whether a modification that triggers PSD for a pollutant other than greenhouse gases should also be subject to BACT for greenhouse gases. These provisions, like the other GHG provisions discussed previously, will likely be revised pending further legal action. However, these provisions do not add new requirements for sources or modifications that only emit or increase greenhouse gases above the major source threshold or the 75,000 tons per year (tpy) greenhouse gas level in 40 CFR 52.21(b)(49)(iv). Rather, the PALs provisions provide increased flexibility to sources that choose to address their GHG emissions in a PAL. Because this flexibility may still be valuable to sources in at least one context described above, we believe that it is appropriate to approve these provisions into the Washington SIP at this point in time. The EPA is therefore proposing to determine that Ecology’s SIP revision meets the necessary PSD requirements at this time, consistent with the Supreme Court’s decision.

**IV. The EPA’s Proposed Action**

Consistent with the discussion above, the EPA proposes to approve the PSD and visibility permitting regulations submitted by Ecology on January 27, 2014. This action is the third and final in a series acting on all remaining elements contained in Ecology’s January 27, 2014 submittal. The previous two actions consisted of the EPA’s October 3, 2014 (79 FR 59653) final approval of general provisions that apply to all air pollution sources and the EPA’s November 7, 2014 (79 FR 66291) final approval of requirements that implement major source NNSR.

*A. Rules To Approve Into the SIP*

The EPA proposes to approve into Washington’s SIP at 40 CFR part 52, subpart WW, the Ecology regulations listed in the table below. The EPA also proposes to determine that the general air quality regulations contained WAC 173–400–110, WAC 173–400–111, WAC 173–400–112, WAC 173–400–113, and WAC 173–400–171 also meet the EPA’s requirements for PSD and visibility permitting and are approved for such purposes.<sup>2</sup>

**WASHINGTON STATE DEPARTMENT OF ECOLOGY REGULATIONS FOR PROPOSED APPROVAL**

State citation	Title/subject	State effective date	Explanation
<b>Chapter 173–400 WAC, General Regulations for Air Pollution Sources</b>			
173–400–700 .....	Review of Major Stationary Sources of Air Pollution.	4/1/11	
173–400–710 .....	Definitions .....	12/29/12	
173–400–720 .....	Prevention of Significant Deterioration (PSD) .....	12/29/12	Except: 173–400–720(4)(a)(i-iv); 173–400–720(4)(b)(iii)(C); and 173–400–720(4)(a)(vi) with respect to the incorporation by reference of the text in 40 CFR 52.21(b)(49)(v), 52.21(i)(5)(i), and 52.21(k)(2).
173–400–730 .....	Prevention of Significant Deterioration Application Processing Procedures.	12/29/12	
173–400–740 .....	PSD Permitting Public Involvement Requirements.	12/29/12	
173–400–750 .....	Revisions to PSD Permits .....	12/29/12	Except: 173–400–750(2) second sentence.
173–400–116 .....	Increment Protection .....	9/10/11	
173–400–117 .....	Special Protection Requirements for Federal Class I Areas.	12/29/12	

*B. Transfer of Existing EPA-Issued PSD Permits*

In a letter dated October 24, 2014, Ecology requested approval to exercise its authority to fully administer the PSD program with respect to those sources under Ecology’s permitting jurisdiction that have existing PSD permits issued by the EPA since August 7, 1977. This would include authority to conduct

general administration of these existing permits, authority to process and issue any and all subsequent PSD permit actions relating to such permits (e.g., modifications, amendments, or revisions of any nature), and authority to enforce such permits. Since October 1, 1983, Ecology has had full or partial delegation of the PSD permitting program under the FIP. Therefore, most

of the EPA permits subject to proposed transfer were also issued under state authority. For those permits issued solely by the EPA prior to delegation (August 7, 1977 to October 1, 1983), Ecology has also demonstrated adequate authority to enforce and modify these permits. Concurrent with our approval of Ecology’s PSD program into the SIP, we are proposing that the EPA-issued

<sup>2</sup> As discussed above, this proposed approval of these regulations for PSD purposes is subject to the

exceptions and explanations described in the EPA’s July 10, 2014 proposal (79 FR 39351) and October

3, 2014 final action (79 FR 59653) of these regulations.

permits would be transferred to Ecology. The EPA will retain authority to administer any PSD permits issued by the EPA in Washington prior to August 7, 1977.

### C. Scope of Proposed Action

#### 1. WAC 173–400–700 Through 173–400–750

Under WAC 173–400–700, Ecology’s PSD regulations contained in WAC 173–400–700 through 173–400–750 apply statewide except where a local clean air agency has received delegation of the Federal PSD program from the EPA or has a SIP-approved PSD program. At this time, no local clean air agencies have a delegated or SIP-approved PSD program. The EPA is therefore approving Ecology’s regulations contained in WAC 173–400–700 through 173–400–750 to apply statewide, except for the three situations described below. For these facilities, emission categories, and geographic areas, the PSD FIP at 40 CFR 52.21 will continue to apply and the EPA will retain responsibility for issuing permits affecting such sources.

##### a. Sources Under EFSEC’s Jurisdiction

By statute, Ecology does not have authority for sources under the jurisdiction of EFSEC. See Chapter 80.50 RCW. Therefore, the EPA’s proposed approval of Ecology’s PSD program, under WAC 173–400–700 through 173–400–750, excludes projects under the jurisdiction of EFSEC. Such sources will continue to be subject to the PSD FIP in 40 CFR 52.21 until such time that EFSEC’s PSD rules are approved into the SIP.

##### b. Carbon Dioxide Emissions From Industrial Combustion of Biomass

Under a provision contained in RCW 70.235.020, *Greenhouse Gas Emissions Reductions—Reporting Requirements*, Ecology is statutorily barred from regulating certain greenhouse gas emissions under PSD. Specifically, RCW 70.235.020(3) states, “[e]xcept for purposes of reporting, emissions of carbon dioxide from industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, and wood residuals shall not be considered a greenhouse gas as long as the region’s silvicultural sequestration capacity is maintained or increased.” Under the restrictions of this state statute, if the source of carbon dioxide (CO<sub>2</sub>) emissions is subject to PSD because it is major for another regulated NSR pollutant, Ecology is prohibited from issuing a PSD permit regulating CO<sub>2</sub> emissions. Therefore, if

the EPA takes final action on this proposal to approve Ecology’s PSD regulations into the SIP, Ecology will be responsible for issuing PSD permits under the SIP for all pollutants except CO<sub>2</sub> at such sources and the EPA will retain its role as the primary authority for issuing PSD permits for CO<sub>2</sub> emissions from such sources under 40 CFR 52.21. PSD permitting of CO<sub>2</sub> emissions from such sources is also excluded from the 2013 Delegation Agreement.

##### c. Sources in Indian Country

The EPA is also excluding from the scope of this proposed approval of Ecology’s PSD program all Indian reservations in the State, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation (also known as the 1873 Survey Area), and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area and the EPA is therefore proposing to approve Ecology’s PSD regulations into the SIP with respect to such lands.

##### d. Scope of PSD FIP in Washington

Consistent with the limitations on the scope of the EPA’s proposed approval of WAC 173–400–700 through 173–400–750 in the Washington SIP, the EPA is proposing to retain, but significantly narrow, the scope of the current PSD FIP in 40 CFR 52.2497. The EPA’s Federal PSD permitting rules will continue to apply to facilities subject to the jurisdiction of the Energy Facilities Site Evaluation Council; carbon dioxide emissions from facilities with industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products and wood residuals; and facilities located within Indian reservations in Washington (except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation) and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In addition, the EPA’s PSD rules will continue to apply to sources subject to PSD permits issued by the EPA prior to August 7, 1977, but only with respect to the general administration of any such permits still in effect (*e.g.*, modifications, amendments, or revisions of any nature).

#### 2. WAC 173–400–116 and 173–400–117

With respect to the EPA’s proposed approval of WAC 173–400–116 and WAC 173–400–117, the SIP-approved provisions of WAC 173–400–020 govern jurisdictional applicability for those sections. WAC 173–400–020 states, “[t]he provisions of this chapter shall apply statewide, except for specific subsections where a local authority has adopted and implemented corresponding local rules that apply only to sources subject to local jurisdiction as provided under RCW 70.94.141 and 70.94.331.” Because Ecology will be the only authority in Washington with a SIP-approved PSD program that would implement WAC 173–400–116, *Increment Protection*, the EPA’s proposed approval will apply statewide. Similarly, the scope of the EPA’s proposed approval of WAC 173–400–117, *Special Protection Requirements for Federal Class I Areas*, applies statewide for PSD permits issued by Ecology under WAC 173–400–700 through 173–400–750. However, for visibility-related elements associated with permits issued under the major NNSR program, the applicability of WAC 173–400–117 is more complicated because local clean air agencies have the authority under state law to have alternative, but no less stringent, permitting requirements. Therefore, consistent with the EPA’s November 7, 2014 approval of Ecology’s major NNSR program, the EPA’s proposed approval of WAC 173–400–117, as it relates to permits issues under WAC 173–400–800 through 173–400–860, is limited to only those counties or sources where the Department of Ecology has direct jurisdiction. The counties where Ecology has direct jurisdiction are: Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman Counties. The EPA also notes that under the SIP-approved provisions of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012, Ecology has statewide, direct jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants. The EPA is therefore also approving WAC 173–400–117 in all areas of the state under Ecology’s jurisdiction for those source categories.

##### a. Scope of Visibility FIP in Washington

Consistent with the limitations on the scope of the EPA’s approval of Ecology’s major NNSR program, the EPA is proposing to retain, but significantly narrow, the scope of the current

visibility FIP in 40 CFR 52.2498. The EPA's Federal visibility new source review rules will continue to apply to facilities subject to the jurisdiction of the Energy Facilities Site Evaluation Council; sources subject to the jurisdiction of local air authorities; and facilities located within Indian reservations in Washington (except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation) and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

#### D. The EPA's Oversight Role

In approving state new source review rules into SIPs, the EPA has a responsibility to ensure that all states properly implement their SIP-approved preconstruction permitting programs. The EPA's approval of Ecology's PSD rules does not divest the EPA of the responsibility to continue appropriate oversight to ensure that permits issued by Ecology are consistent with the requirements of the CAA, Federal regulations, and the SIP. The EPA's authority to oversee permit program implementation is set forth in sections 113, 167, and 505(b) of the CAA. For example, section 167 provides that the EPA shall issue administrative orders, initiate civil actions, or take whatever other action may be necessary to prevent the construction or modification of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever the EPA finds that a state "is not acting in compliance with" any requirement or prohibition of the CAA regarding the construction of new sources or modification of existing sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever the EPA finds that a person is in violation of an applicable implementation plan.

In making judgments as to what constitutes compliance with the CAA and regulations issued thereunder, the EPA looks to (among other sources) its prior interpretations regarding those statutory and regulatory requirements and policies for implementing them. It follows that state actions implementing the Federal CAA that do not conform to the CAA may lead to potential oversight action by the EPA.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. As discussed above, the SIP is not approved to apply in Indian country located in the state, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation (also known as the 1873 Survey Area), or any other area where the EPA or an Indian tribe has demonstrated that a tribe has

jurisdiction. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated February 25, 2014. The EPA did not receive a request for consultation.

#### List of Subjects in 40 CFR Part 52

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

Dated: December 18, 2014.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

[FR Doc. 2014-30716 Filed 1-6-15; 8:45 am]

**BILLING CODE 6560-50-P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

[EPA-HQ-OPPT-2014-0760; FRL-9919-23]

RIN 2070-AB27

### Proposed Significant New Use Rule on Certain Chemical Substances

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 13 chemical substances which were the subject of premanufacture notices (PMNs). This action would require persons who intend to manufacture (including import) or process any of the chemical substances for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit the activity before it occurs.

**DATES:** Comments must be received on or before March 9, 2015.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2014-0760, 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 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>.

**FOR FURTHER INFORMATION CONTACT:** For technical information contact: Kenneth Moss, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 564-9232; email address: [moss.kenneth@epa.gov](mailto:moss.kenneth@epa.gov).

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. 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:

- Manufacturers (including importers) or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemical substances subject to a final SNUR must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or

intend to export a chemical substance that is the subject of this final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

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

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

2. *Tips for preparing your comments*. When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

##### II. Background

###### A. What action is the agency taking?

EPA is proposing these SNURs under TSCA section 5(a)(2) for 13 chemical substances which were the subject of PMNs P-13-270, P-13-365, P-13-392, P-13-393, P-13-471, P-13-563, P-13-617, P-13-618, P-13-619, P-14-60, P-14-267, P-14-268, and P-14-478. These SNURs would require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity. In the **Federal Register** publications of February 12, 2014 (79 FR 8273) (FRL-9903-70), July 8, 2014 (79 FR 38464) (FRL-9911-05), and July 9, 2014 (79 FR 39268) (FRL-9910-01), EPA issued direct final SNURs on ten of these 13 chemical substances, which are the subject of PMNs P-13-365, P-13-392, P-13-393, P-13-471, P-13-270, P-13-563, P-13-617, P-13-618, P-13-619, and P-14-60 in accordance with the procedures at § 721.160(c)(3)(i). EPA received notices of intent to submit adverse comments on these SNURs. Therefore, as required by § 721.160(c)(3)(ii), EPA removed the

direct final SNURs in separate final rules published in the **Federal Register** of April 14, 2014 (71 FR 20800) (FRL-9909-25) and September 4, 2014 (79 FR 52563) (FRL-9915-69), and is now issuing this proposed rule on these ten chemical substances. The records for the direct final SNURs on these ten chemical substances were established as dockets EPA-HQ-OPPT-2013-0739, EPA-HQ-OPPT-2014-0166, and EPA-HQ-OPPT-2014-0277. Those records include information considered by the Agency in developing the direct final rule. Adverse comments received regarding these substances and the direct final rule are discussed in Unit IV. This proposed rule also includes three SNURs for the three chemicals which are the subject of PMNs, P-14-267, P-14-268, and P-14-478 and for which there has not been any previous rulemaking. The record for the SNURs on these three chemicals was established as docket EPA-HQ-OPPT-2014-0760. That record includes information considered by the Agency in developing these three proposed SNURs.

###### B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use. Persons who must report are described in § 721.5.

###### C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by

TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

### III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, taking into consideration the four bulleted TSCA section 5(a)(2) factors listed in this unit.

### IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for 13 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name.
- Chemical Abstracts Service (CAS) Registry number (assigned for non-confidential chemical identities).
- Public comments and EPA's response to comments on the ten direct final SNURs subject to PMNs, P-13-365, P-13-392, P-13-393, P-13-471, P-13-270, P-13-563, P-13-617, P-13-618, P-13-619, and P-14-60.
- Tests recommended by EPA to provide sufficient information to

evaluate the chemical substance (see Unit VII. for more information).

- CFR citation assigned in the regulatory text section of this proposed rule.

The regulatory text section of this proposed rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (*i.e.*, limits on manufacture volume) and other uses designated in this proposed rule, may be claimed as CBI.

#### PMN Number P-13-270

*Chemical name:* Aromatic dibenzoate (generic).

*CAS number:* Claimed confidential.

*Public comment:* A notice of intent to adversely comment has been submitted.

*EPA response:* EPA awaits the adverse comment during the open comment period for this notice of proposed rule-making.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance is as a catalyst component. Based on structural activity relationship (SAR) analysis of test data on analogous esters, EPA predicts chronic toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. Based on uses described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that should there be any new use of the substance resulting in releases to surface waters exceeding 1 ppb significant adverse environmental effects could occur. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

*Recommended testing:* EPA has determined that the results of a sediment-water chironomid life-cycle toxicity test using spiked water or spiked sediment (OECD Test Guideline 233); a hydrolysis test (OECD Test Guideline 111); and a Zahn-Wellens inherent biodegradation test (OECD Test Guideline 302B) would help characterize the potential for environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substances and mixtures (OECD Test Guideline 23) be followed to facilitate solubility in the test media, because of the PMN substance's low water solubility.

*CFR citation:* 40 CFR 721.10735.

#### PMN Number P-13-365

*Chemical name:* MDI modified polyalkene glycols (generic).

*CAS number:* Not available.

1. *Public comment:* One commenter claimed SNUR requirements associated with P-13-365 for respiratory protection, record-keeping, and hazard communication are difficult to understand and implement and they add another layer of complexity for potential customers. Customers are likely to choose existing adhesive system chemicals with no or fewer SNUR requirements which may have greater risk potential to avoid having to comply with the SNUR requirements of P-13-365 and similar new chemicals.

1. *EPA response:* The proposed SNUR does not contain significant new use reporting requirements pertaining to hazard communication. EPA has issued numerous SNURs with similar recordkeeping and worker protection requirements that other manufacturers and processors have complied with and implemented. The comment period for the proposed rule is an opportunity to provide more detail on specific issues or challenges posed by the proposed SNUR reporting requirements, as well as potential suggestions for EPA to better clarify those requirements. Unless EPA receives specific, quantitative information that demonstrates the chemical substances subject to these proposed SNURs exhibit a lower potential for the hazards and risks described in the proposed SNUR or that they will specifically replace a chemical substance with a higher potential for hazards and risks, EPA would expect to issue the SNUR as proposed to provide the Agency with the opportunity to review any new uses for potential unreasonable risks. As described in the Agency's ongoing Action Plan for MDI and TDI, diisocyanates are well-known dermal and inhalation sensitizers in the workplace and have been documented to cause asthma, lung damage, and in severe cases, fatal reactions. EPA is concerned about potential health effects that may result from exposures of consumers or self-employed workers while using products containing uncured (unreacted) MDI and TDI and its related polyisocyanates (*e.g.*, spray-applied foam sealants, adhesives, and coatings) or incidental exposures to the general population while such products are used in or around buildings including homes or schools. While workers may already be using protective controls in occupational settings, due to the nature of the potential risk posed by these chemicals, EPA believes it is prudent to emphasize its concern

through respiratory protection requirements where there is potential for inhalation exposure, in addition to proposing significant new uses such as consumer use and application method. Accordingly, the regulatory action for new diisocyanates reflects EPA's policy of consistent treatment of the entire class of potentially hazardous chemicals, regardless of their statutory status as "new" or "existing" chemicals. EPA continues to work to lessen the apparent inequity between regulations of new and existing chemicals.

**2. Public comment:** The same commenter questioned whether EPA's basis for adverse human health concerns stem from the residual diisocyanate monomer or the P-13-365 substance. The P-13-365 substance is not expected to be volatile under any use.

**2. EPA response:** The basis for EPA's health concern is for the P-13-365 substance which includes the presence of any residual diisocyanate monomer. In addition, EPA finds that there are unreacted isocyanate groups in the polymer and that there is a significant percentage of the polymer with molecular weight below 1,000. EPA agrees that the higher molecular weight components of the P-13-365 substance are not expected to be volatile. The residual diisocyanate monomer is expected to be volatile and lower molecular components could be volatile resulting in a higher potential for exposure.

**3. Public comment:** The same commenter proposes that instead of recommending the 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) to characterize the human health effects of the P-13-365 substance, EPA should consider a Differential Scanning Calorimetric or Thermogravimetric Analysis of the PMN substance to assess vaporization potential. The 90-day inhalation toxicity test would require delivery of the PMN substance as a mist or aerosol which the associated SNUR prohibits. In addition, the results of the test may be heavily influenced by the residual diisocyanate and not exhibit effects from the PMN substance itself.

**3. EPA response:** In the "Recommended testing" section, the 90-day inhalation toxicity and the dermal sensitization tests, are listed as an appropriate way to characterize potential health effects. EPA will consider any other testing, data, or information that would be relevant to assessing potential health effects. The proposed SNUR would require notification if a method was used that generates a mist or aerosol. Conducting the 90-day inhalation toxicity test could

address the potential lung effects and respiratory sensitization if a significant new use notice was submitted to EPA. As stated in the response to comment 2, EPA is concerned about the health effects of any residual monomer as well as unreacted isocyanate groups on the polymer.

**Basis for action:** The PMN states that the generic (non-confidential) use of the substance will be as an adhesive component. Based on test data on analogous diisocyanates, EPA identified concerns for dermal and respiratory sensitization, and lung and mucous membrane irritation effects. For the use described in the PMN, EPA does not expect significant occupational or any consumer inhalation exposure due to the use of adequate personal protective equipment and because the substance is not applied using a method that generates a vapor, mist, or aerosol nor is it used in a consumer product. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator (with eye/face protection, when dermal and/or ocular exposure is likely) with an APF of at least 10, where there is a potential for inhalation exposure; any use of the substance in consumer products; or any use of the substance involving an application method that generates a vapor, mist, or aerosol, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

**Recommended testing:** EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

**CFR citation:** 40 CFR 721.10717.

**PMN Number P-13-392**

**Chemical name:** Acrylic acid esters polymers, reaction products with polyisocyanate (generic).

**CAS number:** Not available.

**Public comment:** A notice of intent to adversely comment has been submitted.

**EPA response:** EPA awaits the adverse comment during the open comment period for this notice of proposed rule-making.

**Basis for action:** The PMN states that the generic (non-confidential) use of the substance will be for wood, plastic, and automotive paint material. Based on test data on analogous diisocyanates, EPA

identified concerns for dermal and respiratory sensitization, lung and mucous membrane irritation, and lung effects if inhaled based on the low molecular weight isocyanates. As described in the PMN, worker inhalation exposure is not expected and dermal exposure will be minimal due to the use of adequate personal protective equipment and consumer exposure is not expected because the substance will not be used in consumer products. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator (with eye/face protection, when dermal and/or ocular exposure is likely) with an APF of at least 10, where there is a potential for inhalation exposure, or any use of the PMN substance in a consumer product, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

**Recommended testing:** EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

**CFR citation:** 40 CFR 721.10719.

**PMN Number P-13-393**

**Chemical name:** 1,3-Benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 1,4-dimethyl 1,4-benzenedicarboxylate, 2,2-dimethyl-1,3-propanediol, dodecanedioic acid, 1,2-ethanediol, hexanedioic acid, 1,6-hexanediol, alkyl diol ester and aromatic isocyanate (generic).

**CAS number:** Not available.

**Public comment:** A notice of intent to adversely comment has been submitted.

**EPA response:** EPA awaits the adverse comment during the open comment period for this notice of proposed rule-making.

**Basis for action:** The PMN states that the generic (non-confidential) use of the substance will be as an industrial adhesive. Based on test data on analogous diisocyanates, the Agency identified concerns for dermal and respiratory sensitization, lung and mucous membrane irritation, and lung effects if inhaled based on the low molecular weight isocyanates. For the use described in the PMN, EPA does not expect significant occupational or any consumer inhalation exposure due to the use of adequate personal protective

equipment and because the substance is not applied using a method that generates a vapor, mist, or aerosol nor is the substance used in a consumer product. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator (with eye/face protection, when dermal and/or ocular exposure is likely) with an APF of at least 10, where there is a potential for inhalation exposure; any use of the substance in consumer products; or any use of the substance involving an application method that generates a vapor, mist, or aerosol, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

**Recommended testing:** EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

*CFR citation:* 40 CFR 721.10720.

*PMN Number P-13-471*

**Chemical name:** Methylene diisocyanate polymer with polypropylene glycol and diols (generic).

**CAS number:** Not available.

**Public comment:** A notice of intent to adversely comment has been submitted.

**EPA response:** EPA awaits the adverse comment during the open comment period for this notice of proposed rule-making.

**Basis for action:** The PMN states that the generic (non-confidential) use of the substance will be as an industrial adhesive. Based on test data on analogous diisocyanates, EPA identified concerns for oncogenicity, mutagenicity, respiratory and dermal sensitization, and lung and mucous membrane irritation. As described in the PMN, worker inhalation exposure is not expected and dermal exposure will be minimal due to the use of adequate personal protective equipment, and consumer exposure is not expected because the substance will not be used in consumer products. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator (with eye/face protection, when dermal and/or ocular exposure is likely) with

an APF of at least 10, where there is a potential for inhalation exposure or the use of the substance in a consumer product, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

**Recommended testing:** EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600), a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance, and a carcinogenicity test (OPPTS Test Guideline 870.4200) would help characterize the human health effects of the PMN substance.

*CFR citation:* 40 CFR 721.10723.

*PMN Number P-13-563*

**Chemical name:** Propylene glycol, alpha isocyanate, omega silane (generic).

**CAS number:** Claimed confidential.

**Public comment:** A notice of intent to adversely comment has been submitted.

**EPA response:** EPA awaits the adverse comment during the open comment period for this notice of proposed rule-making.

**Basis for action:** The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate for polyurethane polymers. Based on test data on analogous diisocyanates, EPA identified concerns for oncogenicity, mutagenicity, respiratory and dermal sensitization and lung and mucous membrane irritation. For the use described in the PMN, EPA does not expect significant occupational or any consumer exposure. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator (with eye/face protection, when dermal and/or ocular exposure is likely) with an APF of at least 10, where there is a potential for inhalation exposure; any use other than as an intermediate; or any use of the substance in consumer products, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

**Recommended testing:** EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600); a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465); and a carcinogenicity test (OPPTS Test Guideline 870.4200) would help

characterize the human health effects of the PMN substance.

*CFR citation:* 40 CFR 721.10741.

*PMN Numbers P-13-617, P-13-618, and P-13-619*

**Chemical names:** (P-13-617) Aromatic dicarboxylic acid polymer with alkanediol, alkyl alkyl-2-alkenoate, 1,4-dialkyl aromatic dicarboxylate, alkanedioic acid, alkanediol, .alpha.-hydro.-omega.-hydroxypoly[oxy(alkylalkanedyl)], hydroxyalkyl 2-alkyl-2-alkenoate, aromatic diisocyanate, alkyl-2-alkyl-2-alkenoate and 2-alkyl-2-alkenoic acid (generic), (P-13-618) Alkanedioic acid, polymer with alkyl 2-alkyl-2-alkenoate, alkanedioic acid, alkanediol, .alpha.-hydro.-omega.-hydroxypoly[oxy(alkyl-1 2-alkanediyl)], hydroxyalkyl 2-alkyl-2-alkenoate, aromatic diisocyanate, alkyl 2-alkyl-2-alkenoate and 2-alkyl-2-alkenoic acid (generic); and (P-13-619) Alkanedioic acid, polymer with alkyl alkylalkanoate, alkanedioic acid, alkanediol, .alpha.-hydro.-omega.-hydroxypoly[oxy(alkyl-1,2-alkanediyl)], aromatic diisocyanate, alkyl alkylalkanoate and alkyl-alkenoic acid (generic).

**CAS numbers:** Claimed confidential.

1. **Public comment:** The commenter (identity confidential) had concerns about the respirators listed as NIOSH-certified respirators with an APF of at least 10 meeting the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

The commenter argues these listed respirators have, in fact, APFs ranging from 25 to 1,000 and not 10 as required.

1. **EPA response:** The proposed SNUR would require notification if workers who are reasonably likely to be exposed to the PMN substance by inhalation did not use a NIOSH certified respirator with an APF of at least 10. Workers who are exposed may use respirators with an APF higher than 10. As noted in the response to the comment on P-13-365, isocyanates are known dermal and respiratory sensitizers and known to cause other health effects. Thus, EPA requires respirators to provide protection from all potential exposures. Dermal exposures to isocyanates can also possibly cause respiratory

exposures. EPA has modified language in the preamble language to indicate that respirators that provide dermal (face/eyes) protection are required if dermal and/or ocular exposures are likely. Consequently, respirators with a higher APF are also indicated because respirators with an APF of 10 do not provide the desired dermal protection. The respirators listed were examples of respirators that meet the requirements of the SNUR. In the proposed regulatory text, EPA has now also included a respirator that has an APF of 10 and does not protect against dermal or ocular exposures for scenarios where neither dermal nor ocular exposures are likely: NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister incorporating N100, R100, or P100 filters.

2. *Public comment:* The same commenter provided data that shows that diphenylmethane diisocyanate (MDI), “spills when modeled reached the [threshold limit value] TLV concentration 3.8 ft at 38 C (after) 10 h had elapsed (and) the [permissible exposure limit] PEL at 38 C reached 2.2 ft after 10h,” and that “MDI diffuses slowly from the spill and remains close to the surface of the spill.” The commenter concludes, “It appears unlikely that respiratory protection would be required to prevent excessive employee exposure to MDI vapors emitted from the spill.” The commenter contends the use of this data as a surrogate for P-13-617, P-13-618, and P-13-619 is conservative because the average molecular weight of the individual PMNs is much larger than the 4-4'-MDI used in this data.

2. *EPA response:* EPA acknowledges that this could be the type of data used to determine if a worker is reasonably likely to be exposed to the PMN substance. However, it does not address every scenario where workers are reasonably likely to be exposed. EPA is proposing the SNUR to use the notice and comment process to receive and evaluate more fully the described data. EPA will then respond to this comment in more detail in the final rule along with any additional comments on this topic that are received during the notice and comment process.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substances will be as an adhesive. Based on test data on analogous diisocyanates, EPA identified concerns for dermal and respiratory sensitization. For the use described in the PMN, EPA does not expect significant occupational or any

consumer inhalation exposure as the substances are not applied using a method that generates a vapor, mist, or aerosol, nor are they used in a consumer product. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator (with eye/face protection, when dermal and/or ocular exposure is likely) with an APF of at least 10, where there is a potential for inhalation exposure; any use in consumer products; or any use of the substances involving an application method that generates a vapor, mist, or aerosol may cause serious health effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(3)(ii).

*Recommended testing:* EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substances.

*CFR citation:* 40 CFR 721.10742 (P-13-617); 40 CFR 721.10743 (P-03-618) and 40 CFR 721.10744 (P-13-619).

*PMN Number P-14-60*

*Chemical name:* 1,1'-methylenebis[isocyanatobenzene], polymer with polycarboxylic acids in alkane polyols (generic).

*CAS number:* Claimed confidential.

*Public comment:* A notice of intent to adversely comment has been submitted.

*EPA response:* EPA awaits the adverse comment during the open comment period for this notice of proposed rule-making.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance will be as a coating component. Based on test data on analogous diisocyanates, EPA identified concerns for dermal and respiratory sensitization. As described in the PMN, worker exposure will be minimal due to the use of adequate personal protective equipment, and EPA does not expect consumer exposure as the substance is not used in a consumer product. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator (with eye/face protection, when dermal and/or ocular exposure is likely) with an APF of at least 10, where there is a potential for inhalation exposure or any use of the

substance in consumer products may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

*Recommended testing:* EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

*CFR citation:* 40 CFR 721.10762.

*PMN Numbers P-14-267 and P-14-268*

*Chemical name:* (P-14-267) Poly(oxy-1,2-ethanediyl), -[ (3-isocyanatomethylphenyl)amino] carbonyl]—methoxy- and (P-14-268) Carbamic acid, N-(3-isocyanatomethylphenyl)-, 2-[2-(2-butoxyethoxy)ethoxy]ethyl ester.

*CAS numbers:* (P-14-267) 51247-55-3 and (P-14-268) 304855-14-9.

*Basis for action:* The PMNs state that the generic (non-confidential) use of the substances will be as an intermediate. Based on test data on analogous isocyanates, EPA identified concerns for respiratory and dermal sensitization, and lung and mucous membrane irritation. In addition, the Agency identified concerns for oncogenicity and mutagenicity based on analog test data. For the use described in the PMNs, EPA does not expect significant occupational dermal or inhalation exposure, and does not expect consumer exposure as the PMNs are not used in consumer products. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator (with eye/face protection, when dermal and/or ocular exposure is likely) with an APF of at least 10, where there is a potential for inhalation exposure; any use in consumer products; or any use of the substances involving an application method that generates a vapor, mist, or aerosol may cause serious health effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

*Recommended testing:* EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600), a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465), and a carcinogenicity test (OPPTS Test Guideline 870.4200) would help characterize the human health effects of the PMN substance.

*CFR citation: 40 CFR 721.10790 (P-14-267) and 40 CFR 721.10791 (P-14-268).*

*PMN Number P-14-478*

**Chemical name:** Carbonic acid, dimethyl ester, polymer with 1,4-diisocyanatobenzene, 1,6-hexanediol and 1,5-pentanediol.

**CAS numbers:** 1558862-08-0.

**Basis for action:** The PMN states that the substance will be used to make thermoplastic polyurethanes. Based on test data on analogous diisocyanates, EPA identified concerns for lung effects and irritation to mucous membranes, and for respiratory and dermal sensitization. As described in the PMN, EPA does not expect significant occupational dermal or inhalation exposure due to use of adequate personal protective equipment; and the substance is applied by a method that does not generate a vapor, mist, or aerosol. Further, consumer exposures are not expected as the PMN substance is not used in consumer products. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator (with eye/face protection, when dermal and/or ocular exposure is likely) with an APF of at least 10, where there is a potential for inhalation exposure; any use of the substance involving an application method that generates a vapor, mist, or aerosol; or any use in consumer products may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

**Recommended testing:** EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

*CFR Citation: 40 CFR 721.10792.*

## V. Rationale and Objectives of the Proposed Rule

### A. Rationale

For these 13 PMNs subject to these proposed SNURs, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met. For additional discussion of the rationale for the SNURs on these chemical substances, see Units II. and IV. of the proposed rule.

### B. Objectives

EPA is proposing these SNURs for specific chemical substances that have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this proposed rule:

- EPA will receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA section 5(e), 5(f), 6, or 7.
- EPA will ensure that all manufacturers and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at <http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html>.

### VI. Applicability of the Proposed Rule to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this proposed rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. The identities for 10 of the 13 chemical substances subject to this proposed rule have been claimed as confidential and

EPA has received no post-PMN bona fide submissions (per 40 CFR 720.25 and § 721.11). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this proposed rule are ongoing.

Therefore, EPA designates January 7, 2015 as the cutoff date for determining whether the new use is ongoing. Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires. If such a person met the conditions of advance compliance under § 721.45(h), the person would be considered exempt from the requirements of the SNUR. Consult the **Federal Register** document of April 24, 1990 (55 FR 17376) for a more detailed discussion of the cutoff date for ongoing uses.

### VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. 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." The OECD test guidelines are available from the OECD Bookshop at <http://www.oecdbookshop.org> or [sourceoecd](http://www.sourceoecd.org) at <http://www.sourceoecd.org>.

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

#### VIII. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and § 721.25. E-PMN software is available electronically at <http://www.epa.gov/opptintr/newchems>.

#### IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances which were the subject of PMNs P–13–270, P–13–365, P–13–392, P–13–393, P–13–471, P–13–563, P–13–617, P–13–618, P–13–619, and P–14–60, during the development of the direct final rules. EPA's complete economic analyses associated with these ten PMNs are available in the docket under docket ID numbers EPA–HQ–OPPT–2013–0739, EPA–HQ–OPPT–2014–0166, and EPA–HQ–OPPT–2014–0277. EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances which were the subject of PMNs P–14–267, P–14–268, and P–14–478. EPA's complete economic analysis associated with these three PMNs is available in the docket

under docket ID number EPA–HQ–OPPT–2014–0760.

#### X. Statutory and Executive Order Reviews

##### A. Executive Order 12866

This proposed rule would establish SNURs for 13 chemical substances that were the subject of PMNs and a TSCA section 5(e) consent order. 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).

##### B. Paperwork Reduction Act (PRA)

According to PRA, 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

##### C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial

number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
2. The SNUR submitted by any small entity would not cost significantly more than \$8,300.

A copy of that certification is available in the docket for this proposed rule.

This proposed rule is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit IX., and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than \$8,300.

Therefore, the promulgation of these SNURs would not have a significant economic impact on a substantial number of small entities.

##### D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government would be impacted by this proposed rule. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

##### E. Executive Order 13132

This action would not have a substantial direct effect on 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, entitled “Federalism” (64 FR 43255, August 10, 1999).

##### F. Executive Order 13175

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly nor uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the

requirements of Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

#### G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

#### H. Executive Order 13211

This proposed 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), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

#### I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action would not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), would not apply to this action.

#### J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

#### List of Subjects

##### 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 20, 2014.

**Maria J. Doa,**

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

#### PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add § 721.10735 to subpart E to read as follows:

#### § 721.10735 Aromatic dibenzoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as aromatic dibenzoate (PMN P-13-270) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 3. Add § 721.10717 to subpart E to read as follows:

#### § 721.10717 MDI modified polyalkene glycols (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as MDI modified polyalkene glycols (PMN P-13-365) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii) and (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister incorporating N100, R100, or P100 filters (for scenarios where neither dermal nor ocular exposure is likely).

(B) NIOSH-certified power air-purifying respirator with a hood or

helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters (for scenarios where dermal and/or ocular exposure is also likely).

(C) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet (for scenarios where dermal and/or ocular exposure is also likely).

(D) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece (for scenarios where dermal and/or ocular exposure is also likely).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 4. Add § 721.10719 to subpart E to read as follows:

#### § 721.10719 Acrylic acid esters polymers, reaction products with polyisocyanate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as acrylic acid esters polymers, reaction products with polyisocyanate (PMN P-13-392) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following NIOSH-certified respirators with an APF of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister

incorporating N100, R100, or P100 filters (for scenarios where neither dermal nor ocular exposure is likely).

(B) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters (for scenarios where dermal and/or ocular exposure is also likely).

(C) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet (for scenarios where dermal and/or ocular exposure is also likely).

(D) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece (for scenarios where dermal and/or ocular exposure is also likely).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 5. Add § 721.10720 to subpart E to read as follows:

**§ 721.10720 1,3-Benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 1,4-dimethyl 1,4-benzenedicarboxylate, 2,2-dimethyl-1,3-propanediol, dodecanedioic acid, 1,2-ethanediol, hexanedioic acid, 1,6-hexanediol, alkyl diol ester and aromatic isocyanate (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as 1,3-Benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 1,4-dimethyl 1,4-benzenedicarboxylate, 2,2-dimethyl-1,3-propanediol, dodecanedioic acid, 1,2-ethanediol, hexanedioic acid, 1,6-hexanediol, alkyl diol ester and aromatic isocyanate (PMN P-13-393) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or

confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister incorporating N100, R100, or P100 filters (for scenarios where neither dermal nor ocular exposure is likely).

(B) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters (for scenarios where dermal and/or ocular exposure is also likely).

(C) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet (for scenarios where dermal and/or ocular exposure is also likely).

(D) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece (for scenarios where dermal and/or ocular exposure is also likely).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 6. Add § 721.10723 to subpart E to read as follows:

**§ 721.10723 Methylene diisocyanate polymer with polypropylene glycol and diols (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as methylene diisocyanate polymer with polypropylene glycol and diols (PMN P-13-471) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(i), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following NIOSH-certified respirators with an APF of at least 10 meet the requirements of § 721.63(a)(4).

(A) NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister incorporating N100, R100, or P100 filters (for scenarios where neither dermal nor ocular exposure is likely).

(B) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters (for scenarios where dermal and/or ocular exposure is also likely).

(C) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet (for scenarios where dermal and/or ocular exposure is also likely).

(D) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece (for scenarios where dermal and/or ocular exposure is also likely).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 7. Add § 721.10741 to subpart E to read as follows:

**§ 721.10741 Polyalkylene glycol, alpha isocyanate, omega silane (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as polyalkylene glycol, alpha isocyanate, omega silane (PMN P-13-

563) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4).

(A) NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister incorporating N100, R100, or P100 filters (for scenarios where neither dermal nor ocular exposure is likely).

(B) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters (for scenarios where dermal and/or ocular exposure is also likely).

(C) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet (for scenarios where dermal and/or ocular exposure is also likely).

(D) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece (for scenarios where dermal and/or ocular exposure is also likely).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 8. Add § 721.10742 to subpart E to read as follows:

**§ 721.10742 Aromatic dicarboxylic acid polymer with alkanediol, alkyl alkyl-2-alkenoate, 1,4-dialkyl aromatic dicarboxylate, alkanedioic acid, alkanedioic acid, alkanediol, .alpha.-hydro.-omega.-hydroxypoly[oxy(alkyl-alkanediyl)], hydroxyalkyl 2-alkyl-2-alkenoate, aromatic diisocyanate, alkyl 2-alkyl-2-alkenoate and 2-alkyl-2-alkenoic acid (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as aromatic dicarboxylic acid polymer with alkanediol, alkyl alkyl-2-alkenoate, 1,4-dialkyl aromatic dicarboxylate, alkanedioic acid, alkanedioic acid, alkanediol, .alpha.-hydro.-omega.-hydroxypoly[oxy(alkyl-alkanediyl)], hydroxyalkyl 2-alkyl-2-alkenoate, aromatic diisocyanate, alkyl 2-alkyl-2-alkenoate and 2-alkyl-2-alkenoic acid (PMN P-13-617) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4).

(A) NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister incorporating N100, R100, or P100 filters (for scenarios where neither dermal nor ocular exposure is likely).

(B) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters (for scenarios where dermal and/or ocular exposure is also likely).

(C) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet (for scenarios where dermal and/or ocular exposure is also likely).

(D) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece (for scenarios where dermal and/or ocular exposure is also likely).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 9. Add § 721.10743 to subpart E to read as follows:

**§ 721.10743 Alkanedioic acid, polymer with alkyl 2-alkyl-2-alkenoate, alkanedioic acid, alkanediol, .alpha.-hydro.-omega.-hydroxypoly[oxy(alkyl-1 2-alkanediyl)], hydroxyalkyl 2-alkyl-2-alkenoate, aromatic diisocyanate, alkyl 2-alkyl-2-alkenoate and 2-alkyl-2-alkenoic acid (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkanedioic acid, polymer with alkyl 2-alkyl-2-alkenoate, alkanedioic acid, alkanediol, .alpha.-hydro.-omega.-hydroxypoly[oxy(alkyl-1 2-alkanediyl)], hydroxyalkyl 2-alkyl-2-alkenoate, aromatic diisocyanate, alkyl 2-alkyl-2-alkenoate and 2-alkyl-2-alkenoic acid (PMN P-13-618) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4).

(A) NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister incorporating N100, R100, or P100 filters (for scenarios where neither dermal nor ocular exposure is likely).

(B) NIOSH-certified power air-purifying respirator with a hood or

helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters (for scenarios where dermal and/or ocular exposure is also likely).

(C) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet (for scenarios where dermal and/or ocular exposure is also likely).

(D) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece (for scenarios where dermal and/or ocular exposure is also likely).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 10. Add § 721.10744 to subpart E to read as follows:

**§ 721.10744 Alkanedioic acid, polymer with alkyl alkyl-alkenoate, alkanedioic acid, alkanediol, -alpha.-hydro.-omega.-hydroxypoly[oxy(alkyl-1,2-alkanediyl)], aromatic diisocyanate, alkyl alkyl-alkeneoate and alkyl-alkenoic acid (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkanedioic acid, polymer with alkyl alkylalkenoate, alkanedioic acid, alkanediol, -alpha.-hydro.-omega.-hydroxypoly[oxy(alkyl-1,2-alkanediyl)], aromatic diisocyanate, alkyl alkyl-alkeneoate and alkyl-alkenoic acid (PMN P-13-619) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following

National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4).

(A) NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister incorporating N100, R100, or P100 filters (for scenarios where neither dermal nor ocular exposure is likely).

(B) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters (for scenarios where dermal and/or ocular exposure is also likely).

(C) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet (for scenarios where dermal and/or ocular exposure is also likely).

(D) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece (for scenarios where dermal and/or ocular exposure is also likely).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 11. Add § 721.10762 to subpart E to read as follows:

**§ 721.10762 1,1'-methylenebis[isocyanatobenzene], polymer with polycarboxylic acids in alkane polyols (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as 1,1'-methylenebis[isocyanatobenzene], polymer with polycarboxylic acids in alkane polyols (PMN P-14-60) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(i) through (a)(6)(iv), and (c). When determining which

persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4).

(A) NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister incorporating N100, R100, or P100 filters (for scenarios where neither dermal nor ocular exposure is likely).

(B) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters (for scenarios where dermal and/or ocular exposure is also likely).

(C) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet (for scenarios where dermal and/or ocular exposure is also likely).

(D) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece (for scenarios where dermal and/or ocular exposure is also likely).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 12. Add § 721.10790 to subpart E to read as follows:

**§ 721.10790 Poly(oxy-1,2-ethanediyl), -[ [ (3-isocyanatomethylphenyl)amino]carbonyl]—methoxy-**

(a) Chemical substance and significant new uses subject to reporting. (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), -[ [ (3-isocyanatomethylphenyl)amino]carbonyl]—

methoxy- (PMN P-14-267; CAS No. 51247-55-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister incorporating N100, R100, or P100 filters (for scenarios where neither dermal nor ocular exposure is likely).

(B) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters (for scenarios where dermal and/or ocular exposure is also likely).

(C) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet (for scenarios where dermal and/or ocular exposure is also likely).

(D) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece (for scenarios where dermal and/or ocular exposure is also likely).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

*CFR citation: 40 CFR 721.10790.*

■ 13. Add § 721.10791 to subpart E to read as follows:

**§ 721.10791 Carbamic acid, N-(3-isocyanatomethylphenyl)-, 2-[2-(2-butoxyethoxy)ethoxy]ethyl ester.**

(a) Chemical substance and significant new uses subject to reporting. (1) The chemical substance identified as carbamic acid, N-(3-isocyanatomethylphenyl)-, 2-[2-(2-butoxyethoxy)ethoxy]ethyl ester (PMN P-14-268; CAS No. 304855-14-9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister incorporating N100, R100, or P100 filters (for scenarios where neither dermal nor ocular exposure is likely).

(B) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters (for scenarios where dermal and/or ocular exposure is also likely).

(C) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet (for scenarios where dermal and/or ocular exposure is also likely).

(D) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece (for scenarios where dermal and/or ocular exposure is also likely).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d) and (i) are applicable to

manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. Add § 721.10792 to subpart E to read as follows:

**§ 721.10792 Carbonic acid, dimethyl ester, polymer with 1,4-diisocyanatobenzene, 1,6-hexanediol and 1,5-pentanediol.**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as carbonic acid, dimethyl ester, polymer with 1,4-diisocyanatobenzene, 1,6-hexanediol and 1,5-pentanediol (PMN P-14-478; CAS No. 1558862-08-0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(4), (a)(6)(i), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified air-purifying half-mask respirator equipped with appropriate gas/vapor cartridges in combination with N100, R100, or P100 filters or an appropriate canister incorporating N100, R100, or P100 filters (for scenarios where neither dermal nor ocular exposure is likely).

(B) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters (for scenarios where dermal and/or ocular exposure is also likely).

(C) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet (for scenarios where dermal and/or ocular exposure is also likely).

(D) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece (for scenarios where dermal and/or ocular exposure is also likely).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (y)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

[FR Doc. 2014-30829 Filed 1-6-15; 8:45 am]

**BILLING CODE 6560-50-P**

# Notices

Federal Register

Vol. 80, No. 4

Wednesday, January 7, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meetings.

**SUMMARY:** The National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule Committee (Committee) will meet in Charlotte, North Carolina. Attendees may also participate via webinar and conference call. The Committee operates in compliance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). Additional information relating to the Committee can be found by visiting the Committee's Web site at: <http://www.fs.usda.gov/main/planningrule/committee>.

**DATES:** The meetings will be held, in-person and via webinar/conference call on the following dates and times:

- Tuesday, January 27, 2015 from 9 a.m. to 5:15 p.m. EST.
- Wednesday, January 28, 2015 from 9 a.m. to 5:15 p.m. EST.
- Thursday, January 29, 2015 from 9 a.m. to 3 p.m. EST.

**ADDRESSES:** The meeting will be located at Holiday Inn City Center; 230 North College Street Charlotte, NC 28202.

For anyone who would like to attend via webinar and/or conference call, please visit the Web site listed above or contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. Written comments must be sent to USDA Forest Service, Ecosystem Management Coordination, 201 14th Street SW., Mail Stop 1104, Washington, DC 20250–1104. Comments may also be sent via email to Chalonda Jasper at [cjasper@fs.fed.us](mailto:cjasper@fs.fed.us).

All comments are placed in the record and are available for public inspection and copying, including names and addresses when provided. The public may inspect comments received at the USDA Forest Service Washington Office—Yates Building. Please call ahead to facilitate entry into the building.

#### FOR FURTHER INFORMATION CONTACT:

Chalonda Jasper, Committee Coordinator, by phone at 202–260–9400 or email at [cjasper@fs.fed.us](mailto:cjasper@fs.fed.us).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to provide ongoing advice and recommendations on implementation of the planning rule. This meeting is open to the public.

The following business will be conducted:

1. Continue deliberations on formulating advice for the Secretary,
2. Discussion of Committee work group findings and progress, including finalizing the Citizen and Government Guides, and finalizing recommendations put forth from the Turnover working group,
3. Dialogue with key Forest Service personnel and stakeholders from Region 8, the Southern Region, regarding the land management plan revision processes currently underway in the region,
4. Conduct work group break-out sessions to advance each work group and plan work group tasks for upcoming months,
5. Hear public comments, and
6. Administrative tasks.

The agenda and a summary of the meeting will be posted on the Committee's Web site within 21 days of the meeting.

**Meeting Accommodations:** If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: December 29, 2014.

**Gregory C. Smith,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2015–00001 Filed 1–6–15; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C–570–971]

#### Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2012

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on multilayered wood flooring (wood flooring) from the People's Republic of China (PRC). The period of review (POR) is January 1, 2012, through December 31, 2012. We preliminarily find that the mandatory respondents Fine Furniture (Shanghai) Limited (Fine Furniture) and The Lizhong Wood Industry Limited Company of Shanghai (Lizhong) (also known as "Shanghai Lizhong Wood Products Co., Ltd.") received countervailable subsidies during the POR. We also intend to rescind the review of one company, Changzhou Hwd Flooring Co., Ltd. (Changzhou), which timely certified that it had no shipments of subject merchandise to the United States during the POR. Interested parties are invited to comment on these preliminary results.

**DATES:** *Effective Date:* January 7, 2015.

**FOR FURTHER INFORMATION CONTACT:** Mary Kolberg or Joshua Morris, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1785 or (202) 482–1779, respectively.

#### Scope of the Order

Multilayered wood flooring is composed of an assembly of two or

more layers or plies of wood veneer(s)<sup>1</sup> in combination with a core. Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; and 4418.72.9500.

While HTSUS subheadings are provided for convenience and customs purposes, the written product description remains dispositive.

A full description of the scope of the order is contained in the memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of Countervailing Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China" dated concurrently with this notice (Preliminary Decision

Memorandum), which is hereby adopted by this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).<sup>2</sup> ACCESS is available to registered users at <https://access.trade.gov> and in the Central Records Unit, Room 7046 of the main Department building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/index.html>. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

**Intent To Rescind Administrative Review, in Part**

On April 4, 2014, we received a timely filed no-shipment certification from Changzhou. Because there is no evidence on the record to indicate that this company had entries of subject merchandise during the POR, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the review with respect to Changzhou. A final decision regarding whether to rescind the review of this company will be made in the final results of this review.

**Methodology**

We have conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily find that there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>3</sup> For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum.

We were not able to make a preliminary determination concerning the countervailability of certain programs because we require additional

<sup>2</sup> On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System ("IA ACCESS") to AD and CVD Centralized Electronic Service System ("ACCESS"). The Web site location was changed from <http://iaaccess.trade.gov> to <http://access.trade.gov>. The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

<sup>3</sup> *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

information.<sup>4</sup> We intend to seek that information prior to our final results and issue a post-preliminary decision reflecting our review and analysis of that information.

**Preliminary Results of the Review**

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a countervailable subsidy rate for each of the mandatory respondents, Fine Furniture and Lizhong.

For the non-selected respondents, we have followed the Department's practice, which is to base the subsidy rates on an average of the subsidy rates calculated for those companies selected for individual review, excluding *de minimis* rates or rates based entirely on adverse facts available.<sup>5</sup> We have preliminarily assigned to the non-selected respondents the simple average of the rates calculated for Fine Furniture and Lizhong. We have used a simple average rather than a weighted average due to inconsistent units of measure in the publicly ranged quantity and value data.

We preliminarily find the countervailable subsidy rates for the producers/exporters under review to be as follows:

Producer/exporter	Net subsidy rate (percent)
Shanghai Lizhong Wood Products Co., Ltd (aka The Lizhong Wood Industry Limited Company of Shanghai); Linyi Youyou Wood Co., Ltd .....	0.95
Fine Furniture (Shanghai) Limited; Great Wood (Tonghua) Limited; FF Plantation (Shishou) Limited .....	0.99
A&W (Shanghai) Woods Co., Ltd .....	0.97
Anhui Suzhou Dongda Wood Co., Ltd .....	0.97
Armstrong Wood Products (Kunshan) Co., Ltd .....	0.97
Baishan Huafeng Wood Product Co., Ltd .....	0.97
Baiying Furniture Manufacturer Co., Ltd .....	0.97
Baroque Timber Industries (Zhongshan) Co., Ltd .....	0.97
Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd .....	0.97

<sup>4</sup> *See* Preliminary Decision Memorandum at "Analysis of Programs—II. Programs For Which More Information Is Required."

<sup>5</sup> *See, e.g., Certain Pasta From Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 18806, 18811 (April 13, 2010), unchanged in *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386 (June 29, 2010).

<sup>1</sup> A "veneer" is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

Producer/exporter	Net subsidy rate (percent)	Producer/exporter	Net subsidy rate (percent)	Disclosure and Public Comment
Chinafloors Timber (China) Co., Ltd .....	0.97	Jiashan Hui Jia Le Decoration Material Co., Ltd .....	0.97	<p>We will disclose to parties in this proceeding the calculations performed in reaching the preliminary results within five days of the date of public announcement of these preliminary results.<sup>6</sup> As a result of the Department's intention to release a post-preliminary analysis memorandum, interested parties may submit written comments (case briefs) on the preliminary results and the post-preliminary analysis memorandum no later than one week after the issuance of the post-preliminary analysis memorandum, and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.<sup>7</sup> Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.</p> <p>Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice.<sup>8</sup> Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If the Department receives a request for a hearing, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.<sup>9</sup> Parties should confirm by telephone the date, time, and location of the hearing.</p> <p>Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5 p.m. Eastern Time on the due date.</p> <p>Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.</p>
Dalian Dajen Wood Co., Ltd .....	0.97	Jilin Forest Industry Jinqiao Flooring Group Co., Ltd .....	0.97	
Dalian Huade Wood Product Co., Ltd .....	0.97	Jilin Xinyuan Wooden Industry Co., Ltd .....	0.97	
Dalian Huilong Wooden Products Co., Ltd .....	0.97	Karly Wood Product Limited Kemian Wood Industry (Kunshan) Co., Ltd .....	0.97	
Dalian Jiuyuan Wood Industry Co., Ltd .....	0.97	Linyi Anying Wood Co., Ltd ..	0.97	
Dalian Kemian Wood Industry Co., Ltd .....	0.97	Linyi Bonn Flooring Manufacturing Co., Ltd .....	0.97	
Dalian Penghong Floor Products Co., Ltd .....	0.97	Mudanjiang Bosen Wood Industry Co., Ltd .....	0.97	
Dalian T-Boom Wood Products Co., Ltd .....	0.97	Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd .....	0.97	
Dongtai Fuan Universal Dynamics, LLC .....	0.97	Nanjing Minglin Wooden Industry Co., Ltd .....	0.97	
Dun Hua City Jisen Wood Industry Co., Ltd .....	0.97	Power Dekor Group Co., Ltd	0.97	
Dunhua City Dexin Wood Industry Co., Ltd .....	0.97	Riverside Plywood Corporation .....	0.97	
Dunhua City Hongyuan Wood Industry Co., Ltd .....	0.97	Samling Elegant Living Trading (Labuan) Limited .....	0.97	
Dunhua City Wanrong Wood Industry Co., Ltd .....	0.97	Samling Riverside Co., Ltd ...	0.97	
Dunhua Sentai Wood Co., Ltd .....	0.97	Shanghai Anxin (Weiguang) Timber Co., Ltd .....	0.97	
Dunhua Shengda Wood Industry Co., Ltd .....	0.97	Shanghai Eswell Timber Co., Ltd .....	0.97	
Fu Lik Timber (HK) Co., Ltd	0.97	Shanghai Lairunde Wood Co., Ltd .....	0.97	
Fusong Jinlong Wooden Group Co., Ltd .....	0.97	Shanghai New Sihe Wood Co., Ltd .....	0.97	
Fusong Qianqiu Wooden Product Co., Ltd .....	0.97	Shanghai Shenlin Corporation .....	0.97	
GTP International Ltd .....	0.97	Shenyang Haobainian Wood- en Co., Ltd .....	0.97	
Guangdong Yihua Timber Industry Co., Ltd .....	0.97	Shenzhenshi Huanwei Woods Co., Ltd .....	0.97	
Guangzhou Homebon Timber Manufacturing Co., Ltd	0.97	Vicwood Industry (Suzhou) Co. Ltd .....	0.97	
Guangzhou Panyu Kangda Board Co., Ltd .....	0.97	Xiamen Yung De Ornament Co., Ltd .....	0.97	
Guangzhou Panyu Southern Star Co., Ltd .....	0.97	Xuzhou Shenghe Wood Co., Ltd .....	0.97	
HaiLin XinCheng Wooden Products, Ltd .....	0.97	Yekalon Industry, Inc .....	0.97	
Hangzhou Dazhuang Floor Co., Ltd (dba Dasso Industrial Group Co., Ltd) .....	0.97	Yingyi-Nature (Kunshan) Wood Industry Co., Ltd .....	0.97	
Hangzhou Hanje Tec Co., Ltd .....	0.97	Yixing Lion-King Timber Industry .....	0.97	
Hangzhou Zhengtian Industrial Co., Ltd .....	0.97	Zhejiang Anji Xinfeng Bamboo and Wood Co., Ltd .....	0.97	
Hunchun Forest Wolf Wooden Industry Co., Ltd .....	0.97	Zhejiang Biyork Wood Co., Ltd .....	0.97	
Hunchun Xingjia Wooden Flooring Inc .....	0.97	Zhejiang Dadongwu Green Home Wood Co., Ltd .....	0.97	
Huzhou Chenghang Wood Co., Ltd .....	0.97	Zhejiang Desheng Wood Industry Co., Ltd .....	0.97	
Huzhou Fulinmen Imp. & Exp. Co., Ltd .....	0.97	Zhejiang Fudeli Timber Industry Co., Ltd .....	0.97	
Huzhou Fuma Wood Co., Ltd	0.97	Zhejiang Fuerjia Wooden Co., Ltd .....	0.97	
Huzhou Jesonwood Co., Ltd	0.97	Zhejiang Fuma Warm Technology Co., Ltd .....	0.97	
Huzhou Ruifeng Imp. & Exp. Co., Ltd .....	0.97	Zhejiang Haoyun Wooden Co., Ltd .....	0.97	
Huzhou Sunergy World Trade Co., Ltd .....	0.97	Zhejiang Longsen Lumbering Co., Ltd .....	0.97	
Jiafeng Wood (Suzhou) Co., Ltd .....	0.97	Zhejiang Shiyou Timber Co., Ltd .....	0.97	
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd .....	0.97	Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd .....	0.97	
Jiangsu Simba Flooring Co., Ltd .....	0.97			

<sup>6</sup> See 19 CFR 351.224(b).

<sup>7</sup> See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

<sup>8</sup> See 19 CFR 351.310(c).

<sup>9</sup> See 19 CFR 351.310.

and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

### Cash Deposit Requirements

Also in accordance with section 751(a)(1) of the Act, the Department intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for each of the respective companies listed above. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: December 30, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix—List of Topics Discussed in the Preliminary Decision Memorandum:

1. Summary
2. Background
3. Scope of the Order
4. Intent to Partially Rescind Administrative Review
5. Subsidies Valuation Information
6. Analysis of Programs
7. Recommendation

[FR Doc. 2015-00037 Filed 1-6-15; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-863]

### Honey From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on honey from the People's Republic of China ("PRC"). The period of review ("POR") is December 1, 2012, through November 30, 2013. As discussed below, during

the review, because the single mandatory respondent, Kunshan Xinlong Food Co., Ltd. ("Kunshan Xinlong"), did not cooperate, the Department preliminarily determines to treat this company as part of the PRC-wide entity. If these preliminary results are adopted in the final results of review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR.

**DATES:** *Effective Date:* January 7, 2015.

**FOR FURTHER INFORMATION CONTACT:** Irene Gorelik, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-6905.

### SUPPLEMENTARY INFORMATION:

#### Background

On February 3, 2014, the Department initiated an administrative review of the antidumping duty *Order*<sup>1</sup> on honey from the PRC.<sup>2</sup> On February 28, 2014, Petitioners<sup>3</sup> withdrew their request for an administrative review for all companies under review except Kunshan Xinlong.<sup>4</sup>

#### Scope of the Order

The products covered by the *Order* are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, 2106.90.99, 0409.00.0010, 0409.00.0035, 0409.00.0005, 0409.00.0045, 0409.00.0056, and 0409.00.0065 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.<sup>5</sup>

<sup>1</sup> See *Notice Of Antidumping Duty Order and Amendment to Final Determination: Honey from the People's Republic of China*, 66 FR 59026 (December 10, 2001) ("Order").

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 6147 (February 3, 2014) ("Initiation").

<sup>3</sup> Petitioners are: American Honey Producers Association and Sioux Honey Association.

<sup>4</sup> See Letter from Petitioners re: "Petitioners' Partial Withdrawal of Request for 12th Administrative Review," dated February 28, 2014.

<sup>5</sup> For the complete description of the scope of the *Order*, see "Decision Memorandum for the

### Methodology

The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended ("the Act"). In making our findings, we have relied on facts available, and because the single mandatory respondent, Kunshan Xinlong, which we preliminarily are treating as part of the PRC-wide entity, did not act to the best of its ability to respond to the Department's requests for information, we have drawn an adverse inference in selecting from among the facts otherwise available.<sup>6</sup>

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS").<sup>7</sup> ACCESS is available to registered users at <http://access.trade.gov> and to all parties in the Central Records Unit ("CRU"), Room 7046 of the main Department of Commerce building. In addition, parties can obtain a complete version of the Preliminary Decision Memorandum on the Internet at <http://trade.gov/enforcement/frn/index.html>. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

### Preliminary Results of Review

We preliminarily determine that the following antidumping duty margin exists:

Preliminary Results of the 2012-2013 Administrative Review: Honey from the People's Republic of China," from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, ("Preliminary Decision Memorandum"), dated concurrently with this notice.

<sup>6</sup> See sections 776(a) and (b) of the Act.

<sup>7</sup> On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System ("IA ACCESS") to AD and CVD Centralized Electronic Service System ("ACCESS"). The Web site location was changed from <http://iaaccess.trade.gov> to <http://access.trade.gov>. The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

Manufacturer/exporter	Margin (dollars per kilogram)
PRC-wide entity (including Kunshan Xinlong Food Co., Ltd.) .....	2.63

### Disclosure and Public Comment

Normally, the Department discloses to interested parties the calculations performed in connection with a preliminary results within five days of the date of publication of the notice of preliminary results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because the Department preliminarily applied adverse facts available to the PRC-wide entity, including Kunshan Xinlong, pursuant to section 776 of the Act, there are no calculations to disclose, the determination for which is fully discussed in the Preliminary Decision Memorandum.

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results.<sup>8</sup> A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department.<sup>9</sup> Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later.<sup>10</sup>

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically in ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.<sup>11</sup> Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues you intend to present at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department intends to issue the final results of this administrative

review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, i.e., less than 0.5 percent, no cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of \$2.63 per kilogram; and, (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with sections 751(a)(1) and

777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: December 29, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
  1. Initiation
  2. Period of Review
  3. Scope of the Order
- III. Discussion of the Methodology
  1. Non-Market Economy Country
  2. Separate Rates
  3. Withdrawal of Requests for Review
  4. Use of Facts Available and AFA
    - A. Background and Basis for Use of Facts Available
    - B. Application of Facts Available and Selection Based Upon Adverse Inferences for the PRC-Wide Entity
  5. Corroboration of AFA Rate
- IV. Conclusion

[FR Doc. 2014-30852 Filed 1-6-15; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-489-805]

#### Certain Pasta From Turkey: Preliminary Results of Antidumping Duty New Shipper Review; 2013-2014

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from respondent Beşsan Makarna Gıda San. Ve Tic. A.Ş. (Beşsan), the Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on certain pasta (pasta) from Turkey. The period of review (POR) is July 1, 2013, through January 31, 2014. We preliminarily find that Beşsan did not sell subject merchandise at prices below normal value (NV) during the POR. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate entries of merchandise produced by Beşsan without regard to antidumping duties. We invite interested parties to comment on these preliminary results.

**DATES:** *Effective Date:* January 7, 2015.

#### FOR FURTHER INFORMATION CONTACT:

Tyler Weinhold or Robert James, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW.,

<sup>8</sup> See 19 CFR 351.309(c)(1)(iii).

<sup>9</sup> See 19 CFR 351.309(c)(2).

<sup>10</sup> See 19 CFR 351.309(d).

<sup>11</sup> See 19 CFR 351.310(c).

Washington, DC 20230; telephone: (202) 482-1121 or (202) 482-0649, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Scope of the Order

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white.

For a full description of the scope of the order, see the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Pasta From Turkey" (Preliminary Decision Memorandum), which is dated concurrently with this notice, and is hereby incorporated by reference.<sup>1</sup>

##### Methodology

The Department has conducted this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214. Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).<sup>2</sup> ACCESS is available to registered users at <https://access.trade.gov> and is available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at

<sup>1</sup> A list of the topics discussed in the Preliminary Decision Memorandum appears in Appendix I of this notice.

<sup>2</sup> On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System ("IA ACCESS") to AD and CVD Centralized Electronic Service System ("ACCESS"). The Web site location was changed from <http://iaaccess.trade.gov> to <http://access.trade.gov>. The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

<http://www.trade.gov/enforcement/>. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

##### Preliminary Results of the Review

As a result of this review, we preliminarily determine the following dumping margin for the period July 1, 2013, through January 31, 2014.

Exporter/manufacturer	Margin (percent)
Beşsan Makarna Gıda San. Ve Tic. A.Ş. ....	0.00

##### Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.<sup>3</sup> Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.<sup>4</sup> Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>5</sup> Case and rebuttal briefs should be filed using ACCESS.<sup>6</sup>

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by the Departments electronic records system, ACCESS, by 5:00 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.<sup>7</sup> Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 1401

<sup>3</sup> See 19 CFR 351.224(b).

<sup>4</sup> See 19 CFR 351.309(d).

<sup>5</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>6</sup> See 19 CFR 351.303(b).

<sup>7</sup> See 19 CFR 351.310(c).

Constitution Avenue NW., Washington, DC 20230.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, within 90 days after the date of publication of this notice, pursuant to section 751(a)(2)(B)(iv) of the Act.

##### Assessment Rates

Upon completion of this new shipper review, the Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If Beşsan's weighted-average dumping margin is not zero or *de minimis* in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). If Beşsan's weighted-average dumping margin is zero or *de minimis* in the final results of review, or an importer-specific rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to dumping margins.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

##### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of new shipper review for all shipments of pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Beşsan will be the rate established in the final results of this new shipper review except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period in which the manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value 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; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 51.49 percent, the

all-others rate established in the less-than-fair-value investigation.<sup>8</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.214.

Dated: December 24, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

#### Appendix I

##### List of Topics Discussed in the Preliminary Decision Memorandum

Summary  
Background  
Scope of the Order  
Methodology  
    *Bona Fide* Sales Analysis  
    Fair Value Comparisons  
    Product Comparisons  
    Determination of Comparison Method  
    Date of Sale  
    U.S. Price  
    Normal Value  
    Currency Conversion  
    Conclusion

[FR Doc. 2014-30848 Filed 1-6-15; 8:45 am]

BILLING CODE 3510-DS-P

#### DEPARTMENT OF COMMERCE

##### National Institute of Standards and Technology

##### National Conference on Weights and Measures 100th Interim Meeting

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** The 100th Interim Meeting of the National Conference on Weights and Measures (NCWM) will be held in Daytona Beach, Florida, from Sunday, January 18, 2015 through Wednesday,

January 21, 2015. This notice contains information about significant items on the NCWM Committee agendas, but does not include all agenda items. As a result, the items are not consecutively numbered.

**DATES:** The meeting will be held from Sunday, January 18, 2015 through Wednesday, January 21, 2015, meeting schedule is available at [www.ncwm.net](http://www.ncwm.net).

**ADDRESSES:** This meeting will be held at the Hilton Daytona Beach Oceanfront Resort 100 North Atlantic Avenue, Daytona Beach, Florida 32118.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol Hockert, Chief, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899-2600. You may also contact Ms. Hockert at (301) 975-5507 or by email at [carol.hockert@nist.gov](mailto:carol.hockert@nist.gov). The meeting is open to the public, but a paid registration is required. Please see NCWM Publication 15 "Interim Meeting Agenda" ([www.ncwm.net](http://www.ncwm.net)) to view the meeting agendas, registration forms, and hotel reservation information.

#### SUPPLEMENTARY INFORMATION:

Publication of this notice on the NCWM's behalf is undertaken as a public service; NIST does not endorse, approve, or recommend any of the proposals or other information contained in this notice or in the publications of the NCWM.

The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, federal agencies, and representatives from the private sector. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, and enforcement. NIST participates to encourage cooperation between federal agencies and the states in the development of legal metrology requirements. NIST also promotes uniformity among the states in laws, regulations, methods, and testing equipment that comprise the regulatory control of commercial weighing and measuring devices, packaged goods, and other trade and commerce issues.

The following are brief descriptions of some of the significant agenda items that will be considered at the NCWM Interim Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals. This meeting also includes work sessions in which the Committees may also accept comments, and where recommendations will be developed for consideration and

possible adoption at the NCWM 2015 Annual Meeting. The Committees may withdraw or carryover items that need additional development. The 100th Annual Meeting of the NCWM will be held July 19 to 23, 2015, at The Sheraton Philadelphia Society Hill Hotel, 1 Dock Street, Philadelphia, Pennsylvania 19106.

Some of the items listed below provide notice of projects under development by groups working to develop specifications, tolerances, and other requirements for devices used in the retail sales of engine fuels and the establishment of approximate gallon and liter equivalents to diesel fuel that would be used in marketing both compressed and liquefied natural gas. These notices are intended to make interested parties aware of these development projects and to make them aware that reports on the status of the project will be given at the Interim Meeting. The notices are also presented to invite the participation of manufacturers, experts, consumers, users, and others who may be interested in these efforts.

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44, "Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices." Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of products or services sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST Handbook 130, "Uniform Laws and Regulations in the area of Legal Metrology and Engine Fuel Quality" and NIST Handbook 133, "Checking the Net Contents of Packaged Goods."

#### NCWM Specifications and Tolerances Committee

The following items are proposals to amend NIST Handbook 44:

*Scales (including weigh-in-motion vehicle scales for use in the enforcement of highway load limits)*

*Item 320-4 Weigh-in-Motion Vehicle Scales for Use in Highway Weight Enforcement*

The S&T Committee will consider recommending adoption of a new code to be included in NIST Handbook 44 that will include the specifications, tolerances, and other technical

<sup>8</sup> See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey*, 61 FR 38545 (July 24, 1996).

requirements for the vehicle scales used by highway weight enforcement agencies to determine the axle weights and gross weights of trucks and other large highway vehicles while they are in motion. The proposed code includes recommended tests and tolerances for static and dynamic weighing modes as well as user requirements that will ensure devices are maintained properly, allowing weighing results to be used to carry out highway weight enforcement programs across the nation.

#### **Belt-Conveyor Scale Systems**

##### *Item 321-1 Belt-Conveyor Scale Systems*

Belt-conveyor scales are used in a wide variety of applications for weighing coal, grain, ore, and many other raw materials or products. Currently, only scales that are fully integrated into a conveyor system are permitted under NIST Handbook 44. The S&T Committee will consider adoption of new definitions and proposals to broaden the scope of the requirements to allow fully “self-contained weigh-belt systems” to be covered by the specifications, tolerances, and other technical requirements in NIST Handbook 44 so these devices may be utilized in commercial transactions.

#### **Automatic Bulk Weighing Systems**

##### *Item 322-1 N.1. Testing Procedures*

The S&T Committee will consider a proposal to change the test procedures and tolerances for automatic bulk weighing systems to reflect that these devices are generally operating in a “dynamic” mode when commercial weight determinations are made. When these devices weigh in a “dynamic” mode, the accuracy of the weighment can be affected by many additional factors (e.g., vibration, mechanical timing of the systems’ filling and emptying mechanisms); this may result in differences when compared to the weight determinations obtained in “static” weighing mode. The proposed procedures require “as used” testing to verify the accuracy of these devices. Requiring “as used” testing would improve the weighing accuracy of these devices and bring this code into agreement with requirements in other NIST Handbook 44 codes where dynamic weighing is allowed.

#### **Liquid Measuring Devices**

##### *Item 330-2 S.2.2. Categories of Device and Methods of Sealing*

The S&T Committee will consider a proposal that would allow device

manufacturers to supply required security and configuration related data in “event loggers” (i.e., digital systems that keep track of the number of times a calibration event occurs) to weights and measures officials and service personnel utilizing digital communications (e.g., cellular or Internet connections) or other electronic means (e.g., USB flash memory drive) in lieu of providing a printed record. This information is used to ascertain how many and what type of calibrations and configuration changes were made to a weighing and measuring device since the last official inspection or service. The S&T Committee will evaluate the costs, practicality, and other aspects of the proposal in addition to considering the data security and privacy concerns that may arise if this proposal is adopted.

##### *Item 330-3 N.4.1.3. Normal Tests on Wholesale Multi-Point Calibration Devices*

The S&T Committee will consider a proposal to update the Liquid-Measuring Devices Code to include test procedures that recognize technological advances in meter calibration and improve the accuracy of meters used to measure petroleum, chemicals, and other liquids. The intent of the proposal is to prescribe test procedures for meters with multi-point calibration (i.e., their measurement accuracy is adjusted to account for variations in volume, which result from the meter being operated at different flow rates). The S&T Committee will also consider requirements that will govern how users utilize the optional features found on these systems. See also Item 331-1 which addresses these features on vehicle-tank meters used to measure products such as home heating fuel and other fuel deliveries.

#### **Liquefied Petroleum Gas and Anhydrous Ammonia Liquid-Measuring Devices**

##### *Item 332-2 N.3. Test Drafts—Use of Transfer Standards for Calibration and Verification*

The S&T Committee will consider a proposal to recognize the use of calibrated transfer standards (also called “master meters”) in the verification and calibration of Liquefied Petroleum Gas and Anhydrous Ammonia Liquid-Measuring Devices. Currently, most official tests of these devices are conducted using volumetric test measures or using gravimetric testing. Adoption of this proposal, which includes requirements for a minimum test draft, would allow the use of

“master meters” in both service-related and official testing. The S&T Committee will also consider expanding the use of transfer standards to other types of measuring devices, including those used to measure petroleum at terminals and retail outlets and to meters used to deliver home heating fuel and other products.

#### **Mass Flow Meters**

##### *Item 337-1 Diesel Energy Equivalents for Compressed and Liquefied Natural Gas*

Natural gas is sold in the marketplace in both compressed (CNG) and liquefied (LNG) states as alternative fuel choices to gasoline and diesel fuel. The S&T Committee will consider proposed revisions to NIST Handbook 44 to define volume units for CNG and LNG in terms of the energy equivalents for a liter or gallon of diesel fuel. The availability of these values should enable consumers to compare the cost and mileage economy of different fuels so enable informed purchasing decisions when considering the use, purchase, or lease of vehicles equipped to operate on different fuels.

#### **Taximeters (and GPS Devices When Used in Transportation Services)**

##### *Items 354-1, 354-2, 354-3, 354-4, and 354-5*

The S&T Committee will consider this group of proposals (listed above) which includes proposed revisions and updates to the Taximeter Code in NIST Handbook 44 to address changes in technology related to indicating and recording elements (i.e., printers) and operational features including the indications required to be presented to passengers.

##### *Item 354-6 U.S. National Working Group on Taximeters and Global Positioning System-Based Systems for Time and Distance Measurement*

The S&T Committee will consider a progress report from a national working group that is studying the use of Global Positioning Systems and smart phone/web based applications in transportations services in order to develop proposed specifications, tolerances, and other technical requirements to ensure accuracy and transparency for passengers, drivers, and businesses for inclusion in NIST Handbook 44.

#### **Other Items**

##### *Item 360-1 Proposed Definition for a “Batching System”*

The S&T Committee will consider a proposed definition for “batching

systems.” These systems are used daily in a wide variety of industries to produce concrete (sold by the cubic yard) used in buildings, bridge and highway construction, and “blacktop” or asphalt pavement (sold by the short ton) used for road surfaces. Batching systems are also used in the production of animal food, agricultural seed and many other commodities. These systems (which can operate automatically or manually) often include multiple components such as weighing and measuring devices, which fall under different codes in NIST Handbook 44. When these multiple-component systems are used, it is sometimes difficult to categorize the system as a whole as a scale, a measuring device, or an automatic weighing system. Confusion over what requirements to apply from the various codes sometimes occurs. The definition is intended to clarify that weights and measures officials and users may apply different NIST Handbook 44 codes to the components of a batching system without classifying the device as an “automatic bulk weighing system” because that code includes operational and other requirements that manufacturers may not design a system to meet. See also Items 320–1—A.1. General; 324–1—A.1. General; and 330–1—A.1. General.

*Item 360–5 Electric Vehicle Fueling and Submetering*

The S&T Committee will consider recommending adoption of a draft code for use in electric vehicle charging and submetering for inclusion in NIST Handbook 44. The code was developed by a national working group that continues to further refine the specifications, tolerances, and other technical requirements to ensure accuracy and transparency for drivers of electric vehicles and power resellers. The S&T Committee will also consider proposed changes to the section 5.55. “Timing Devices” in NIST Handbook 44 to address requirements for the timing mechanisms that are likely to be used in some recharging systems to determine additional charges for other services (e.g., parking).

NCWM Laws and Regulations Committee (L & R Committee)

The following items are proposals to amend NIST Handbook 130 or NIST Handbook 133:

**NIST Handbook 130—Section on Uniform Regulation for the Method of Sale of Commodities**

*Item 232–3 Animal Bedding*

Animal Bedding is generally defined as any material, except for baled straw, that is kept, offered or exposed for sale or sold to retail consumers for primary use as a medium for any pet or companion or livestock animal to nest or eliminate waste. The purpose of this proposal is to provide a uniform method of sale for animal bedding that will enhance the ability of consumers to make value comparisons and will ensure fair competition. If adopted, the proposal will require packers to advertise and sell packages of animal bedding on the basis of the expanded volume of the bedding. Most packages of animal bedding are compressed during packaging and the expanded volume is the amount of product that consumers will recover through unwrapping and decompressing the bedding according to the instructions provided by the packer. See also Item 260–3 for proposed Test Procedures for Verifying the Expanded Volume Declaration on Packages of Animal Bedding

*NIST Handbook 133—“Checking the Net Contents of Packaged Goods”*

*Item 260–1 Chitterling Test Procedure*

This proposal will add a test procedure and purge allowance to NIST Handbook 133 so that the drainage equipment and methods used by state and local weights and measures officials are identical to those used by the Food Safety and Inspection Service of the U.S. Department of Agriculture (USDA) in packing plants. Currently neither a purge allowance nor test procedure are contained in the handbook so state and local weights and measures inspectors use a modified test procedure developed for frozen seafood and information provided in a USDA response to a consumer inquiry to carry out inspections of these food products. This test procedure will also be used in verifying the amount of purge from beef tripe.

Dated: December 30, 2014.

**Willie E. May,**

*Acting Director.*

[FR Doc. 2015–00020 Filed 1–6–15; 8:45 am]

**BILLING CODE 3510–13–P**

**DEPARTMENT OF DEFENSE**

**Department of the Army**

[Docket ID: USA–2015–0003]

**Proposed Collection; Comment Request**

**AGENCY:** Army & Air Force Exchange Service (Exchange), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Army & Air Force Exchange Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by March 9, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to

obtain a copy of the proposal and associated collection instruments, please write to the Army and Air Force Exchange Service, Office of the General Counsel, Compliance Division, Attn: Teresa Schreurs, 3911 South Walton Walker Blvd., Dallas, TX 75236-1598 or call the Exchange Compliance Division at 800-967-6067.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Exchange Application for Employment Files; Exchange Form 1200-038 "Employment Reference Request"; Exchange Form 1200-718 Local National Employment Application-Germany Only"; OMB Control Number: 0702-XXXX.

*Needs and Uses:* The information collection requirement is necessary to consider individuals who have applied for positions in the Army and Air force Exchange Service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 181,162 Hours.

*Number of Respondents:* 72,648.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 Minutes.

*Frequency:* On occasion.

Respondents are Exchange applicants for employment.

Dated: January 2, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-00025 Filed 1-6-15; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE**

**Department of the Army**

[Docket ID: USA-2015-0002]

**Proposed Collection; Comment Request**

**AGENCY:** Army & Air Force Exchange Service (Exchange), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Exchange announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by March 9, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Army and Air Force Exchange Service, Office of the General Counsel, Compliance Division, Attn: Teresa Schreurs, 3911 South Walton Walker Blvd., Dallas, TX 75236-1598 or call the Exchange Compliance Division at 800-967-6067.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Exchange Customer Service; Exchange Form 6150-003, Exchange Form 6800-023 "Army and Air Force Exchange Service (Exchange) Sweepstakes Acceptance Form", Exchange Form 6800-002 "Official Entry for Drawing", Exchange Form 6200-010 "Customer convenience Order Log", Exchange Form 6450-032 "Customer Service Counter Special Order Log", Exchange Form 6550-009

"Customer Daily Sales Register", Exchange Form 6700-001 "Exchange Service—Repair Log", Exchange-Europe Form 6650-704 "Work Order Home Repair Service", Exchange Form 6500-093 "Army & Air Force Exchange Service Anthony Pizza Order Form", Exchange Form 4700-037 "The Cherish Collection Diamond Lifetime Guarantee and Trade-up Certificate", Exchange Form 6200-9 "Customer Order Form", Exchange Form 4150-082 "Customer Special Order Repair Parts", Exchange Form 6800-003 "Customer Service Counter Log", Exchange Military Star Card Application Form; OMB Control Number 0702-XXXX.

*Needs and Uses:* The information collection requirement is necessary record customer transactions/payment for layaway and special orders; to determine payment status before finalizing transactions; to identify account delinquencies and prepare customer reminder notices; to mail refunds on canceled layaway or special orders; to process purchase refunds; to document receipt from customer of merchandise subsequently returned to vendors for repair or replacement, shipping/delivery information, and initiate follow up actions; to monitor individual customer refunds; to perform market basket analysis; to improve efficiency of marketing system(s); and to help detect and prevent criminal activity, and identify potential abuse of Exchange privileges.

*Affected Public:* Authorized patrons of the Exchange.

*Annual Burden Hours:* 26,667.

*Number of Respondents:* 800,000.

*Responses Per Respondent:* 1.

*Average Burden per Response:* 2 minutes.

*Frequency:* On Occasion.

Authorized customers of the Army and Air Force Exchange Service information, who provide comments, suggestions, complaints, concerns, opinions, observations or other information pertaining to Exchange operations. The Exchange collects information electronically transmitted, or provided by customers via paper forms completed by the customer or by phone, which allows the Exchange to contact the customer for special events, sales, address customer complaints as well as provide information about shopping at the Exchange. The information provides valuable data to the Exchange, which is used to enhance operations and improve efficiencies of the Exchange marketing program, and to generally enrich the customers' experience. If the Exchange does not receive the data, the Exchange efforts to improve the shopping experience would

not be as effective, efficient or useful. Customer information is vital to the efficient and effective maintenance and improvement of Exchange operations.

Dated: January 2, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-00015 Filed 1-6-15; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID: USA-2015-0001]

#### Proposed Collection; Comment Request

**AGENCY:** Army & Air Force Exchange Service (Exchange), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Army & Air Force Exchange Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by March 9, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Army and Air Force Exchange Service, Office of the General Counsel, Compliance Division, Attn: Teresa Schreurs, 3911 South Walton Walker Blvd., Dallas, TX 75236-1598 or call the Exchange Compliance Division at 800-967-6067.

#### SUPPLEMENTARY INFORMATION:

*Title; Associated Form; and OMB Number:* Exchange Employee Pay System Records; Exchange Form 1200-021 "Request for Separate Maintenance Allowance (SMA)", Exchange Form 1200-006 "Pre-Employment Screening Applicant Consent Form", Exchange Form 1100-016 "Identification & Privilege Card Application", Exchange-Europe Form 1100-727 "Eligibility Questionnaire for HPP Status and Logistical Support Entitlement", Exchange-Europe Form 1200-729 "Personal Data Sheet"; OMB Control Number: 0702-XXXX.

*Needs and Uses:* The information collection requirement is necessary to provide a basis for computing civilian pay entitlements and to keep a record of the history of pay transactions. Information collected is necessary to accurately accrue civilian's correct leave, benefits, retirement and pay, issue bonds, pay taxes, and to keep the Exchange compliant with court orders such as Qualifying Domestic Relations Orders which obligate the Exchange to pay benefits to ex-spouses or other Exchange employee(s) or ex-employee(s), and the ability to answer any inquires to process such claims. These uses require the collection of the individual's names, SSN, address, email address, telephone numbers and a copy of any court orders submitted to the Exchange.

*Affected Public:* Exchange employee family members, and former spouses.

*Annual Burden Hours:* 65,000.

*Number of Respondents:* 260,000.

*Responses per Respondent:* 1.0.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion.

Respondents are Exchange terminated employees, retired employees, employee

beneficiaries, and contractors who are actively working with the exchange. These individuals submit information to the Exchange primarily through electronic means so the Exchange may pay them appropriately for their time and accurately provide them with benefits and leave.

Dated: January 2, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-00008 Filed 1-6-15; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID: USA-2015-0004]

#### Proposed Collection; Comment Request

**AGENCY:** Army & Air Force Exchange Service (Exchange), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Army & Air Force Exchange Service announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by March 9, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public

viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Army and Air Force Exchange Service, Office of the General Counsel, Compliance Division, Attn: Teresa Schreurs, 3911 South Walton Walker Blvd., Dallas, TX 75236-1598 or call the Exchange Compliance Division at 800-967-6067.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Exchange Official Personnel Folder; Exchange Form 1100-016 "Identification & Privilege Card Application"; Exchange Form 1200-038 "Employment reference Request"; Exchange Form 1200-718 Local National Employment Application—Germany Only"; Exchange Form 3250-005 "Request for Official Personnel Folder"; and OMB Control Number: 0702-XXXX.

*Needs and Uses:* The information collection requirement is necessary to provide a repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's service with the Army and Air Force Exchange Service (Exchange). Records provide the basic source of factual data about a person's employment with the agency and have various uses by the Exchange personnel office, including screening qualifications of employees, determining status, eligibility, and employee's rights and benefits, computing length of service and other information needed to provide personnel services.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 208,000 hours.  
*Number of Respondents:* 260,000.  
*Responses per Respondent:* 3.2.  
*Average Burden per Response:* 15 Minutes.

*Frequency:* On Occasion.

Respondents are Exchange personnel who are active, terminated, or retired.

Information on dependents including ex-spouses is obtained from the Exchange personnel. These individuals submit information to the Exchange primarily through electronic means.

Dated: January 2, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-00030 Filed 1-6-15; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**[Docket Number DARS 2014-0053]**

**Submission for OMB Review; Comment Request**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Notice.

**SUMMARY:** The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by February 6, 2015.

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Forms and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 217, Special Contracting Methods, and related clauses at 252.217; OMB Control Number 0704-0214.

*Type of Request:* Extension.

*Number of Respondents:* 5,688.

*Responses per Respondent:*

Approximately 18.

*Annual Responses:* 102,139.

*Average Burden per Response:* Approximately 8.7 hours.

*Annual Burden Hours:* 886,703.

*Needs and Uses:* DFARS Part 217 prescribes policies and procedures for acquiring supplies and services by special contracting methods.

Contracting officers use the required information as follows:

The clause at DFARS 252.217-7012 is used in master agreements for repair and alteration of vessels. Contracting officers use the information required by paragraph (d) of the clause to determine that the contractor is adequately insured. This requirement supports prudent business practice, because it limits the Government's liability as a related party to the work the contractor performs. Contracting officers use the information required by paragraphs (f)

and (g) of the clause to keep informed of lost or damaged property for which the Government is liable, and to determine the appropriate course of action for replacement or repair of the property.

Contracting officers use the information required by the provision at DFARS 252.217-7026 to identify the apparently successful offeror's sources of supply so that competition can be enhanced in future acquisitions. This collection complies with 10 U.S.C. 2384, Supplies: Identification of Suppliers and Sources, which requires the contractor to identify the actual manufacturer or all sources of supply for supplies furnished under contract to DoD.

Contracting officers use the information required by the clause at 252.217-7028 to determine the extent of "over and above" work before the work commences. This requirement allows the Government to review the need for pending work before the contractor begins performance.

Contracting officers use the information required by DFARS 217.7004(a) where offerors shall state prices for the new items being acquired both with and without any exchange (trade-in allowance).

Contracting officers use the information from 217.7404-3(b), to evaluate a contractor's "qualifying proposal" in accordance with the definitization schedule. This subpart allows the contracting officer to require receipt of a qualifying proposal containing sufficient information for DoD to complete a meaningful analyses and audit of the information in the proposal, and any other information that the contracting officer has determined DoD needs to review in connection with the contract.

Contracting officers use the information from 217.7505(d), where the offeror submits with its proposal, price and quantity data on any Government orders for the replenishment part issued within the most recent 12 months.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Frequency:* On occasion.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions*: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

*DoD Clearance Officer*: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Publication Collections Program, WHS/ESD Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2014-30915 Filed 1-6-15; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Intent To Grant Partially Exclusive Patent License; Vann Technology, LLC

**AGENCY**: Department of the Navy, DoD.  
**ACTION**: Notice.

**SUMMARY**: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy. The Department of the Navy hereby gives notice of its intent to grant to Vann Technology, LLC, a revocable, nonassignable, exclusive license to practice in the United States, the Government-owned invention described below: U.S. Patent 6,902,316 (Navy Case 85003): Issued June 7, 2005, entitled "NON-INVASIVE CORROSION SENSOR".

**DATES**: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than January 26, 2015.

**ADDRESSES**: Written objections are to be filed with Naval Surface Warfare Center,

Crane Division, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522-5001.

**FOR FURTHER INFORMATION CONTACT**: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Division, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522-5001, telephone 812-854-4100.

**Authority**: 35 U.S.C. 207, 37 CFR part 404

Dated: December 29, 2014.

**N.A. Hagerty-Ford,**

*Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2015-00012 Filed 1-6-15; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY**: Department of the Navy, DoD.  
**ACTION**: Notice.

**SUMMARY**: The inventions listed below are assigned to the United States Government, as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: Patent No. 8,784,584: PERCHLORATE-FREE YELLOW SIGNAL FLARE COMPOSITION//Patent No. 8,782,944: ACCESSORY INTERFACE SYSTEM//Patent No. 8,802,983: PROTECTIVE MEMBERS FOR AN ELECTRICAL INTERFACE ASSEMBLY//Patent No. 8,669,504: HAND LAUNCHABLE UNMANNED AERIAL VEHICLE//Patent No. 8,738,324: METHOD AND SYSTEM FOR DETERMINATION OF DETECTION PROBABILITY OF A TARGET OBJECT BASED ON A RANGE//Patent No. 8,493,261: COUNTERMEASURE DEVICE FOR A MOBILE TRACKING DEVICE//Patent No. 8,526,097: TUNABLE DETECTION SYSTEM//Patent No. 8,576,548: COMMUNICATIONS VEHICLE//Patent No. 8,692,171: HAND LAUNCHABLE UNMANNED AERIAL VEHICLE//Patent No. 8,434,397: HELICOPTER WEAPON MOUNTING SYSTEM//Patent No. 8,209,897: TARGETING SYSTEM FOR A PROJECTILE LAUNCHER//Patent No. 8,573,109: AMMUNITION CANISTER AND FEED SYSTEM//Patent No. 8,692,729: ANTENNA WITH SHAPED DIELECTRIC LOADING//Patent No. 8,531,114: ILLUMINATION BEACON//Patent No. 8,216,403: PERCHLORATE-FREE RED SIGNAL FLARE COMPOSITION//Patent No. 8,366,847:

PERCHLORATE-FREE YELLOW SIGNAL FLARE COMPOSITION//Patent No. 8,215,236: SIGNAL TRANSMISSION SURVEILLANCE SYSTEM//Patent No. 8,001,901: SIGNAL TRANSMISSION SURVEILLANCE SYSTEM//Patent No. 8,543,357: RF POWER DENSITY AND FIELD CHARACTERIZATION TECHNIQUE//Patent No. 8,788,218: EVENT DETECTION SYSTEM HAVING MULTIPLE SENSOR SYSTEMS IN COOPERATION WITH AN IMPACT DETECTION SYSTEM//Patent No. 8,788,220: VEHICLE DAMAGE DETECTION SYSTEM//Patent No. 8,365,664: IMPULSE CARTRIDGE//Patent No. 8,250,979: MULTIPLE BAY EJECTION DEVICE SYSTEM//Patent No. 8,671,840: FLEXIBLE FRAGMENTATION SLEEVE//Patent No. 8,234,978: HAND-HELD FIRING DEVICE//Patent No. 8,356,541: VEHICLE PROTECTIVE STRUCTURE//Patent No. 8,146,480: VEHICLE PROTECTIVE STRUCTURE//Patent No. 8,479,434: ACCESSORY INTERFACE SYSTEM//Patent No. 8,478,335: SYSTEM AND METHOD FOR RADIO COMMUNICATION//Patent No. 8,151,426: METHOD OF CONVERTING A TRAILER CONFIGURATION//Patent No. 8,276,325: VEHICLE AND MAST MOUNTING ASSEMBLY THEREFOR//Patent No. 8,146,283: WEAPON MOUNTED ADAPTER//Patent No. 7,988,802: THERMITE TORCH FORMULATION INCLUDING COMBINED OXIDIZERS//Patent No. 7,998,291: THERMITE TORCH FORMULATION INCLUDING MOLYBDENUM TRIOXIDE//Patent No. 8,737,634: WIDE AREA NOISE CANCELLATION SYSTEM AND METHOD//Patent No. 8,297,626: PRESSURE SEAL//Patent No. 8,154,954: PROJECTILE FOR FOCUSING A KINETIC PULSE ARRAY//Patent No. 7,804,741: SYSTEM AND METHOD FOR FOCUSING A KINETIC PULSE ARRAY//Patent No. 7,948,829: LOCATOR SYSTEM AND METHOD INCLUDING NODE AND TARGET ACQUISITION//Patent No. 8,402,892: SIMULTANEOUS NONELECTRIC PRIMING ASSEMBLY AND METHOD//Patent No. 8,408,460: AUTO ADJUSTING RANGING DEVICE//Patent No. 8,281,718: EXPLOSIVE FOIL INITIATOR AND METHOD OF MAKING//Patent No. 8,445,813: COMPACT PORTABLE HIGH POWER YTTERBIUM LASER//Patent No. 7,999,230: TUNABLE DETECTION SYSTEM AND METHOD OF USE//Patent No. 8,420,977: HIGH POWER LASER SYSTEM//Patent No. 8,367,991: MODULATION DEVICE FOR A

MOBILE TRACKING DEVICE//Patent No. 8,581,771: SCENE ILLUMINATOR//Patent No. 8,212,709: COUNTERMEASURE METHOD FOR A MOBILE TRACKING DEVICE//Patent No. 8,146,476: VEHICLE PROTECTIVE STRUCTURE//Patent No. 7,946,210: VEHICLE PROTECTIVE STRUCTURE//Patent No. 7,811,092: ROTARY ELECTRICAL CONTACT DEVICE//Patent No. 8,683,451: SYSTEM AND METHOD FOR TRANSLATING SOFTWARE CODE//Patent No. 8,704,891: EXTERNAL MOUNTED ELECTRO OPTIC SIGHT FOR A VEHICLE//Patent No. 8,398,038: WHEEL SUPPORT//Patent No. 8,557,421: REUSABLE ELECTROCHEMICAL CELL TEST FIXTURE//Patent No. 8,667,333: EXTENSIBLE TESTING SYSTEM//Patent No. 8,688,795: GPS EMBEDDED INTERACTIVE NETWORK INTERFACE//Patent No. 8,151,683: LINK CHUTE EJECTION ADAPTER//Patent No. 8,316,023: DATA MANAGEMENT SYSTEM//Patent No. 8,283,562: ELECTRICAL INTERFACE ASSEMBLY//Patent No. 8,789,261: COMMUNICATIONS VEHICLE//Patent No. 8,450,609: PROTECTIVE MEMBERS FOR AN ELECTRICAL INTERFACE ASSEMBLY//Patent No. 7,841,898: CONNECTOR ADAPTOR//Patent No. 8,744,783: SYSTEM AND METHOD FOR MEASURING POWER GENERATED DURING LEGGED LOCOMOTION//Patent No. 8,423,336: AERODYNAMIC SIMULATION SYSTEM AND METHOD FOR OBJECTS DISPENSED FROM AN AIRCRAFT//Patent No. 8,366,946: FRAME FOR HOLDING LAMINATE DURING PROCESSING//Patent No. 8,069,767: GUN MOUNT AND EJECTION SYSTEM//Patent No. 8,151,684: AMMUNITION CANISTER AND FEED SYSTEM//Patent No. 7,811,132: ELECTROMAGNETIC INTERFERENCE PROTECTIVE BACKSHELL FOR CABLES//Patent No. 8,002,914: SMOKELESS FLASH POWDER//Patent No. 8,146,993: ROTATABLE SEAT ASSEMBLY//Patent No. 8,055,206: SIGNAL TRANSMISSION SURVEILLANCE SYSTEM//Patent No. 8,004,660: METHOD AND SYSTEM FOR DETERMINATION OF DETECTION PROBABILITY OF A TARGET OBJECT BASED ON VIBRATION//Patent No. 8,447,563: METHOD AND SYSTEM FOR DETERMINATION OF DETECTION PROBABILITY OR A TARGET OBJECT BASED ON A RANGE//Patent No. 8,149,390: USER INTERFACE FOR LASER TARGETING SYSTEM//Patent No. 7,987,791: METHOD OF DISRUPTING ELECTRICAL POWER TRANSMISSION//Patent No. 8,082,849: SHORT TERM POWER GRID DISRUPTION DEVICE//Patent No. 8,267,014: MULTIPLE BAY EJECTION DEVICE//Patent No. 8,366,054: HAND LAUNCHABLE UNMANNED AERIAL VEHICLE//Patent No. 8,656,081: SYSTEM AND METHOD FOR COORDINATING CONTROL OF AN OUTPUT DEVICE BY MULTIPLE CONTROL CONSOLES//Patent No. 8,297,191: PRESSURE SEAL//Patent No. 8,264,417: APERTURE ANTENNA WITH SHAPED DIELECTRIC LOADING//Patent No. 8,213,547: IDENTIFICATION OF TARGET SIGNALS IN RADIO FREQUENCY PULSED ENVIRONMENTS//Patent No. 8,244,268: SYSTEM AND METHOD FOR COMMUNICATING WITH A PLURALITY OF REMOTE COMMUNICATION UNITS//Patent No. 8,147,133: TOP LOADED TWIN CELL CALORIMETER SYSTEM WITH REMOVABLE REFERENCE//Patent No. 7,882,785: DEMOLITION CHARGE HAVING A MULTI-PRIMED INITIATION SYSTEM//Patent No. 7,882,784: DEMOLITION CHARGE HAVING A MULTI-PRIMED INITIATION SYSTEM//Patent No. 8,368,996: TUNABLE DETECTION SYSTEM//Patent No. 8,156,050: PROJECT MANAGEMENT SYSTEM AND METHOD//Patent No. 8,421,673: METHOD AND SOFTWARE FOR SPATIAL PATTERN ANALYSIS//Patent No. 7,813,223: SYSTEM AND METHOD FOR FOCUSING A KINETIC PULSE ARRAY//Patent No. 8,279,118: APERIODIC ANTENNA ARRAY//Patent No. 8,146,992: TURRET SEAT//Patent No. 8,277,583: PERCHLORATE-FREE RED SIGNAL FLARE COMPOSITION//Patent No. 8,568,542: PERCHLORATE-FREE YELLOW SIGNAL FLARE COMPOSITION//Patent No. 7,988,801: PERCHLORATE-FREE GREEN SIGNAL FLARE COMPOSITION//Patent No. 8,264,486: REALTIME-HIGH SPEED THREE DIMENSIONAL MODELING SYSTEM//Patent No. 8,667,206: INTERFACE DEVICE FOR COORDINATING CONTROL OF AN OUTPUT DEVICE BY MULTIPLE CONTROL CONSOLES//Patent No. 7,966,763: TARGETING SYSTEM FOR A PROJECTILE LAUNCHER//Patent No. 8,210,557: CONVERTIBLE TRAILER//Patent No. 8,264,409: ELECTROMAGNETIC RADIATION SOURCE LOCATING SYSTEM//Patent No. 8,305,252: COUNTERMEASURE DEVICE FOR MOBILE TRACKING DEVICE//Patent No. 7,635,266: ROTARY ELECTRICAL CONTACT DEVICE//Patent No. 8,452,569: LASER TARGETING SYSTEM//Patent No. 8,436,276: PORTABLE CUTTING DEVICE FOR BREACHING A BARRIER//Patent No. 8,149,153: INSTRUMENTATION STRUCTURE WITH REDUCED ELECTROMAGNETIC RADIATION REFLECTIVITY OR INTERFERENCE CHARACTERISTICS//Patent No. 7,812,932: UNIVERSAL LASER RANGE EVALUATION AND VERIFICATION SYSTEM//Patent No. 8,001,902: SIGNAL TRANSMISSION SURVEILLANCE SYSTEM//Patent No. 8,077,098: ANTENNA TEST SYSTEM//Patent No. 8,058,189: METHOD AND APPARATUS FOR RESISTING BALLISTIC IMPACT//Patent No. 8,240,520: MATERIAL EXTRUDER//Patent No. 8,004,455: ANTENNA SIMULATOR//Patent No. 7,885,001: TILT LOCK MECHANISM AND METHOD FOR A MOVEABLE OPTICAL OR DISPLAY DEVICE//Patent No. 7,823,498: VEHICLE PROTECTIVE STRUCTURE//Patent No. 7,940,225: DISCONE ANTENNA WITH ASYMMETRIC DIELECTRIC LOADING//Patent No. 8,211,559: METHOD AND SYSTEM FOR DETECTING LEAKAGE OF ENERGY STORAGE STRUCTURE LIQUID//Patent No. 7,774,913: DEVICE AND METHOD FOR SEPARATING PARTS OF ACOUSTIC SENSORS//Patent No. 7,938,066: STRIP CHARGE STORAGE ARRANGEMENT//Patent No. 7,470,883: NON-INVASIVE INITIATION DETONATION SENSOR//Patent No. 7,472,652: DEMOLITION CHARGE HAVING MULTI-PRIMED INITIATION SYSTEM//Patent No. 8,576,953: IDENTIFICATION OF TARGET SIGNALS IN RADIO FREQUENCY PULSED ENVIRONMENTS//Patent No. 8,259,860: IDENTIFICATION OF TARGET SIGNALS IN RADIO FREQUENCY PULSED ENVIRONMENTS//Patent No. 7,049,998: INTEGRATED RADAR, OPTICAL SURVEILLANCE, AND SIGHTING SYSTEM//Patent No. 8,150,325: BLANKING SYSTEM//Patent No. 7,157,290: MAGNETICALLY SHIELDED CIRCUIT BOARD//Patent No. 7,573,235: BATTERY CHARGER AND POWER REDUCTION SYSTEM AND METHOD//Patent No. 7,242,346: PULSE DESCRIPTOR WORD GENERATOR//Patent No. 6,970,002: TUBE MEASUREMENT AND CALIBRATION SYSTEM//Patent No. 7,222,525: SKIN AND TISSUE SIMULANT FOR MUNITIONS TESTING//Patent No. 7,361,206: APPARATUS AND METHOD FOR WATER VAPOR REMOVAL IN AN ION MOBILITY SPECTROMETER//Patent No. 7,078,680: ION MOBILITY

SPECTROMETER USING ION BEAM MODULATION & WAVELET DECOMPOSITION//Patent No. 7,458,305: MODULAR SAFE ROOM//Patent No. 7,058,377: PULSED RADIO FREQUENCY MEASUREMENT//Patent No. 6,798,888: MOUNT FOR UNDERWATER ACOUSTIC Projector//Patent No. 6,798,122: LIGHTWEIGHT UNDERWATER ACOUSTIC PROJECTOR//Patent No. 6,700,517: PHOTONIC ANALOG-TO-DIGITAL CONVERTER//Patent No. 6,995,359: MINIATURE CRYOGENIC SHUTTER ASSEMBLY//Patent No. 6,564,690: INTERFACE PALLET ASSEMBLY FOR A HELICOPTER-BASED WEAPON SYSTEM//Patent No. 6,675,694: MACHINE GUN & AMMUNITION CAN INTERFACE GUN MOUNT//Patent No. 6,582,246: FOLDABLE CONNECTOR ASSEMBLY FOR ELECTRONIC DEVICE//Patent No. 6,665,594: PLUG & PLAY MODULAR MISSION PAYLOADS//Patent No. 7,278,310: NON-INVASIVE MEASUREMENT SYSTEM//Patent No. 6,570,539: METHOD FOR VIBRATION DETECTION DURING NEAR-FIELD ANTENNA TESTING//Patent No. 6,961,887: STREAMLINED LASAR-TO-L200 POST-PROCESSING FOR CASS.

**ADDRESSES:** Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane Division, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522-5001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Division, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522-5001, telephone 812-854-4100.

**Authority:** 35 U.S.C. 207, 37 CFR part 404.

Dated: December 29, 2014.

**N.A. Hagerty-Ford,**

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015-00019 Filed 1-6-15; 8:45 am]

**BILLING CODE 3810-FF-P**

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## DEPARTMENT OF EDUCATION

### Applications for New Awards; Rehabilitation Training: Rehabilitation Long-Term Training Program—Vocational Rehabilitation Counseling

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

*Overview Information:* Rehabilitation Services Administration (RSA)—Rehabilitation Training: Rehabilitation Long-Term Training Program—

Vocational Rehabilitation (VR) Counseling Notice inviting applications for new awards for fiscal year (FY) 2015.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.129B.

**DATES:** Applications Available: January 7, 2015.

Date of Pre-Application Webinar: January 15, 2015.

Deadline for Transmittal of Applications: March 9, 2015.

Deadline for Intergovernmental Review: May 7, 2015.

### Full Text of Announcement

#### I. Funding Opportunity Description

*Purpose of Program:* The Rehabilitation Long-Term Training program provides financial assistance for projects that provide—

(1) Basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) A specified series of courses or program of study leading to the award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

*Priorities:* This notice includes two absolute priorities. In accordance with 34 CFR 75.105(b)(2)(ii), Absolute Priority 1 is from the regulations for this program (34 CFR 386.1). Absolute Priority 2 is from the notice of final priority for this program, published in the **Federal Register** on November 5, 2013 (78 FR 66271).

*Absolute Priorities:* For FY 2015 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet both of these priorities.

These priorities are:

*Absolute Priority 1—Rehabilitation Long-Term Training Programs Designed to Provide Academic Training in Areas of Personnel Shortages.*

Under 34 CFR 75.105(c)(3), for this competition, we consider only applications that propose to provide training in the priority area of rehabilitation counseling.

*Absolute Priority 2—Vocational Rehabilitation Counseling.*

**Note:** The full text of this priority is included in the notice of final priority for this program published in the **Federal Register** on November 5, 2013 (78 FR 66271) and in the application package.

*Fourth and Fifth Years of the Project:* In deciding whether to continue funding

any Rehabilitation Long-Term Training program for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of the RSA project officer who will monitor the reported annual performance of the grantee's training program and measure it against the projections stated in the grantee's application. This review will consider the number of students actually enrolled in the grantee's training program, the number of students who successfully enter qualifying employment with State VR agencies, and the number who obtain qualifying employment in related agencies.

(b) The timeliness and effectiveness with which all requirements of the grant award have been or are being met by the grantee, including the submission of annual performance reports and annual RSA scholar payback program reports, and adherence to fiduciary responsibilities related to the budget submitted in the application; and

(c) The quality, relevance, and usefulness of the grantee's training program and activities and the degree to which the training program and activities and their outcomes have contributed to significantly improving the quality of VR professionals ready for employment with State VR agencies and related agencies, as measured by the percentage of students entering eligible employment under 34 CFR 386.34.

Grantees must also provide assurances that they will abide by all of the administrative and performance reporting requirements associated with the RSA scholar payback program reports and will retain all the documentation, including the scholarship agreement, exit forms, and any other documentation, necessary to ensure students understand their financial liabilities under this program (34 CFR part 386).

**Note:** While applicants may not hire staff or select trainees based on race or national origin/ethnicity, they may conduct outreach activities to increase the pool of eligible minority candidates. We may disqualify and not consider for funding any applicant that indicates that it will hire or train a certain number or percentage of minority candidates.

**Program Authority:** 29 U.S.C. 772.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as

adopted and amended as regulations of the Department in 2 CFR part 3485, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (c) The regulations for this program in 34 CFR parts 385 and 386. (d) The notice of final priority published in the **Federal Register** on November 5, 2013 (78 FR 66271).

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply only to institutions of higher education (IHEs).

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:*  
\$4,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2016 from the list of unfunded applicants from this competition.

*Estimated Range of Awards:*  
\$190,000–\$200,000.

*Estimated Average Size of Awards:*  
\$195,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding \$200,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 20.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and IHEs.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Long-Term Training program. The Secretary may waive part of the non-Federal share of the cost of the project after negotiations if the applicant demonstrates that it does not have sufficient resources to contribute the entire match (34 CFR 386.30).

**Note:** Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base,

whichever amount is less. Indirect costs in excess of the limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: [www.ed.gov/fund/grant/apply/grantapps/index.html](http://www.ed.gov/fund/grant/apply/grantapps/index.html).

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: [www.EDPubs.gov](http://www.EDPubs.gov) or at its email address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.129B.

To obtain a copy from the program office, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 45 pages, using the following standards:

- A “page” is 8.5” × 11”, on one side only, with 1” margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit of 45 pages applies to all of the application narrative section, Part III. We will reject your application if you exceed the page limit for Part III.

However, the page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page double-spaced abstract.

If you submit optional materials such as resumes, a bibliography, or letters of support, please limit these materials to a total of no more than 30 pages.

Please note that, if you receive funding under the competition, the abstract will be made available to the public.

3. *Submission Dates and Times:* Applications Available: January 7, 2015.

Date of Pre-Application Webinar: Interested parties are invited to participate in a pre-application webinar. The pre-application webinar with staff from the Department will be held on January 15, 2015, at 2:00 p.m. Washington, DC time. The webinar will be recorded. For further information about the pre-application webinar, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: March 9, 2015. Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application

remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 7, 2015.

4. *Intergovernmental Review*: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management*: To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

**Note:** Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and

before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete.

Information about SAM is available at SAM.gov. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: <http://www2.ed.gov/fund/grant/apply/sam-faqs.html>.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: [www.grants.gov/web/grants/register.html](http://www.grants.gov/web/grants/register.html).

7. *Other Submission Requirements*: Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications*.

Applications for grants under the Rehabilitation Training: Rehabilitation Long-Term Training competition, CFDA number 84.129B, must be submitted electronically using the Governmentwide Grants.gov Apply site at [www.Grants.gov](http://www.Grants.gov). Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Rehabilitation Training: Rehabilitation Long-Term Training competition at

[www.Grants.gov](http://www.Grants.gov). You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.129, not 84.129B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at [www.G5.gov](http://www.G5.gov).

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for

SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

**Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:** If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the

Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

**Exception to Electronic Submission Requirement:** You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: RoseAnn Ashby, U.S. Department of Education, 400 Maryland Avenue SW., Room 5055, PCP, Washington, DC 20202-2800. FAX: (202) 245-7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

**b. Submission of Paper Applications by Mail.**

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the

Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129B), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202-4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

**c. Submission of Paper Applications by Hand Delivery.**

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129B), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application

deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

#### V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and 34 CFR 386.20 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

#### VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The

GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to [www.ed.gov/fund/grant/apply/appforms/appforms.html](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of RSA's Rehabilitation Training: Rehabilitation Long-Term Training program is to increase the number of qualified VR personnel, including counselors and other professional staff, working in State VR or related agencies. At least 75 percent of all grant funds must be used for direct payment of student scholarships.

Grantees are required to maintain a system that safeguards the privacy of current and former scholars from the time they are enrolled in the program until they successfully meet their service obligation through qualified employment or monetary repayment. This system must ensure that scholars sign a payback agreement and an exit form when they exit the program, regardless of whether they drop out, are removed, or successfully complete the program. Specifically, each grantee is required to maintain the following scholar information:

(a) Current contact information for all students receiving scholarships, including home address, email, and a phone number (home or cell);

(b) A point of contact for each scholar in the event that the grantee is unable to contact the student. This contact must be at least 21 years of age and may

be a parent, relative, spouse, partner, sibling, or guardian;

(c) Cumulative financial support granted to scholars;

(d) Scholar debt in years;

(e) Program completion date and reason for exit for each scholar;

(f) Annual documentation from the scholar's employer(s) until the scholar completes the service obligation. This documentation must include the following elements in order to verify qualified employment: Start date of employment to the present date, confirmation of full-time or part-time employment (if the scholar is working part-time the number of hours per week must be included in the documentation), type of employment, and a description of the roles and responsibilities performed on the job. This information is required for each employer if the scholar has worked in more than one setting in order to meet the service obligation.

If the scholar is employed in a related agency, the agency must also provide documentation to validate that there is a relationship with the State VR agency. This may be a formal or informal contract, cooperative agreement, memorandum of understanding, or related document;

(g) Annual documentation from the scholar's IHE to verify dates of deferral, if applicable. The documentation may be prepared by the scholar's advisor or department chair and must include: Confirmation of enrollment date, estimated graduation date, confirmation that the scholar is enrolled in a full-time course of study, and confirmation of the scholar's intent to fulfill the service obligation upon completion of the program.

Grantees are required to report annually to RSA on the data elements described above using the RSA Grantee Reporting Form, OMB number 1820-0617, an electronic reporting system supported by the RSA Management Information System (RSA MIS). In addition, grantees are required to utilize all forms required by RSA to prepare and process repayment, as well as requests for deferral and exceptions. The RSA Grantee Reporting Form collects specific data, including the number of scholars entering the rehabilitation workforce, the rehabilitation field each scholar enters, and the type of employment setting each scholar chooses (e.g., State VR agency, nonprofit service provider, or professional practice group). This form allows RSA to measure results against the goal of increasing the number of qualified VR personnel working in State VR and related agencies.

In addition, all Rehabilitation Long-Term Training grantees must submit the following quantitative and qualitative data in an annual performance report:

(a) Program activities that occurred during each fiscal year from October 1 to March 31 and projected program activities to occur from April 1 to September 30. For subsequent reporting years, grantees confirm projections made from the prior year;

(b) Summary of academic support and counseling provided to scholars to ensure successful completion;

(c) Summary of career counseling provided to scholars upon program completion to ensure that they have support during their search for qualifying employment, as well as during their initial months of their employment. This may include but is not limited to informing scholars of professional contacts, networks, and job leads, matching scholars with mentors in the field, and connecting scholars to other necessary resources and information;

(d) Summary of partnership and coordination activities with State VR agencies and community-based rehabilitation providers. This may include but is not limited to obtaining input and feedback regarding curricula from State VR agencies and community-based rehabilitation providers; organizing internships, practicum agreements, job shadowing, and mentoring opportunities; and assessing scholars at the work site;

(e) Assistance provided to scholars who may not be meeting academic standards or who are performing poorly in a practicum or internship setting;

(f) Results of the program evaluation, as well as information describing how these results will be used to make necessary adjustments and improvements to the program;

(g) Results from scholar internship, practicum, job shadowing, or mentoring assessments, as well as information describing how those results will be used to ensure that future scholars receive all necessary preparation and training prior to program completion;

(h) Results from scholar evaluations and information describing how these results will be used to ensure that future scholars will be proficient in meeting the needs and demands of today's consumers and employers;

(i) Number of scholars who began an internship during the reporting period;

(j) Number of scholars who completed an internship during the reporting period;

(k) Number of scholars who dropped out or were dismissed from the program during the reporting period;

(l) Number of scholars receiving RSA scholarships during the reporting period;

(m) Number of scholars who graduated from the program during the reporting period;

(n) Number of scholars who obtained qualifying employment during the reporting period;

(o) Number of vacancies filled in the State VR agency with qualified counselors from the program during the reporting period;

(p) A budget and narrative detailing expenditures covering the period of October 1 through March 31 and projected expenditures from April 1 through September 30. The budget narrative must also verify progress towards meeting the 10 percent match requirement. For subsequent reporting years, grantees will confirm projections made from the prior year; and

(q) Other information, as requested by RSA, in order to verify substantial progress and effectively report program impact to Congress and key stakeholders.

5. *Continuation Awards*: In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

#### VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** RoseAnn Ashby, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue SW., Room 5055, PCP, Washington, DC 20202-2800. Telephone: (202) 245-7258 or by email: [roseann.ashby@ed.gov](mailto:roseann.ashby@ed.gov).

If you use a TDD or TTY, call the Federal Relay Service, toll free, at 1-800-877-8339.

#### VIII. Other Information

*Accessible Format*: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large

print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Electronic Access to This Document*: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 2, 2015.

**Michael K. Yudin,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2015-00024 Filed 1-6-15; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Rehabilitation Services Administration—Capacity Building Program for Traditionally Underserved Populations—Vocational Rehabilitation Training Institute for the Preparation of Personnel in American Indian Vocational Rehabilitation Services Projects

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

*Overview Information*: Rehabilitation Services Administration—Capacity Building Program for Traditionally Underserved Populations—Vocational Rehabilitation (VR) Training Institute for the Preparation of Personnel in American Indian Vocational Rehabilitation Services Projects (Institute) Notice inviting applications for new awards for fiscal year (FY) 2015.

*Catalog of Federal Domestic Assistance (CFDA) Number*: 84.315C.

**DATES:** Applications Available: January 7, 2015.

Date of Pre-Application Webinar: January 22, 2015.

Deadline for Transmittal of Applications: March 9, 2015.

Deadline for Intergovernmental Review: May 7, 2015.

## Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of the Program:* The Capacity Building Program for Traditionally Underserved Populations under section 21(b)(2)(C) of the Rehabilitation Act of 1973, as amended (Rehabilitation Act) (29 U.S.C. 718(b)(2)(C)), provides outreach and technical assistance (TA) to minority entities and American Indian tribes to promote their participation in activities funded under the Rehabilitation Act, including assistance to enhance their capacity to carry out such activities.

*Priorities:* This notice includes two absolute priorities. These priorities are from the notice of final priorities for this program, published in the **Federal Register** on August 14, 2014 (79 FR 47579).

*Absolute Priorities:* For FY 2015 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet both of these priorities.

These priorities are:

*Absolute Priority 1—Vocational Rehabilitation Training Institute for the Preparation of Personnel in American Indian Vocational Rehabilitation Services Projects.*

*Absolute Priority 2—Partnership Between a Four-Year Institution of Higher Education and a Two-Year Community College or Tribal College.*

**Note:** The full texts of the absolute priorities are included in the notice of final priorities for this program, published in the **Federal Register** on August 14, 2014 (79 FR 47579), and in the application package.

**Program Authority:** 29 U.S.C. 718(b)(2)(C).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86 and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The notice of final priorities for this program, published in the

**Federal Register** on August 14, 2014 (79 FR 47579).

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

### II. Award Information

*Type of Award:* Cooperative agreement.

*Estimated Available Funds:* \$500,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding \$500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

**Note:** Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

*Project Period:* Up to 60 months.

*Continuing the Fourth and Fifth Years of the Project:*

In deciding whether to continue funding the Institute for the fourth and fifth years, the Department, as part of the review of the cooperative agreement, the application narrative, the partnership agreement, and annual performance reports will consider the degree to which the Institute demonstrates—

(a) Substantial progress in providing a structured training program focused on the VR process and practices and the unique skills and knowledge necessary to improve employment outcomes for American Indians with disabilities.

(b) Substantial progress in improving counseling and VR services in a culturally appropriate manner to American Indians with disabilities so that they can prepare for, and engage in, gainful employment consistent with their informed choice.

(c) Effective collaboration between the four-year IHE and the two-year community college or tribal college that demonstrates efficient and effective program and fiduciary operations.

(d) A commitment to sustain the collaboration and the structured training

program after the Federal investment is completed.

### III. Eligibility Information

1. *Eligible Applicants:* IHEs, community colleges, and tribal colleges. Applications must reflect a partnership between a four-year IHE and a two-year community college or tribal college.

### IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: [www.ed.gov/fund/grant/apply/grantapps/index.html](http://www.ed.gov/fund/grant/apply/grantapps/index.html).

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1-877-433-7827. FAX: (703) 605-6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1-877-576-7734.

You can contact ED Pubs at its Web site, also: [www.EDPubs.gov](http://www.EDPubs.gov) or at its email address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.315C.

To obtain a copy from the program office, contact Kristen Rhinehart-Fernandez, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue SW., Room 5027, Potomac Center Plaza (PCP), Washington, DC 20202-2800. Telephone: (202) 245-6103 or by email: [kristen.rhinehart@ed.gov](mailto:kristen.rhinehart@ed.gov).

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

**Page Limit:** The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 45 pages using the following standards:

- A "page" is 8.5" × 11", on one side only, with 1" margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

In addition to the page limit on the application narrative section, you must limit the partnership agreement to the equivalent of no more than 15 pages and the abstract to the equivalent of no more than two pages. The standards listed above, which also are applicable to the application narrative, apply to these sections.

We will reject your application if you exceed the page limits, or if you apply other standards and exceed the equivalent of the page limits.

The only optional materials that will be accepted are one-page resumes for those identified as key personnel, not to exceed a total of five pages. There are no page standards associated with these optional materials. Please note that although optional materials exceeding the page limit will not result in automatic rejection of an application, our reviewers are not required to read optional materials and will not review optional materials exceeding the page limit.

Please note that any funded applicant's application abstract will be made available to the public.

3. *Submission Dates and Times:* Applications Available January 7, 2015.

Date of Pre-Application Webinar: Interested parties are invited to participate in a pre-application webinar. The pre-application webinar with staff from the Department will be held at 2:00 p.m., Washington DC time, on Thursday, January 22, 2015. The webinar will be recorded. For further information about the pre-application webinar, contact the person listed under *For Further Information Contact* in section VII of this notice.

Deadline for Transmittal of Applications: March 9, 2015.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for

an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review May 7, 2015.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN,

please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

**Note:** Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at [www.SAM.gov](http://www.SAM.gov). To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: <http://www2.ed.gov/fund/grant/apply/sam-faqs.html>.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: [www.grants.gov/web/grants/register.html](http://www.grants.gov/web/grants/register.html).

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Capacity Building Program for Traditionally Underserved Populations—Vocational Rehabilitation Training Institute for the Preparation of Personnel in American Indian Vocational Rehabilitation Services Projects, CFDA number 84.315C, must be submitted electronically using the Governmentwide Grants.gov Apply site at [www.Grants.gov](http://www.Grants.gov). Through this site, you will be able to download a copy of the application package, complete it

offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Capacity Building Program for Traditionally Underserved Populations—Vocational Rehabilitation Training Institute for the Preparation of Personnel in American Indian Vocational Rehabilitation Services Projects competition at [www.Grants.gov](http://www.Grants.gov). You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.315, not 84.315C).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application

deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at [www.G5.gov](http://www.G5.gov).

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number.

(This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please

contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to the Grants.gov system;

*and*

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an

exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Kristen Rhinehart-Fernandez, U.S. Department of Education, 400 Maryland Avenue SW., Room 5027, Potomac Center Plaza (PCP), Washington, DC 20202-2800. FAX: (202) 245-7592.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

*b. Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.315C), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202-4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

*c. Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your

paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.315C), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and
- (2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

**V. Application Review Information**

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system

that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

**VI. Award Administration Information**

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to [www.ed.gov/fund/grant/apply/appforms/appforms.html](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of the Capacity Building Program for Traditionally Underserved Populations—Vocational Rehabilitation Training Institute for the Preparation of

Personnel in American Indian Vocational Rehabilitation Services Projects is to improve the knowledge and skills of such personnel so that they can provide appropriate, effective, and culturally relevant VR services to assist American Indians with disabilities prepare for, and engage in, gainful employment consistent with their informed choice.

The cooperative agreement will specify the measures that will be used to assess the grantee's performance against the goals and objectives of the project, including outcome measures and measures that reflect the quality, relevance, and usefulness of the training and TA products developed by the Institute.

In its annual and final performance report to the Department, the grant recipient will be expected to report the data outlined in the cooperative agreement that is needed to assess its performance, including, at a minimum, the following information related to the performance measures for this project:

- The number of participants enrolled in the Institute;
- The number of participants who successfully completed the series of trainings provided by the Institute; and
- The number of participants who obtained a VR certificate.

The cooperative agreement and annual report will be reviewed by RSA and the grant recipient between the third and fourth quarter of each project period. Adjustments will be made to the project accordingly in order to ensure demonstrated progress towards meeting the goal and outcomes of the project.

5. *Continuation Awards*: In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Kristen Rhinehart-Fernandez, U.S.

Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue SW., Room 5027, PCP, Washington, DC 20202-2800. Telephone: (202) 245-6103 or by email: [kristen.rhinehart@ed.gov](mailto:kristen.rhinehart@ed.gov).

If you use a TDD or a TTY, call the FRS, toll free, at 1-800-877-8339.

## VIII. Other Information

*Accessible Format*: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Electronic Access to This Document*: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 2, 2015.

**Michael K. Yudin,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2015-00022 Filed 1-6-15; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### National Coal Council

**AGENCY**: Department of Energy.

**ACTION**: Notice of open meeting.

**SUMMARY**: This notice announces one virtual meeting of the National Coal Council (NCC). The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES**: Thursday, January 29, 2015, 11:00 a.m. to 12:00 p.m.

**ADDRESSES**: If you wish to join the meeting you must forward an email address to [robert.wright@hq.doe.gov](mailto:robert.wright@hq.doe.gov) by

close of business, Friday, January 23, 2015, with your name, organization, email address, telephone number and a request to join the meeting. Three days before the meeting, instructions on how to join the WebEx webinar will be forwarded to your email address. WebEx requires a computer, web browser and an installed application (free).

**FOR FURTHER INFORMATION CONTACT**: Dr. Robert J. Wright, U.S. Department of Energy, 4G-036/Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585-0001; Telephone: 202-586-0429.

### SUPPLEMENTARY INFORMATION:

*Purpose of the Council*: The National Coal Council provides advice and recommendations to the Secretary of Energy, on general policy matters relating to coal and the coal industry.

*Purpose of Meeting*: The National Coal Council (the Council) will hold a virtual meeting via Cisco WebEx at 11:00 a.m. (EST) on Thursday, January 29, 2015, for the sole purpose of receiving a report, "Bridging the CCS Chasm: An Assessment of Opportunities to Advance CCS/CCUS Deployment", from the Council Policy Committee. The Council membership will be asked to accept the study and forward it to the U. S. Secretary of Energy.

The draft report to be presented will be available eight days in advance (Wednesday, January 21, 2015) at the following URL: [http://www.nationalcoalcoalouncil.org/newsletter/Bridging\\_the\\_CCS\\_Chasm.pdf](http://www.nationalcoalcoalouncil.org/newsletter/Bridging_the_CCS_Chasm.pdf).

*Public Participation*: The meeting is open to the public. If you would like to file a written statement with the Council, you may do so either before or up to 5 days after the meeting. Please contact Dr. Wright at the address or telephone number listed above.

*Minutes*: A link to the audio/video recording of the meeting will be posted on the NCC Web site at: <http://www.nationalcoalcoalouncil.org/>.

Issued at Washington, DC on December 31, 2014.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2015-00026 Filed 1-6-15; 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:* ER10-1945-005; ER10-2042-017; ER10-2039-005; ER10-1938-012; ER10-1934-011; ER10-1893-011; ER10-1871-005; ER10-1406-003; ER10-1862-011.

*Applicants:* Auburndale Peaker Energy Center, LLC, Calpine Energy Services, L.P., Calpine Newark, LLC, Calpine Power America—CA, LLC, CES Marketing IX, LLC, CES Marketing X, LLC, Morgan Energy Center, LLC, Osprey Energy Center, LLC, Power Contract Financing, L.L.C.

*Description:* Updated Market Power Analysis of the Calpine Southeast MBR Sellers under ER10-1945, et. al.

*Filed Date:* 12/31/14.

*Accession Number:* 20141231-5087.

*Comments Due:* 5 p.m. ET 3/2/15.

*Docket Numbers:* ER10-1946-008; ER11-3864-011; ER10-3233-001; ER10-3231-001.

*Applicants:* Broad River Energy LLC, EquiPower Resources Management, LLC, Wheelabrator Ridge Energy Inc., Wheelabrator South Broward Inc.

*Description:* Triennial Market Power Analysis of the ECP MBR Sellers under ER10-1946, et. al.

*Filed Date:* 12/31/14.

*Accession Number:* 20141231-5123.

*Comments Due:* 5 p.m. ET 3/2/15.

*Docket Numbers:* ER10-2819-003; ER14-413-001; ER14-1397-002; ER14-1390-002; ER10-2358-004.

*Applicants:* ALLETE, Inc., ALLETE Clean Energy, Inc., Storm Lake Power Partners I LLC, Storm Lake Power Partners II, LLC, Lake Benton Power Partners LLC.

*Description:* Triennial Market Power Analysis Update for Central Region of ALLETE, Inc., et. al. under ER10-2819, et. al.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5283.

*Comments Due:* 5 p.m. ET 3/2/15.

*Docket Numbers:* ER13-68-003.

*Applicants:* Portland General Electric Company.

*Description:* Compliance filing per 35: Att K Fourth Regional Compliance Filing to be effective 10/1/2013.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5186.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER14-2156-001.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Compliance filing per 35: 2014-12-30 Ramp Compliance to be effective 12/31/9998.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5258.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-765-000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2014-12-30\_SA 6509 White Pine SSR Unit 2 to be effective 1/1/2015.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5237.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-766-000.

*Applicants:* Nevada Power Company.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Rate Schedule No. 147 NPC Concurrence with SCE RS 500 to be effective 11/22/2014.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5243.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-767-000.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2014-12-30\_Schedule 431 White Pine SSR Unit 2 to be effective 1/1/2015.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5244.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-768-000.

*Applicants:* Baconton Power LLC.

*Description:* Compliance filing per 35.37: Market Power Analysis Update to be effective 12/31/2014.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5246.

*Comments Due:* 5 p.m. ET 3/2/15.

*Docket Numbers:* ER15-769-000.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2014-12-30 ARR Zone Weighting Factor Calculation to be effective 1/1/2015.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5247.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-770-000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): SA 31 Twelfth Revised—NITSA with ConocoPhillips to be effective 3/1/2015.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5257.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-771-000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): SA 304 Eighth Revised—NITSA with Barretts Minerals Inc to be effective 3/1/2015.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5262.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-772-000.

*Applicants:* ALLETE, Inc.

*Description:* Compliance filing per 35: Revisions to MBR Tariff to be effective 3/1/2015.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5263.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-773-000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): SA 312 Sixth Revised—NITSA with Southern Montana Co-op to be effective 3/1/2015.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5264.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-774-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Revisions Addressing Regulation Compensation and Mitigation of Regulation Offers to be effective 3/1/2015.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5265.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-775-000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): CCSF IA—2015 Annual Transmission Rate Adjustment to be effective 1/1/2015.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5266.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-776-000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): SA 605 Fourth Revised—NITSA with Bonneville Power Administration to be effective 3/1/2015.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5267.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-777-000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): SA 666 Second Revised—NITSA with Suiza Diary Group LLC to be effective 7/1/2015.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5273.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-778-000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): SA 243 Seventh Revised—NITSA with CHS Inc to be effective 3/1/2015.

*Filed Date:* 12/30/14.

*Accession Number:* 20141230-5282.

*Comments Due:* 5 p.m. ET 1/20/15.

*Docket Numbers:* ER15-779-000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): SA 32 Fifth Revised—NITSA with Colstrip Steam Electric Station to be effective 3/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5000.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–780–000.  
*Applicants:* New England Power Pool Participants Committee.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): January 2015 Membership Filing to be effective 12/1/2014.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5002.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–781–000.  
*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): SA 290 Fourth Revised—NITSA with Holcim US Inc to be effective 3/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5003.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–782–000.  
*Applicants:* Las Vegas Cogeneration Limited Partnership.

*Description:* Tariff Withdrawal per 35.15: Cancellation of Tariff to be effective 12/31/2014.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5004.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–783–000.  
*Applicants:* Las Vegas Cogeneration II, L.L.C.

*Description:* Tariff Withdrawal per 35.15: Cancellation of Tariff to be effective 12/31/2014.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5005.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–784–000.  
*Applicants:* ArcLight Energy Marketing, LLC.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Revised Tariff re Category 1 in SE to be effective 1/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5069.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–785–000.  
*Applicants:* Calpine Newark, LLC.

*Description:* Tariff Withdrawal per 35.15: Notice of Cancellation to be effective 1/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5071.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–786–000.  
*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2014–12–31\_SA 2523

ITC-Pheasant Run Wind 3rd Rev. GIA (J075) to be effective 1/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5073.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–787–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 1148R20 American Electric Power NITSA and NOA to be effective 12/1/2014.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5075.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–788–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Tariff Revisions Regarding Thresholds for Uneconomic Production Investigation to be effective 3/1/2014.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5085.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–789–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2236R5 Golden Spread Electric Cooperative, Inc. NITSA/NOA to be effective 12/1/2014.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5086.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–790–000.  
*Applicants:* Shell Chemical LP.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Revised MBR re Category 1 in SE to be effective 1/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5088.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–791–000.  
*Applicants:* Motiva Enterprises LLC.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Revised MBR re Category 1 SE Region to be effective 1/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5089.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–792–000.  
*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement No. 4061; Queue No. X1–027A\_AT12 to be effective 12/2/2014.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5090.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–793–000.  
*Applicants:* Southern Indiana Gas and Electric Company.

*Description:* Compliance filing per 35.37: SIGECO (“Vectren South”) Triennial MBR Update to be effective 3/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5117.  
*Comments Due:* 5 p.m. ET 3/2/15.  
*Docket Numbers:* ER15–794–000.  
*Applicants:* Catalyst Paper Operations Inc.

*Description:* Initial rate filing per 35.12 Catalyst Paper Operations MBR Application to be effective 12/31/9998.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5134.  
*Comments Due:* 5 p.m. ET 1/21/15.  
*Docket Numbers:* ER15–795–000.  
*Applicants:* AL Sandersville, LLC.

*Description:* Compliance filing per 35.37: Triennial Update Market Power Analysis Filing for SE Region & Tariff Amendment to be effective 1/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5139.  
*Comments Due:* 5 p.m. ET 3/2/15.  
*Docket Numbers:* ER15–796–000.  
*Applicants:* Effingham County Power, LLC.

*Description:* Compliance filing per 35.37: Triennial Update Market Power Analysis Filing for SE Region & Tariff Amendment to be effective 1/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5140.  
*Comments Due:* 5 p.m. ET 3/2/15.  
*Docket Numbers:* ER15–797–000.  
*Applicants:* Walton County Power, LLC.

*Description:* Compliance filing per 35.37: Triennial Update Market Power Analysis for SE Region & Tariff Amendment to be effective 1/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5141.  
*Comments Due:* 5 p.m. ET 3/2/15.  
*Docket Numbers:* ER15–798–000.  
*Applicants:* MPC Generating, LLC.

*Description:* Compliance filing per 35.37: Triennial Update Market Power Analysis Filing for SE Region & Tariff Amendment effective 1/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5142.  
*Comments Due:* 5 p.m. ET 3/2/15.  
*Docket Numbers:* ER15–799–000.  
*Applicants:* Washington County Power, LLC.

*Description:* Compliance filing per 35.37: Triennial Update Market Power Analysis Filing for SE Region & Tariff Amendment to be effective 1/1/2015.  
*Filed Date:* 12/31/14.  
*Accession Number:* 20141231–5143.  
*Comments Due:* 5 p.m. ET 3/2/15.  
*Docket Numbers:* ER15–800–000.  
*Applicants:* Entergy Arkansas, Inc.

*Description:* Compliance filing per 35.37: Triennial Market Power Update

of Entergy Arkansas, Inc. to be effective N/A.

*Filed Date:* 12/31/14.

*Accession Number:* 20141231-5144.

*Comments Due:* 5 p.m. ET 3/2/15.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF89-198-009; EL15-35-000.

*Applicants:* Kalaeloa Partners, L.P.

*Description:* Form 556 and Petition for Recertification as a Qualifying Cogeneration Facility and Temporary Limited Waiver of the Qualifying Facility Standards for 2014 of Kalaeloa Partners, L.P. under QF89-198, et. al.

*Filed Date:* 12/29/14.

*Accession Number:* 20141229-5210.

*Comments Due:* 5 p.m. ET 12/19/14.

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: December 31, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-00005 Filed 1-6-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER15-801-000.

*Applicants:* NorthWestern Corporation.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): SA 305 Fifth Revised—NITSA with Stillwater Mining Company to be effective 7/1/2015.

*Filed Date:* 12/31/14.

*Accession Number:* 20141231-5147.

*Comments Due:* 5 p.m. ET 1/21/15.

*Docket Numbers:* ER15-802-000.

*Applicants:* Entergy Gulf States Louisiana, L.L.C.

*Description:* Compliance filing per 35.37: Triennial Market Power Update of Entergy Gulf States Louisiana, L.L.C. to be effective N/A.

*Filed Date:* 12/31/14.

*Accession Number:* 20141231-5149.

*Comments Due:* 5 p.m. ET 3/2/15.

*Docket Numbers:* ER15-803-000.

*Applicants:* Entergy Louisiana, LLC.

*Description:* Compliance filing per 35.37: Triennial Market Power Update of Entergy Louisiana, LLC to be effective N/A.

*Filed Date:* 12/31/14.

*Accession Number:* 20141231-5150.

*Comments Due:* 5 p.m. ET 3/2/15.

*Docket Numbers:* ER15-804-000.

*Applicants:* Entergy Mississippi, Inc.

*Description:* Compliance filing per 35.37: Triennial Market Power Update of Entergy Mississippi, Inc. to be effective N/A.

*Filed Date:* 12/31/14.

*Accession Number:* 20141231-5153.

*Comments Due:* 5 p.m. ET 3/2/15.

*Docket Numbers:* ER15-805-000.

*Applicants:* Entergy New Orleans, Inc.  
*Description:* Compliance filing per 35.37: Triennial Market Power Update of Entergy New Orleans, Inc. to be effective N/A.

*Filed Date:* 12/31/14.

*Accession Number:* 20141231-5154.

*Comments Due:* 5 p.m. ET 3/2/15.

*Docket Numbers:* ER15-806-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to the OATT, OA and RAA re Ministerial Revisions to Definitions to be effective 3/2/2015.

*Filed Date:* 12/31/14.

*Accession Number:* 20141231-5203.

*Comments Due:* 5 p.m. ET 1/21/15.

*Docket Numbers:* ER15-807-000.

*Applicants:* PJM Interconnection, L.L.C., Duke Energy Ohio, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Duke submits Amended Service Agreement No. 3140 to be effective 11/10/2014.

*Filed Date:* 12/31/14.

*Accession Number:* 20141231-5223.

*Comments Due:* 5 p.m. ET 1/21/15.

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: December 31, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-00006 Filed 1-6-15; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OA-2015-0001; FRL 9921-42-OA]

### Farm, Ranch, and Rural Communities Committee (FRRCC); Notice of Meeting

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Meeting.

**SUMMARY:** Under the Federal Advisory Committee Act, Public Law 92-463, the Environmental Protection Agency (EPA) hereby provides notice of a meeting of the Farm, Ranch, and Rural Communities Committee (FRRCC). This meeting is open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the FRRCC. For additional information about registering for public comment, please refer to the **SUPPLEMENTARY INFORMATION** section. Due to limited space, seating at the FRRCC meeting will be limited to a first-come, first-served basis.

**DATES:** The Farm, Ranch, and Rural Communities Committee will convene on Wednesday, January 21, 2015, from 9 a.m. until 5 p.m. and will reconvene Thursday, January 22, 2015, from 9 a.m. until 3 p.m. (Eastern Standard Time).

One public comment period relevant to specific issues being considered by the FRRCC is scheduled for Thursday, January 22, 2015, from 2:30 p.m. to 3 p.m. (Eastern Standard Time). Members of the public who wish to participate during the public comment period are encouraged to pre-register by noon, (Eastern Standard Time), on Monday, January 12, 2015.

**ADDRESSES:** The meeting will be held at the EPA Potomac Yard Conference Center located at One Potomac Yard (South Tower Building) on the 1st Floor.

The street address is 2777 South Crystal Drive, Arlington, Virginia 22202. The meeting is open to the public with limited seating on a first-come, first-served basis.

**FOR FURTHER INFORMATION CONTACT:**

Questions or correspondence concerning this meeting should be directed to Sheritta W. Taylor, Designated Federal Officer, US EPA, Office of the Administrator (MC1101A), 1200 Pennsylvania Avenue NW., Washington, DC 20460; via email at [taylor.sheritta@epa.gov](mailto:taylor.sheritta@epa.gov), or via telephone at 202-564-1771.

**SUPPLEMENTARY INFORMATION:** The FRRCC is a policy-oriented committee that provides policy advice, information, and recommendations to the EPA Administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities.

The purpose of this meeting is to advance discussion of specific topics of unique relevance to agriculture such as exploring best practices to maintain soil health, the impact of soil health as it relates to air and water quality and the relationship between soil health and extreme weather events across the country, in such a way as to provide thoughtful advice and useful insights to the Agency as it crafts environmental policies and programs that affect and engage agriculture and rural communities. A copy of the meeting agenda will be posted at <http://www.epa.gov/ocem/frcc>.

**Public Comment:** Individuals or groups making oral presentations during the public comment period will be limited to a total presentation time of five minutes. To accommodate large groups addressing the FRRCC, only one representative of an organization or group will be allowed to speak during the designated public comment period. Written comments received by noon, (Eastern Standard Time), January 12, 2015, will be included in the materials distributed to members of the FRRCC. Written comments received after that date and time will be provided to the FRRCC as time allows. Requests to make brief oral comments or provide written statements to the FRRCC should be sent to Sheritta W. Taylor, Designated Federal Officer, at the contact information above.

**Meeting Access:** For information on access or services for individuals with disabilities, please contact Sheritta W. Taylor at 202-564-1771 or [taylor.sheritta@epa.gov](mailto:taylor.sheritta@epa.gov). To request special accommodations, please contact Sheritta W. Taylor, preferably at least four working days prior to the meeting,

to allow EPA sufficient time to process your request.

Dated: January 2, 2015.

**Sheritta W. Taylor,**

*Acting Designated Federal Officer.*

[FR Doc. 2015-00074 Filed 1-6-15; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9921-46-Region 3]

**Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the Commonwealth of Virginia**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of tentative approval and solicitation of requests for a public hearing.

**SUMMARY:** Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act, as amended, and the requirements governing the National Primary Drinking Water Regulations Implementation, 40 CFR part 142, that the Commonwealth of Virginia is revising its approved Public Water System Supervision Program. The Commonwealth has adopted the Lead and Copper Rule Short Term Revisions which will provide for better public health protection by reducing potential reproductive and developmental health risks from lead. The Environmental Protection Agency (EPA) has determined that these revisions are no less stringent than the corresponding Federal regulations. EPA is taking action to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

**DATES:** Comments or a request for a public hearing must be submitted by February 6, 2015. This determination shall become effective on February 6, 2015 if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect on his own to hold a hearing, and if no comments are received which cause EPA to modify its tentative approval.

**ADDRESSES:** Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. Comments may also be submitted electronically to [Rizzo.George@epa.gov](mailto:Rizzo.George@epa.gov). All documents relating to this

determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch (3WP21), Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.
- Office of Drinking Water, Virginia Department of Health, Madison Building, 6th Floor, 109 Governor Street, Room 632, Richmond, VA 23219.

**FOR FURTHER INFORMATION CONTACT:**

George Rizzo at the Philadelphia address given above, telephone (215) 814-5781, fax (215) 814-2302, or email [Rizzo.George@epa.gov](mailto:Rizzo.George@epa.gov).

**SUPPLEMENTARY INFORMATION:** All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered; if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by February 6, 2015, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: December 3, 2014.

**Shawn M. Garvin,**

*Regional Administrator, EPA, Region III.*

[FR Doc. 2015-00017 Filed 1-6-15; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

[DA 14-1855]

**Notice of Debarment**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Enforcement Bureau (the "Bureau") debars Gregory Paul Styles from the schools and libraries universal service support mechanism (or "E-Rate Program") for a period of three years. The Bureau takes this action to protect

the E-Rate Program from waste, fraud, and abuse.

**DATES:** Debarment commences on the date Mr. Gregory Paul Styles receives the debarment letter or January 7, 2015, whichever date comes first, for a period of three years.

**FOR FURTHER INFORMATION CONTACT:** Joy M. Ragsdale, Attorney Advisor, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4-C330, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by telephone at (202) 418-1697 or by email at [Joy.Ragsdale@fcc.gov](mailto:Joy.Ragsdale@fcc.gov). If Ms. Ragsdale is unavailable, you may contact Ms. Theresa Cavanaugh, Chief, Investigations and Hearings Division, by telephone at (202) 418-1420 and by email at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The Bureau debarred Mr. Gregory Paul Styles from the schools and libraries service support mechanism for a period of three years pursuant to 47 CFR 54.8. Attached is the debarment letter, DA 14-1855, which was mailed to Mr. Styles and released on December 18, 2014. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at <http://www.fcc.gov>. The text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street SW., Room CY-B420, Washington, DC 20554, telephone (202) 488-5300 or (800) 378-3160, facsimile (202) 488-5563, or via email <http://www.bcpweb.com>.

Federal Communications Commission.

**Jeffrey J. Gee,**

*Acting Chief, Investigations and Hearings Division, Enforcement Bureau.*

December 18, 2014

DA 14-1855

**SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND E-MAIL**

Mr. Gregory Paul Styles  
15506 Banjo Court  
Woodbridge, VA 22193

Re: Debarment Notice, FCC Case No. EB-IHD-14-00013502

Dear Mr. Styles:

The Federal Communications Commission (Commission) hereby notifies you that, pursuant to Section 54.8 of its rules, you are prohibited from participating in activities associated with or relating to the schools and libraries universal service support

mechanism (E-Rate program) for three years from either the date of your receipt of this Notice of Debarment or of its publication in the **Federal Register**, whichever is earlier in time (Debarment Date).<sup>1</sup>

On August 26, 2014, the Commission's Enforcement Bureau sent you a Notice of Suspension and Initiation of Debarment Proceedings that was published in the **Federal Register** on September 22, 2014.<sup>2</sup> That *Suspension Notice* suspended you from participating in activities associated with or relating to the E-Rate program. It also described the basis for initiating debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.

As discussed in the *Suspension Notice*, in March 2011 you were convicted of conspiring with Marvin Mitch Freeman to obstruct the competitive bidding process and defraud the E-Rate program of approximately \$788,000.<sup>3</sup> As the Management Information Systems Director for Chowchilla Elementary School District (CESD) you were responsible for CESD's procurement process and, therefore were ineligible to bid on CESD's E-Rate projects.<sup>4</sup> To circumvent the Commission's competitive bidding rules, you solicited Mr. Freeman to bid on CESD E-Rate contracts through his business, Twisted Head Design.<sup>5</sup> Specifically, you awarded Mr. Freeman the E-Rate contracts knowing he was unqualified to perform E-Rate work and that you or a subcontractor would perform the work, and bill the Universal Service Administrative Company for that work.<sup>6</sup> Pursuant to Section 54.8(c) of the Commission's rules, your conviction of criminal conduct in connection with the E-Rate program is the basis for this debarment.<sup>7</sup>

In accordance with the Commission's debarment rules, you were required to file with the Commission any opposition to your suspension or its scope, or to your proposed debarment or

its scope, no later than 30 calendar days from either the date of your receipt of the *Suspension Notice* or of its publication in the **Federal Register**, whichever date occurred first.<sup>8</sup> The Commission did not receive any such opposition from you.

For the foregoing reasons, you are debarred from participating in activities associated with or related to the E-Rate program for three years from the Debarment Date.<sup>9</sup> During this debarment period, you are excluded from participating in any activities associated with or related to the E-Rate program, including the receipt of funds or discounted services through the E-Rate program, or consulting with, assisting, or advising applicants or service providers regarding the E-Rate program.<sup>10</sup>

Sincerely,

Jeffrey J. Gee

*Acting Chief, Investigations and Hearings Division Enforcement Bureau*

cc: Johnnay Schrieber, Universal Service Administrative Company (via e-mail)

Rashann Duvall, Universal Service Administrative Company (via e-mail)

Mark J. McKeon, United States Attorney's Office, Eastern District of California (via e-mail)

[FR Doc. 2015-00035 Filed 1-6-15; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[DA 14-1854]

### Notice of Debarment

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Enforcement Bureau (the "Bureau") debar Marvin Mitch Freeman from the schools and libraries universal service support mechanism (or "E-Rate Program") for a period of three years. The Bureau takes this action to protect the E-Rate Program from waste, fraud, and abuse.

**DATES:** Debarment commences on the date Mr. Marvin Mitch Freeman receives the debarment letter or January 7, 2015, whichever date comes first, for a period of three years.

**FOR FURTHER INFORMATION CONTACT:** Joy M. Ragsdale, Attorney Advisor, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4-C330, 445

<sup>1</sup> 47 CFR 54.8(e), (g); *see also id.* 0.111 (delegating authority to the Enforcement Bureau to resolve universal service suspension and debarment proceedings).

<sup>2</sup> Letter from Jeffrey J. Gee, Acting Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Gregory Paul Styles, Notice of Suspension and Initiation of Debarment Proceedings, 29 FCC Rcd 10109 (Enf. Bur. 2014) (*Suspension Notice*); 79 FR 56579 (Sept. 22, 2014).

<sup>3</sup> *United States v. Gregory P. Styles*, Criminal Docket No. 1:06CR00013-001, Judgment at 1 (E.D. Cal. filed March 17, 2011, amended June 15, 2011); *Suspension Notice*, 29 FCC Rcd at 10110-11.

<sup>4</sup> *Suspension Notice*, 29 FCC Rcd at 10110.

<sup>5</sup> *Id.*; *see* 47 CFR 54.503, 54.511(a).

<sup>6</sup> *Id.*

<sup>7</sup> 47 CFR 54.8(c).

<sup>8</sup> *Id.* 54.8(e)(3)-(4). Any opposition had to be filed no later than October 22, 2014.

<sup>9</sup> *Id.* 54.8(e)(5), (g).

<sup>10</sup> *Id.* 54.8(a)(1), (5), (d).

12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by telephone at (202) 418-1697 or by email at [Joy.Ragsdale@fcc.gov](mailto:Joy.Ragsdale@fcc.gov). If Ms. Ragsdale is unavailable, you may contact Ms. Theresa Cavanaugh, Chief, Investigations and Hearings Division, by telephone at (202) 418-1420 and by email at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The Bureau debarred Mr. Marvin Mitch Freeman from the schools and libraries service support mechanism for a period of three years pursuant to 47 CFR 54.8. Attached is the debarment letter, DA 14-1854, which was mailed to Mr. Freeman and released on December 18, 2014. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at <http://www.fcc.gov>. The text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street SW., Room CY-B420, Washington, DC 20554, telephone (202) 488-5300 or (800) 378-3160, facsimile (202) 488-5563, or via email <http://www.bcpweb.com>.

Federal Communications Commission.

**Jeffrey J. Gee,**

*Acting Chief, Investigations and Hearings Division, Enforcement Bureau.*

December 18, 2014

DA 14-1854

**SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND E-MAIL**

Mr. Marvin Mitch Freeman,  
1408 Northhill Street,  
Selma, CA 93662,

Re: Debarment Notice, FCC Case No. EB-IHD-14-00015659

Dear Mr. Freeman:

The Federal Communications Commission (Commission) hereby notifies you that, pursuant to Section 54.8 of its rules, you are prohibited from participating in activities associated with or relating to the schools and libraries universal service support mechanism (E-Rate program) for three years from either the date of your receipt of this Notice of Debarment or of its publication in the **Federal Register**, whichever is earlier in time (Debarment Date).<sup>1</sup>

On August 26, 2014, the Commission's Enforcement Bureau sent

you a Notice of Suspension and Initiation of Debarment Proceedings that was published in the **Federal Register** on September 12, 2014.<sup>2</sup> That *Suspension Notice* suspended you from participating in activities associated with or relating to the E-Rate program. It also described the basis for initiating debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.

As discussed in the *Suspension Notice*, on March 17, 2011, you were convicted of conspiring with Gregory Paul Styles, the Management Information Systems Director for the Chowchilla Elementary School District (CESD), to obstruct the competitive bidding process and defraud the E-Rate program of approximately \$788,000.<sup>3</sup> You and Mr. Styles used your silk screening company, Twisted Head Design, to bid on CESD's E-Rate contracts.<sup>4</sup> Mr. Styles awarded E-Rate contracts to Twisted Head Design knowing you and the company were unqualified to perform E-Rate work, performed the work himself or through his subcontractors, and billed USAC for that work.<sup>5</sup> Pursuant to Section 54.8(c) of the Commission's rules, your conviction of criminal conduct associated with the E-Rate program is the basis for this debarment.<sup>6</sup>

In accordance with the Commission's debarment rules, you were required to file with the Commission any opposition to your suspension or its scope, or to your proposed debarment or its scope, no later than 30 calendar days from either the date of your receipt of the *Suspension Notice* or of its publication in the **Federal Register**, whichever date occurred first.<sup>7</sup> The Commission did not receive any such opposition from you.

For the foregoing reasons, you are debarred from participating in activities associated with or related to the E-Rate program for three years from the Debarment Date.<sup>8</sup> During this debarment period, you are excluded from participating in any activities associated with or related to the E-Rate program,

<sup>2</sup> Letter from Jeffrey J. Gee, Acting Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Marvin Mitch Freeman, Notice of Suspension and Initiation of Debarment Proceedings, 29 FCC Rcd 10114 (Enf. Bur. 2014) (*Suspension Notice*); 79 FR 54718 (Sept. 12, 2014).

<sup>3</sup> *United States v. Marvin Mitch Freeman*, Criminal Docket No. 1:06-cr-00013-002, Judgment at 1 (E.D. Cal. filed March 17, 2011); *Suspension Notice*, 29 FCC Rcd at 10115-16.

<sup>4</sup> *Suspension Notice*, 29 FCC Rcd at 10115.

<sup>5</sup> *Id.*

<sup>6</sup> 47 CFR 54.8(c).

<sup>7</sup> *Id.* 54.8 (e)(3), (4). Any opposition had to be filed no later than October 3, 2014.

<sup>8</sup> *Id.* 54.8(e)(5), (g).

including the receipt of funds or discounted services through the E-Rate program, or consulting with, assisting, or advising applicants or service providers regarding the E-Rate program.<sup>9</sup>

Sincerely,

Jeffrey J. Gee

*Acting Chief, Investigations and Hearings Division Enforcement Bureau*

[FR Doc. 2015-00034 Filed 1-6-15; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[DA 14-1856]

### Notice of Debarment

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Enforcement Bureau (the "Bureau") debar Donna P. English from the schools and libraries universal service support mechanism (or "E-Rate Program") for a period of three years. The Bureau takes this action to protect the E-Rate Program from waste, fraud, and abuse.

**DATES:** Debarment commences on the date Ms. Donna P. English receives the debarment letter or January 7, 2015, whichever date comes first, for a period of three years.

**FOR FURTHER INFORMATION CONTACT:** Joy M. Ragsdale, Attorney Advisor, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4-C330, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by telephone at (202) 418-1697 or by email at [Joy.Ragsdale@fcc.gov](mailto:Joy.Ragsdale@fcc.gov). If Ms. Ragsdale is unavailable, you may contact Ms. Theresa Cavanaugh, Chief, Investigations and Hearings Division, by telephone at (202) 418-1420 and by email at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The Bureau debarred Ms. Donna P. English from the schools and libraries service support mechanism for a period of three years pursuant to 47 CFR 54.8. Attached is the debarment letter, DA 14-1856, which was mailed to Ms. English and released on December 18, 2014. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. In addition, the complete text is

<sup>1</sup> 47 CFR 54.8(e), (g); see also *id.* 0.111 (delegating authority to the Enforcement Bureau to resolve universal service suspension and debarment proceedings).

<sup>9</sup> *Id.* 54.8(a)(1), (5), (d).

available on the FCC's Web site at <http://www.fcc.gov>. The text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street SW., Room CY-B420, Washington, DC 20554, telephone (202) 488-5300 or (800) 378-3160, facsimile (202) 488-5563, or via email <http://www.bcpweb.com>.

Federal Communications Commission.

**Jeffrey J. Gee,**

*Acting Chief, Investigations and Hearings Division, Enforcement Bureau.*

December 18, 2014 DA 14-1856  
SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND E-MAIL  
Ms. Donna P. English  
225 Warren Road  
Michigan City, IN 46360

Re: Debarment Notice, FCC Case No. EB-IHD-14-00015686

Dear Ms. English:

The Federal Communications Commission (Commission) hereby notifies you that, pursuant to Section 54.8 of its rules, you are prohibited from participating in activities associated with or relating to the schools and libraries universal service support mechanism (E-Rate program) for three years from either the date of your receipt of this Debarment Notice or of its publication in the **Federal Register**, whichever is earlier in time (Debarment Date).<sup>1</sup>

On August 26, 2014, the Commission's Enforcement Bureau sent you a Notice of Suspension and Initiation of Debarment Proceedings that was published in the **Federal Register** on September 16, 2014.<sup>2</sup> That *Suspension Notice* suspended you from participating in activities associated with or relating to the E-Rate program. It also described the basis for initiating debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.

As discussed in the *Suspension Notice*, in October 2011 you were convicted of multiple counts of wire fraud, one count of mail fraud, and one count of theft of government property for activities associated with the E-Rate program.<sup>3</sup> As the owner of Project

Managers, Inc. (PMI) you defrauded the E-Rate program by completing and filing E-Rate applications for the River Forest Community School Corporation (RFCSC) in violation of the E-Rate program rules.<sup>4</sup> In addition, you submitted false invoices and received more than \$200,000 in E-Rate payments from RFCSC and the Universal Service Administrative Company for technical services you did not provide and for cash advances you did not repay.<sup>5</sup> Pursuant to Section 54.8(c) of the Commission's rules, your conviction of criminal conduct in connection with the E-Rate program is the basis for this debarment.<sup>6</sup>

In accordance with the Commission's debarment rules, you were required to file with the Commission any opposition to your suspension or its scope, or to your proposed debarment or its scope, no later than 30 calendar days from either the date of your receipt of the *Suspension Notice* or of its publication in the **Federal Register**, whichever date occurred first.<sup>7</sup> The Commission did not receive any such opposition from you.

For the foregoing reasons, you are debarred from participating in activities associated with or related to the E-Rate program for three years from the Debarment Date.<sup>8</sup> During this debarment period, you are excluded from participating in any activities associated with or related to the E-Rate program, including the receipt of funds or discounted services through the E-Rate program, or consulting with, assisting, or advising applicants or service providers regarding the E-Rate program.<sup>9</sup>

Sincerely,

Jeffrey J. Gee

*Acting Chief, Investigations and Hearings Division Enforcement Bureau*

[FR Doc. 2015-00036 Filed 1-6-15; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Safety and Homeland Security Bureau; Federal Advisory Committee Act; Task Force on Optimal Public Safety Answering Point Architecture

**AGENCY:** Federal Communications Commission.

<sup>4</sup> *Suspension Notice*, 29 FCC Rcd at 10120.

<sup>5</sup> *Id.* at 10120-2.

<sup>6</sup> 47 CFR 54.8(c).

<sup>7</sup> *Id.* 54.8 (e)(3)-(4). Any opposition had to be filed no later than October 3, 2014.

<sup>8</sup> *Id.* 54.8(e)(5), (g).

<sup>9</sup> *Id.* 54.8(a)(1), (5), (d).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (FACA), this notice advises interested persons that the Federal Communications Commission's (FCC) Task Force on Optimal Public Safety Answering Point (PSAP) Architecture (Task Force) will hold its first meeting on January 26, 2015, at 1 p.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW-C305, 445 12th Street SW., Washington, DC 20554.

**DATES:** January 26, 2015.

**ADDRESSES:** Federal Communications Commission, Room TW-C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Timothy May, Federal Communications Commission, Public Safety and Homeland Security Bureau, 202-418-1463, email: [timothy.may@fcc.gov](mailto:timothy.may@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The meeting will be held on January 26th, 2015, from 1:00 p.m. to 4:00 p.m. in the Commission Meeting Room of the FCC, Room TW-305, 445 12th Street SW., Washington, DC 20554. The Task Force is a Federal Advisory Committee that will study and report findings and recommendations on PSAP structure and architecture in order to determine whether additional consolidation of PSAP infrastructure and architecture improvements would promote greater efficiency of operations, safety of life, and cost containment, while retaining needed integration with local first responder dispatch and support. On December 2, 2014, pursuant to the FACA, the Commission established the Task Force charter for a period of two years, through December 2, 2016. The Task Force will present its initial findings and recommendations to the Commission no later than April 30, 2015 unless such period is extended by consent of the Chairman of the Commission (or his designee).

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at <http://www.fcc.gov/live>.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to

<sup>1</sup> 47 CFR 54.8(e), (g); *see also id.* 0.111 (delegating authority to the Enforcement Bureau to resolve universal service suspension and debarment proceedings).

<sup>2</sup> Letter from Jeffrey J. Gee, Acting Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Donna P. English, Notice of Suspension and Initiation of Debarment Proceedings, 29 FCC Rcd 10119 (Enf. Bur. 2014) (*Suspension Notice*); 79 FR 55486 (Sept. 16, 2014).

<sup>3</sup> *United States v. Donna P. English*, Criminal Docket No. 2:10-cr-00075-JTM-PRC, Judgment at 1 (N.D. Ind. entered Oct. 14, 2011); *Suspension Notice*, 29 FCC Rcd at 10120-21.

[fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs at (202) 418-0432 (TTY). Such requests should include a detailed description of the accommodation requested. In addition, please include a way the FCC may contact you if it needs more information. Please allow at least five days' advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2015-00004 Filed 1-6-15; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735-01]

### Sunshine Act Notice

January 5, 2015.

**TIME AND DATE:** 11:00 a.m., Thursday, January 15, 2015.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument in the matter *Secretary of Labor v. Jim Walter Resources, Inc.*, Docket No. SE 2012-681-R (Issues include whether the Administrative Law Judge erred in upholding an imminent danger order.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFO:** Emogene Johnson (202) 434-9935/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2015-00086 Filed 1-5-15; 4:15 pm]

**BILLING CODE P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735-01]

### Sunshine Act Notice

January 5, 2015.

**TIME AND DATE:** 10:00 a.m., Thursday, January 15, 2015.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument in the matter *Secretary of Labor v. Jim Walter Resources, Inc.*, Docket No. SE 2011-407-R (Issues include whether the Administrative Law Judge erred in upholding an imminent danger order.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFO:** Emogene Johnson (202) 434-9935/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2015-00084 Filed 1-5-15; 4:15 pm]

**BILLING CODE 6735-01-P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 2, 2015.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166-2034:

1. *First Horizon National Corporation*, Memphis, Tennessee; to merge with TrustAtlantic Financial Corporation, and thereby indirectly acquire TrustAtlantic Bank, both in Raleigh, North Carolina.

Board of Governors of the Federal Reserve System, January 2, 2015.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2015-00033 Filed 1-6-15; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 2015.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105-1579:

1. *CITIC Group Corporation*, Beijing, China; to retain CLSA Americas, LLC, New York, New York, and to continue to engage in certain permissible nonbanking activities.

Board of Governors of the Federal Reserve System, January 2, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015-00032 Filed 1-6-15; 8:45 am]

BILLING CODE 6210-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket Nos. FDA-2005-N-0453, FDA-2003-N-0196, and FDA-2006-O-0314]

**Sunscreen Feedback Letters; Notice of Availability Under the Sunscreen Innovation Act**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of letters containing FDA’s initial determinations and feedback on safety and effectiveness data submitted to demonstrate that certain active ingredients are generally recognized as safe and effective (GRASE) and not misbranded for use in over-the-counter (OTC) sunscreen drug products (sunscreen feedback letters). We are taking this action under the Sunscreen Innovation Act (SIA).

**DATES:** Submit either electronic or written comments by February 23, 2015. Sponsors may submit written requests for a meeting with FDA to discuss these proposed sunscreen orders by February 6, 2015.

**ADDRESSES:** Submit electronic comments to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should clearly identify the

specific active ingredient(s) and docket number(s) to which the comments apply.

**FOR FURTHER INFORMATION CONTACT:**

Kristen Hardin, Division of Nonprescription Drug Products, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5491, Silver Spring, MD 20993-0002, 240-402-4246.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of six sunscreen feedback letters on its Web site that contain the Agency’s tentative determinations and feedback on safety and effectiveness data submitted to demonstrate that certain active ingredients are GRASE and not misbranded for use in OTC sunscreen drug products. We are taking this action under the SIA (Pub. L. 113-195), enacted November 26, 2014. Before the SIA was enacted, these sunscreen feedback letters were issued to persons seeking OTC monograph status for nonprescription sunscreen active ingredients using the Time and Extent Application (TEA) process under FDA regulations in 21 CFR 330.14, and were also previously made available to the public in the docket.

The SIA amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to, among other things, provide an alternative process for FDA to review the safety and effectiveness of nonprescription sunscreen active ingredients. The SIA establishes new procedures for establishing the conditions under which sunscreens containing active ingredients that have been reviewed through the SIA process and found in a final sunscreen order to be GRASE and not misbranded may be marketed in the United States.

Section 586C(b)(3) of the FD&C Act, as added by the SIA, provides that

sunscreen feedback letters issued before the SIA was enacted are deemed to be proposed sunscreen orders. Proposed sunscreen orders contain FDA’s tentative determination that a nonprescription sunscreen active ingredient or combination of nonprescription sunscreen active ingredients: (A) Is GRASE and not misbranded if marketed in accordance with such order; (B) is not GRASE and is misbranded; or (C) is not GRASE and is misbranded because the data are insufficient to classify the active ingredient or combination of ingredients as GRASE and not misbranded, and additional data are necessary to allow FDA to determine otherwise. All of the proposed sunscreen orders addressed in this notice have been tentatively classified under category (C), as described in the previous sentence. Accordingly, additional data will be needed to support a determination that any or all of the active ingredients they address are GRASE and not misbranded.

**II. Sunscreen Feedback Letters Deemed To Be SIA Proposed Orders**

The six feedback letters that are deemed to be proposed orders under the SIA are identified in Table 1. They can be viewed electronically on FDA’s Web site at <http://www.fda.gov/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/UnderstandingOver-the-CounterMedicines/ucm239463.htm>, under the heading “FDA Regulatory Action on Sunscreen.” Related documents, including safety and efficacy data submissions, can be accessed in the corresponding dockets, identified in Table 1, at <http://www.regulations.gov>. The letters and associated information may also be viewed by visiting FDA’s Division of Dockets Management (see **ADDRESSES**).

TABLE 1—OTC SUNSCREEN FEEDBACK LETTERS DEEMED TO BE SIA PROPOSED ORDERS

Active ingredient	Sponsor	Date issued	Docket No. <sup>1</sup>
Bemotrizinol .....	Ciba Specialty Chemicals Corp .....	11/13/2014	FDA-2005-N-0453
Bisotrizole .....	Ciba Specialty Chemicals Corp .....	9/3/2014	FDA-2005-N-0453
Drometrizole Trisiloxane .....	L’Oreal USA Products, Inc. ....	8/29/2014	FDA-2003-N-0196
Octyl Triazone .....	BASF AG .....	6/23/2014	FDA-2003-N-0196
Amiloxate .....	Symrise, Inc. .... Ego Pharmaceuticals Pty. Ltd. ....	2/25/2014	FDA-2003-N-0196
Diethylhexyl Butamido Triazone .....	3V Inc. ....	2/21/2014	FDA-2006-O-0314

<sup>1</sup> Each letter was previously posted in the docket shown in Table 1 on the date that it was issued.

Sponsors may submit a written request for a meeting with FDA to discuss any of these proposed sunscreen orders (see **DATES**). Submit meeting requests electronically to [www.regulations.gov](http://www.regulations.gov) or in writing to the Division of Dockets Management (see **ADDRESSES**), identified with the active ingredient name(s), the corresponding docket number(s) shown in Table 1, and the heading "Sponsor Meeting Request." To facilitate your request, please also send a copy to Kristen Hardin (see **FOR FURTHER INFORMATION CONTACT**).

### III. Comments

Interested persons may submit either electronic comments about the proposed orders discussed in this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the appropriate docket number(s) and active ingredient name(s) shown in Table 1 for the proposed order(s) that the comments address. Comments on this notice may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the appropriate docket(s) at <http://www.regulations.gov>.

Dated: December 31, 2014.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-00002 Filed 1-6-15; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[CIS No. 2550-14; DHS Docket No. USCIS-2007-0028]

RIN 1615-ZB36

#### Extension of the Designation of El Salvador for Temporary Protected Status

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of El Salvador for Temporary Protected Status (TPS) for 18 months from March 10, 2015, through September 9, 2016.

The extension allows currently eligible TPS beneficiaries to retain TPS through September 9, 2016, so long as they otherwise continue to meet the eligibility requirements for TPS. The Secretary has determined that an extension is warranted because the conditions in El Salvador that prompted the TPS designation continue to be met. There continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from a series of earthquakes in 2001, and El Salvador remains unable, temporarily, to handle adequately the return of its nationals.

Through this Notice, DHS also sets forth procedures necessary for nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of El Salvador and whose applications have been granted. Certain nationals of El Salvador (or aliens having no nationality who last habitually resided in El Salvador) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions, if they meet: (1) At least one of the late initial filing criteria; and, (2) all TPS eligibility criteria (including continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001).

For individuals who have already been granted TPS under the El Salvador designation, the 60-day re-registration period runs from January 7, 2015 through March 9, 2015. USCIS will issue new EADs with a September 9, 2016 expiration date to eligible El Salvador TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on March 9, 2015. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of El Salvador for 6 months, through September 9, 2015, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on Employment Eligibility Verification (Form I-9) and the E-Verify processes.

**DATES:** The 18-month extension of the TPS designation of El Salvador is effective March 10, 2015, and will remain in effect through September 9, 2016. The 60-day re-registration period runs from January 7, 2015 through March 9, 2015. (Note: It is important for re-registrants to timely re-register during this 60-day re-registration period and not to wait until their EADs expire.)

#### FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at <http://www.uscis.gov/tps>. You can find specific information about this extension of El Salvador for TPS by selecting "TPS Designated Country: El Salvador" from the menu on the left of the TPS Web page.

- You can also contact the TPS Operations Program Manager at the Family and Status Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529-2060; or by phone at (202) 272-1533 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquiries.

- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at 800-375-5283 (TTY 800-767-1833). Service is available in English and Spanish.

- Further information will also be available at local USCIS offices upon publication of this Notice.

#### SUPPLEMENTARY INFORMATION:

##### Table of Abbreviations

BIA—Board of Immigration Appeals  
 DHS—Department of Homeland Security  
 DOS—Department of State  
 EAD—Employment Authorization Document  
 FNC—Final Nonconfirmation  
 Government—U.S. Government  
 JJ—Immigration Judge  
 INA—Immigration and Nationality Act  
 OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices  
 SAVE—USCIS Systematic Alien Verification for Entitlements Program  
 Secretary—Secretary of Homeland Security  
 TNC—Tentative Nonconfirmation  
 TPS—Temporary Protected Status  
 TTY—Text Telephone  
 USCIS—U.S. Citizenship and Immigration Services

### What is Temporary Protected Status (TPS)?

• TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to persons without nationality who last habitually resided in the designated country.

• During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work and obtain EADs, so long as they continue to meet the requirements of TPS.

• TPS beneficiaries may also be granted travel authorization as a matter of discretion.

• The granting of TPS does not result in or lead to permanent resident status.

• When the Secretary terminates a country's TPS designation through a separate **Federal Register** notice, beneficiaries return to the same immigration status they maintained before TPS, if any (unless that status has since expired or been terminated), or to any other lawfully obtained immigration status they received while registered for TPS.

### When was El Salvador designated for TPS?

On March 9, 2001, the Attorney General designated El Salvador for TPS based on an environmental disaster within that country, specifically the devastation resulting from a series of earthquakes that occurred in 2001. *See* Designation of El Salvador Under Temporary Protected Status, 66 FR 14214 (Mar. 9, 2001). The Secretary last announced an extension of TPS for El Salvador on May 30, 2013, based on her determination that the conditions warranting the designation continued to be met. *See* Extension of the Designation of El Salvador for Temporary Protected Status, 78 FR 32418 (May 30, 2013). This announcement is the tenth extension of TPS for El Salvador since the original designation in 2001.

### What authority does the Secretary of Homeland Security have to extend the designation of El Salvador for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate U.S. Government agencies, to designate a foreign state (or part thereof) for TPS if the Secretary finds that certain country conditions exist.<sup>1</sup> The Secretary may

then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation may be extended for an additional period of 6, 12, or 18 months. *See* section 244(b)(3)(C) of the INA, 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

### Why is the Secretary extending the TPS designation for El Salvador through September 9, 2016?

Over the past year, DHS and the Department of State (DOS) have continued to review conditions in El Salvador. Based on this review and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because the disruption in living conditions in affected areas of El Salvador resulting from the environmental disaster that prompted the March 9, 2001 designation persists.

El Salvador was originally designated for Temporary Protected Status following a series of major earthquakes and aftershocks in early 2001. The first, on January 13, registered at 7.6 in magnitude on the standard seismic scale; the second, on February 13, measured 6.6 in magnitude. Together they killed over 1,000 people, caused approximately 8,000 injuries, and affected approximately 1.5 million people. Of 262 municipalities in El Salvador, 165 suffered serious damage in the first quake, while the second quake hit the departments of La Paz, San Vicente, and Cuscatlán the hardest. The earthquakes caused significant damage to homes, hospitals, schools, and transportation systems.

The 2001 earthquakes damaged or destroyed 276,594 housing units. A

2012 study by the El Salvador Ministry of Economy indicated the national housing deficit was at 446,000, a profound deficit for a country of 6.1 million people. This shortage would be exacerbated by the return of thousands of Salvadoran nationals currently residing in the United States under TPS.

The National Water Institution estimated that 40 to 50 percent of the Salvadoran population lacked potable water access due to damages to the water and electrical systems in the aftermath of the 2001 earthquakes. Over 10 percent of El Salvador's total population, mostly in rural areas, still lacks access to drinking water. Water contamination and scarcity are of particular concern in the San Salvador metropolitan area, threatening human health and productivity, as well as generating social conflict. According to the El Salvador Ministry of Environment, only 5 percent of El Salvador's surface water is considered treatable for drinking purposes. El Salvador's 59 principal wetland areas have been degraded and polluted by solid waste, untreated waste water, agrochemicals, and unsustainable resource extraction practices. According to El Salvador's public water utility, over 278 million cubic meters of wastewater are produced annually.

Subsequent environmental disasters since the 2001 earthquakes have caused significant damage to infrastructure, disrupting recovery efforts. In 2005, tropical storm Stan caused widespread flooding, landslides, and destruction of homes and crops throughout the country. A series of earthquakes in western El Salvador in 2006 resulted in the temporary displacement of 2,000 families. Storms in 2009 (Ida) and 2010 (Agatha) killed over 200 people, left 78 people unaccounted for, damaged over 1,500 houses, and affected 120,000 Salvadorans. Severe infrastructural damage amounted to \$343 million, of which more than half was related to roadways and bridges. In October 2011, tropical depression 12-E brought 10 days of heavy rain to El Salvador. The storm caused an estimated \$840 million in damage, flooding 20,000 homes, damaging 18 roads and 21 bridges, and resulting in heavy agricultural losses. These three storms caused an estimated \$1.3 billion in damage, a figure equal to 5 percent of the country's total 2012 gross domestic product. In June 2013, Tropical Storm Barry caused flooding in El Salvador, and in December 2013, the eruption of the Chaparrastique volcano located in eastern El Salvador forced thousands of people within a 2-mile radius to evacuate their homes. These environmental disasters, as well as

<sup>1</sup> As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, any reference to the Attorney General in a provision of

the INA describing functions transferred from the Department of Justice to DHS "shall be deemed to refer to the Secretary" of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

others not detailed herein, have caused substantial setbacks to infrastructure recovery and development since the 2001 earthquakes.

El Salvador is currently experiencing the effects of a severe regional drought that is impacting food security. In August 2014, the Famine Early Warning Systems Network reported that rainfall deficits in eastern areas of El Salvador began in late June 2014, and rainfall accumulation in the affected areas is 50 to 75 percent below average. The Famine Early Warning Systems Network has also stated that “[t]his dryness is the worst in 10 years, including the El Niño year of 2009,” and “. . . losses incurred by subsistence farmers located in the worst-affected areas are expected to exceed 70 percent.” In addition to the effects of the drought, a leaf rust epidemic has affected 74 percent of coffee plants in El Salvador, causing a loss of millions of dollars in coffee production, as well as the loss of over 300,000 jobs in that sector.

Economic losses from the earthquakes were reported to be as high as \$2.6 billion, almost 15 percent of El Salvador’s gross domestic product. El Salvador’s economy continues to experience significant challenges. Most analysts expect El Salvador’s gross domestic product to grow 1.6 to 1.8 percent in 2014, approximately half the rate of its regional neighbors. According to a 2013 Social Panorama of Latin America Report issued by the European Commission for Latin America and the Caribbean, almost half of all Salvadorans (45.3 percent) live in poverty. It is estimated that over a third of the country’s workforce is underemployed or not able to find full-time work. In light of the highly problematic economic situation, a large influx of returning citizens at this time would overwhelm the labor market and the government’s fiscal ability to extend basic services to its citizens.

Based upon this review and after consultation with appropriate Government agencies, the Secretary finds that:

- The conditions that prompted the March 9, 2001 designation of El Salvador for TPS continue to be met. *See* INA sections 244(b)(1)(B), (b)(3)(A) and (C), 8 U.S.C. 1254a(b)(1)(B), (b)(3)(A) and (C).
- There continues to be a substantial, but temporary, disruption in living conditions in El Salvador as a result of an environmental disaster. *See* INA section 244(b)(1)(B)(i), 8 U.S.C. 1254a(b)(1)(B)(i).
- El Salvador continues to be unable, temporarily, to handle adequately the return of its nationals (or aliens having

no nationality who last habitually resided in El Salvador). *See* INA section 244(b)(1)(B)(ii), 8 U.S.C. 1254a(b)(1)(B)(ii).

- The designation of El Salvador for TPS should be extended for an additional 18-month period from March 10, 2015 through September 9, 2016. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- There are approximately 204,000 current El Salvador TPS beneficiaries who are expected to file for re-registration and may be eligible to retain their TPS under the extension.

#### **Notice of Extension of the TPS Designation of El Salvador**

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that the conditions that prompted the designation of El Salvador for TPS in 2001 continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the designation of El Salvador for TPS for 18 months from March 10, 2015, through September 9, 2016. *See* INA sections 244(b)(2) and (b)(3), 8 U.S.C. 1254a(b)(2) and (b)(3).

**Jeh Charles Johnson,**  
*Secretary.*

#### **Required Application Forms and Application Fees To Register or Re-register for TPS**

To register or re-register for TPS based on the designation of El Salvador, an applicant must submit each of the following two applications:

1. Application for Temporary Protected Status (Form I-821).
  - If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I-821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at <http://www.uscis.gov/tps>.
  - If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I-821). *See* 8 CFR 244.17. and
2. Application for Employment Authorization (Form I-765).
  - If you are applying for late initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I-765) only if you are age 14 through 65. No fee for the Application for Employment Authorization (Form I-

765) is required if you are under the age of 14 or are 66 and older and applying for late initial registration.

- If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I-765) only if you want an EAD, regardless of age.
- You do not pay the fee for the Application for Employment Authorization (Form I-765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay for the Application for Employment Authorization (Form I-765) and/or biometrics fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I-912) or submitting a personal letter requesting a fee waiver, and by providing satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at <http://www.uscis.gov/tps>. Fees for the Application for Temporary Protected Status (Form I-821), the Application for Employment Authorization (Form I-765), and biometric services are also described in 8 CFR 103.7(b)(1)(i).

#### **Biometric Services Fee**

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I-912) or by submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at <http://www.uscis.gov>. If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

#### **Re-filing a Re-registration TPS Application After Receiving a Denial of a Fee Waiver Request**

USCIS urges all re-registering applicants to file as soon as possible within the 60-day re-registration period so that USCIS can process the applications and issue EADs promptly. Filing early will also allow those applicants who may receive denials of their fee waiver requests to have time to re-file their applications before the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to re-

file by the re-registration deadline, the applicant may still re-file his or her application. This situation will be reviewed to determine whether the applicant has established good cause for late re-registration. However, applicants are urged to re-file within 45 days of the date on their USCIS fee waiver denial notice, if at all possible. See INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit

the USCIS TPS Web page at <http://www.uscis.gov/tps>. **Note:** As previously stated, although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, the applicant may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I-765) fee, until after USCIS has approved the

individual's TPS re-registration, if he or she is eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I-821) with the fee and the Application for Employment Authorization (Form I-765) without the fee and without requesting an EAD.

**Mailing Information**

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
Are applying for re-registration and you live in the following states/territories: Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, Washington DC, West Virginia.	U.S. Postal Service: U.S. Citizenship and Immigration Services, Attn: TPS El Salvador, P.O. Box 8635, Chicago, IL 60680-8635. Non-U.S. Postal Delivery Service: U.S. Citizenship and Immigration Services, Attn: TPS El Salvador, 131 S. Dearborn—3rd Floor, Chicago, IL 60603-5517.
Are applying for re-registration and you live in the following states/territories: Alabama, Alaska, American Samoa, Arkansas, Colorado, Guam, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Northern Mariana Islands, Oklahoma, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Virgin Islands, Wisconsin, Wyoming.	U.S. Postal Service: U.S. Citizenship and Immigration Services, Attn: TPS El Salvador, P.O. Box 660864, Dallas, TX 75266. Non-U.S. Postal Delivery Service: U.S. Citizenship and Immigration Services, Attn: TPS El Salvador, 2501 S. State Highway, 121 Business Suite 400, Lewisville, TX 75067.
Are applying for re-registration and you live in the following states: ..... Arizona, California, Nevada, Oregon, Washington .....	U.S. Postal Service: U.S. Citizenship and Immigration Services, Attn: TPS El Salvador, P.O. Box 21800, Phoenix, AZ 85036. Non-U.S. Postal Delivery Service: U.S. Citizenship and Immigration Services, Attn: TPS El Salvador, 1820 E. Skyharbor Circle S, Suite 100, Phoenix, AZ 85034.
Are applying for the first time as a late initial registration (this is for all states/territories).	U.S. Postal Service: U.S. Citizenship and Immigration Services, Attn: TPS El Salvador, P.O. Box 8635, Chicago, IL 60680-8635, Non-US Postal Delivery Service: U.S. Citizenship and Immigration Services, Attn: TPS El Salvador, 131 S. Dearborn—3rd Floor, Chicago, IL 60603-5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD, or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate address in Table 1. Upon receiving a Notice of Action (Form I-797) from USCIS, please send an email to the appropriate USCIS Service Center handling your application providing the receipt number and stating that you submitted a re-registration and/or request for an EAD based on an IJ/BIA grant of TPS. Upon receiving a Notice of Action (Form I-797) from USCIS, please send an email to [TPSijgrant.vsc@uscis.dhs.gov](mailto:TPSijgrant.vsc@uscis.dhs.gov) with the receipt number and state that you submitted a re-registration and/or request for an EAD based on an IJ/BIA grant of TPS. You can find detailed information on what further information you need to email and the email addresses on the USCIS TPS Web page at <http://www.uscis.gov/tps>.

**E-Filing**

If you are re-registering for TPS during the re-registration period and you do not need to submit any supporting documents or evidence, you are eligible to file your applications electronically. For more information on e-filing, please visit <http://www.uscis.gov/e-filing>.

**Employment Authorization Document (EAD)**

*May I request an interim EAD at my local USCIS office?*

No. USCIS will not issue interim EADs to TPS applicants and registrants at local offices.

*Am I eligible to receive an automatic 6-month extension of my current EAD through September 9, 2015?*

Provided that you currently have TPS under the designation of El Salvador, this Notice automatically extends your EAD by 6 months if you:

- Are a national of El Salvador (or an alien having no nationality who last habitually resided in El Salvador);

- Received an EAD under the last extension of TPS for El Salvador; and
- Have an EAD with a marked expiration date of March 9, 2015, bearing the notation “A-12” or “C-19” on the face of the card under “Category.”

Although this Notice automatically extends your EAD through September 9, 2015, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

*When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I-9)?*

You can find a list of acceptable document choices on the “Lists of Acceptable Documents” for Employment Eligibility Verification (Form I-9). You can find additional detailed information on the USCIS I-9 Central Web page at <http://www.uscis.gov/I-9Central>. Employers are required to verify the identity and employment authorization of all new

employees by using Employment Eligibility Verification (Form I-9). Within 3 days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization) or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). You may present an acceptable receipt for List A, List B, or List C documents as described in the Form I-9 Instructions. An EAD is an acceptable document under "List A." Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of March 9, 2015, and states "A-12" or "C-19" under "Category," it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I-9) through September 9, 2015, (see the subsection titled "*How do my employer and I complete the Employment Eligibility Verification (Form I-9) using an automatically extended EAD for a new job?*" for further information). To minimize confusion over this extension at the time of hire, you may also show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through September 9, 2015. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or a combination of one selection from List B and one selection from List C.

*What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?*

Even though EADs with an expiration date of March 9, 2015, that state "A-12" or "C-19" under "Category" have been automatically extended for 6 months by this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once March 9, 2015 is reached to meet its responsibilities for Employment Eligibility Verification (Form I-9). However, your employer does not need a new document to reverify your employment authorization until September 9, 2015, the expiration date of the automatic extension. Instead, you and your employer must make corrections to the employment

authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I-9) (see the subsection titled "*What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended?*" for further information). In addition, you may also show this **Federal Register** Notice to your employer to explain what to do for Employment Eligibility Verification (Form I-9).

By September 9, 2015, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any document from List A or any document from List C on Employment Eligibility Verification (Form I-9) to reverify employment authorization, or an acceptable List A or List C receipt described in the Form I-9 Instructions. Your employer should complete either Section 3 of the Employment Eligibility Verification (Form I-9) originally completed for the employee or, if this Section has already been completed or if the version of Employment Eligibility Verification (Form I-9) has expired (check the date in the upper right-hand corner of the form), complete Section 3 of a new Employment Eligibility Verification (Form I-9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt.

*Can my employer require that I produce any other documentation to prove my status, such as proof of my Salvadoran citizenship?*

No. When completing Employment Eligibility Verification (Form I-9), including re-verifying employment authorization, employers must accept any documentation that appears on the "Lists of Acceptable Documents" for Employment Eligibility Verification (Form I-9) that reasonably appears to be genuine and that relates to you or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the "Lists of Acceptable Documents." Therefore, employers may not request proof of Salvadoran citizenship when completing Employment Eligibility Verification (Form I-9) for new hires or reverifying the employment authorization of current employees. If presented with EADs that have been automatically extended, employers should accept such EADs as valid List A documents so long as the EADs reasonably appear to be genuine and to relate to the employee. Refer to the Note

to Employees section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

*What happens after September 9, 2015, for purposes of employment authorization?*

After September 9, 2015, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. Before that time, however, USCIS will endeavor to issue new EADs to eligible TPS re-registrants who request them. These new EADs will have an expiration date of September 9, 2016, and can be presented to your employer for completion of Employment Eligibility Verification (Form I-9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Employment Eligibility Verification (Form I-9).

*How do my employer and I complete Employment Eligibility Verification (Form I-9) using an automatically extended EAD for a new job?*

When using an automatically extended EAD to complete Employment Eligibility Verification (Form I-9) for a new job prior to September 9, 2015, you and your employer should do the following:

1. For Section 1, you should:
  - a. Check "An alien authorized to work;"
  - b. Write your alien number (USCIS number or A-number) in the first space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix); and
  - c. Write the automatically extended EAD expiration date (September 9, 2015) in the second space.
2. For Section 2, employers should record the:
  - a. Document title;
  - b. Document number; and
  - c. Automatically extended EAD expiration date (September 9, 2015).

By September 9, 2015, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I-9).

*What corrections should my current employer and I make to Employment Eligibility Verification (Form I-9) if my EAD has been automatically extended?*

If you are an existing employee who presented a TPS-related EAD that was

valid when you first started your job, but that EAD has now been automatically extended, you and your employer should correct your previously completed Employment Eligibility Verification (Form I-9) as follows:

1. For Section 1, you should:
  - a. Draw a line through the expiration date in the second space;
  - b. Write "September 9, 2015" above the previous date;
  - c. Write "TPS Ext." in the margin of Section 1; and
  - d. Initial and date the correction in the margin of Section 1.
2. For Section 2, employers should:
  - a. Draw a line through the expiration date written in Section 2;
  - b. Write "September 9, 2015" above the previous date;
  - c. Write "TPS Ext." in the margin of Section 2; and
  - d. Initial and date the correction in the margin of Section 2.

By September 9, 2015, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

*If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiration" alert for an automatically extended EAD?*

If you are an employer who participates in E-Verify and you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a "Work Authorization Documents Expiring" case alert when this EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I-9) to reverify an employee's employment authorization. For existing employees with TPS-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red "X" in the "dismiss alert" column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I-9). By September 9, 2015, employment authorization must be reverified in Section 3. Employers should never use E-Verify for reverification.

#### **Note to All Employers**

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance,

including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888-464-4218 (TTY 877-875-6028) or email USCIS at [I-9Central@dhs.gov](mailto:I-9Central@dhs.gov). Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 800-255-8155 (TTY 800-237-2515), which offers language interpretation in numerous languages, or email OSC at [oscrcrt@usdoj.gov](mailto:oscrcrt@usdoj.gov).

#### **Note to Employees**

For general questions about the employment eligibility verification process, employees may call USCIS at 888-897-7781 (TTY 877-875-6028) or email at [I-9Central@dhs.gov](mailto:I-9Central@dhs.gov). Calls are accepted in English and many other languages. Employees or applicants may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Worker Information Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based upon citizenship status, immigration status, or national origin, or for information regarding discrimination related to Employment Eligibility Verification (Form I-9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt described in the Employment Eligibility Verification (Form I-9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I-9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of "Tentative Nonconfirmation" (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I-9) differs from federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay or take any adverse action against an employee based on the employee's decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888-897-7781 (TTY 877-875-6028). An employee that believes he or she was discriminated against by an employer in the E-Verify process based on citizenship or immigration status, or based on national origin, may contact OSC's Worker Information Hotline at 800-255-7688 (TTY 800-237-2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I-9) and E-Verify procedures is available on the OSC Web site at <http://www.justice.gov/crt/about/osc/> and the USCIS Web site at <http://www.dhs.gov/E-verify>.

#### **Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)**

While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each State may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

- (1) Your unexpired EAD that has been automatically extended, or your EAD that has not expired;
- (2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;
- (3) A copy of your Application for Temporary Protected Status Notice of Action (Form I-797) for this re-registration;
- (4) A copy of your past or current Application for Temporary Protected Status Notice of Action (Form I-797), if you received one from USCIS; and/or
- (5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found at the SAVE Web site at <http://www.uscis.gov/save>, then by choosing "How to Correct Your Records" from the menu on the right.

[FR Doc. 2015-00031 Filed 1-6-15; 8:45 am]

BILLING CODE 9111-97-P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### **eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond, Identification of Principal on an eBond by Filing Identification Number, and Email Address Correction**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This notice announces modifications and clarifications to U.S. Customs and Border Protection's (CBP's) voluntary National Customs Automation Program eBond test, scheduled to deploy January 3, 2015. This test provides for the transmission in Automated Commercial Environment of electronic bond contracts (eBonds) between principals and sureties, with CBP as third-party beneficiary, for the purpose of linking those eBonds to the transactions they are intended to secure. The modifications and clarifications to CBP's eBond test concern: The method

by which continuous bonds executed prior to or outside of the eBond test may be converted to eBonds by the surety and principal; a surety or principal's ability to terminate an eBond; the identification of the principal on an eBond by the filing identification number; and an email address correction.

**DATES:** The eBond test modifications and clarifications set forth in this notice will go into effect January 7, 2015.

**ADDRESSES:** Comments and/or questions concerning this notice or any aspect of the test may be submitted to CBP via email to [eBondTest@cbp.dhs.gov](mailto:eBondTest@cbp.dhs.gov), with the subject line identifier reading "Comment/Questions on eBond test."

**FOR FURTHER INFORMATION CONTACT:** For policy related questions, contact Kara Welty, Chief, Debt Management Branch, Revenue Division, Office of Administration, at [kara.welty@dhs.gov](mailto:kara.welty@dhs.gov). For technical questions, contact John Everett, Entry Summary, Accounts, and Revenue Branch, ACE Business Office, Office of International Trade, at [john.r.everett@dhs.gov](mailto:john.r.everett@dhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

##### **I. eBond Test**

In a notice published in the **Federal Register** (79 FR 70881) on November 28, 2014, U.S. Customs and Border Protection (CBP) announced a plan to conduct a voluntary National Customs Automation Program (NCAP) eBond test. The eBond test, scheduled to deploy on January 3, 2015, provides for the transmission in Automated Commercial Environment (ACE) of electronic bond contracts (eBonds) between principals and sureties, with CBP as the third-party beneficiary, for the purpose of linking those eBonds to the transactions they are intended to secure (eBond system). The notice invited public comment concerning the test, described the eligibility, procedural and documentation requirements for voluntary participation in the test, and outlined the development and evaluation methodology to be used in the test. The eBond test terms and conditions set forth in 79 FR 70881 remain in effect for the duration of the eBond test, subject to the modifications and clarifications set forth in this notice and any subsequent eBond test modifications published in the **Federal Register**.

##### **II. Modifications and Clarifications to the eBond Test**

###### *A. Continuous Bonds Executed Prior to or Outside the eBond Test May Be Converted to eBonds by the Surety and Principal*

In the eBond test notice published in 79 FR 70881 (also referred to in this notice as the "original eBond test notice"), CBP indicated that continuous bonds executed prior to January 3, 2015, will be accessible in the eBond system for administration purposes but will not be subject to eBond test rules. Instead, pre-January 3, 2015 continuous bonds will remain subject to the CBP bond regulations in 19 CFR part 113, and riders of such bonds must be submitted to CBP in the format and manner detailed in 19 CFR part 113. Similarly, after the eBond test commences on January 3, 2015, sureties and principals who choose not to participate in the eBond test will still be able to submit bonds to CBP in the format and manner detailed in 19 CFR part 113, and those bonds will be accessible in the eBond system for administration purposes.

This notice announces a modification to the eBond test to permit participating sureties/surety agents, acting on behalf of the sureties and principals, to convert pre-January 3, 2015 continuous bonds and other continuous bonds executed outside of the eBond test (collectively referred to hereinafter as "paper continuous bonds") into eBonds subject to the rules set forth in this notice and the original eBond test notice. Under the terms of the original eBond test notice, a participating surety or the surety's agent may, via a CBP-approved Electronic Data Interchange (EDI), transmit limited changes to the terms and conditions of an active continuous eBond that are contractually binding on the principal(s) and surety(ies). At this time, such changes include:

- (1) Transmitting an addition eBond rider (clarified below to be a User Addition eBond rider);
- (2) Transmitting a deletion eBond rider (clarified below to be a User Deletion eBond rider);
- (3) Transmitting a reconciliation eBond rider;
- (4) Terminating a reconciliation eBond rider;
- (5) Transmitting a U.S. Virgin Islands eBond rider; and
- (6) Terminating the eBond.

This notice announces a modification to the eBond test whereby a participating surety or the surety's agent may also transmit, via EDI, the same types of limited changes to the terms and conditions of an active paper

continuous bond accessible in the eBond system.

In accordance with 19 U.S.C. 1623, and consistent with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, *et seq.*, the test participant surety/surety agent's act of transmitting to CBP, via EDI, a change to a paper continuous bond (including, but not limited to, the six types of changes described above) constitutes a binding representation to CBP that: (1) The transmitting surety/surety agent has the authority to bind both the surety(ies) and the principal(s) to the conversion of the identified paper continuous bond to an eBond, including but not limited to the modification of the terms and conditions of the identified paper continuous bond to the terms and conditions of the eBond test; and (2) Pursuant to the transmitting surety/surety agent's authority, both the surety(ies) and the principal(s) intend to be bound by the converted eBond, including the terms and conditions for the eBond set forth in the eBond test. Furthermore, any transaction that identifies or uses the converted eBond as security constitutes the re-affirmation of the principal responsible for the transaction that it intends to be bound by the terms and conditions of the identified or used converted eBond. Once the surety(ies) and principal(s), acting through the transmitting surety/surety agent, have converted a paper continuous bond to an eBond, the eBond cannot be converted back into a paper continuous bond.

Because the elements of paper continuous bonds are similar to eBonds, but not identical, certain elements of the paper continuous bond will not be used as part of the converted eBond. These unused elements are: Broker Filer Code; Transaction Date; Port Code; Principal Name and Physical Address; Principal Signature; Principal Seal (or check box); Mailing Address Requested by the Surety, Surety Name and Physical Address; Surety Signature; Surety Seal (or check box); Principal Name, Co-Principal Name and Physical Address; Co-Principal Signature; Co-Principal Seal (or check box); Section III Names; Co-Surety Name and Physical Address; Co-Surety Signature; and Co-Surety Seal (or check box).

#### B. CBP Filing Identification Number as Primary eBond Identification Marker

In several places in the original eBond test notice, CBP referenced the concept of an eBond or eBond rider containing listed "names." In that document, CBP also noted, at 79 FR 70885, that the importer identification number and surety number will be the primary

eBond identification markers and CBP will not be collecting the name and address of the principal or surety on the eBond as this data will be available to CBP via other components of ACE.

In this document, CBP is clarifying the eBond test terms and conditions to reflect that the "CBP filing identification number" (*see* 19 CFR 24.5), and not a "name," will be the method of identifying the principal on an eBond. Accordingly, there are several references to the use of eBond "names" that require clarification in the original eBond test notice as follows:

- At 79 FR 70883, in the section entitled, "Terms and Conditions for eBonds," the sentence reading "[T]he principal(s) and surety(ies) agree that any charge against the eBond under any of the listed names is as though it was made by the principal(s)" is clarified by changing the term "listed names" to "listed CBP filing identification numbers."
- At 79 FR 70885, in the section entitled "Continuous Bonds Executed Prior to eBond Test Will Be Accessible in eBond System," the sentence reading "[T]he importer identification number and surety number will continue to be the primary identification markers used by CBP when verifying adequate bond coverage for activities that require it," is clarified by changing the words "importer identification number" to "CBP filing identification number" to reflect that the filing identification number is not always associated with an importer.
- At 79 FR 70884, in the section entitled, "Terms and Conditions for eBond Riders," and subsections pertaining to "Addition" and "Deletion" eBond riders, CBP is clarifying these terms and conditions by changing the existing reference to "names" transmitted with these eBond riders to "CBP filing identification numbers" and further clarifying that these two types of eBond riders are "user" riders.

The changes are set forth below:

(1) *User Addition eBond rider.* The principal(s) and surety(ies) agree that the CBP filing identification numbers transmitted with this eBond rider identify unincorporated units of the identified principal or trade or business names used by the identified principal in its business, that the identified eBond covers its business, and that the identified eBond covers any act done in those names or under the CBP filing identification numbers to the same extent as though done by the identified principal. The principal(s) and surety(ies) agree that any such act shall

be considered to be the act of the identified principal.

(2) *User Deletion eBond rider.* The principal(s) and surety(ies) agree that the CBP filing identification numbers transmitted with this eBond rider of unincorporated units of the identified principal or trade or business names used by the identified principal in its business are deleted from the identified eBond effective upon the date of approval of this eBond rider by the appropriate CBP bond approval official.

#### C. Termination of an eBond

In the original eBond test notice, in the section entitled "Termination of an eBond" located at 79 FR 70885, CBP prescribed the manner by which a surety may electronically terminate an eBond on which it is obligated.

This notice announces a modification to the eBond test termination procedures whereby a surety wishing to terminate an eBond must notify the principal(s) at the same time notice of termination is sent to CBP. In addition, a surety may request that a termination go into effect sooner than the prescribed 15 calendar days from the date of the termination notice if the surety can establish, to the Director of the Revenue Division's satisfaction, that good cause exists for terminating the eBond in lesser time. CBP is also modifying the eBond test to permit a principal to terminate an eBond on which it is obligated by means of emailing a termination request to CBP. A principal may not terminate an eBond via EDI.

The modified eBond test terms and conditions pertaining to termination of an eBond are set forth below:

#### Termination of an eBond by Surety/Surety Agent

A surety may, with or without the consent of the principal(s), electronically terminate an eBond on which it is obligated. The surety must notify the principal(s) of the termination at the same time the electronic notice of termination is transmitted to CBP. The effective date of the termination must be stated in the electronic notice of termination, and must be at least 15 calendar days from the date of the electronic notice of termination, unless the surety can show to the satisfaction of the Director of the Revenue Division (RD) that good cause exists for terminating the eBond in lesser time. A request for a termination effective date that is less than 15 calendar days from the date of the electronic notice of termination must be emailed to [CBP.bondquestions@dhs.gov](mailto:CBP.bondquestions@dhs.gov) in accordance with the email conventions described in CBP's Policies and

Procedures for eBond (FRN eBond Test Participants), which is available at <http://www.cbp.gov/trade/trade-community/programs-administration/bonds/ebond>. If an eBond is terminated, no new customs transactions may be charged against the eBond. The surety, as well as the principal, remains liable on a terminated eBond for obligations incurred prior to termination.

#### Termination of an eBond by a Principal

A request by a principal to terminate an eBond must be emailed to [CBP.bondquestions@dhs.gov](mailto:CBP.bondquestions@dhs.gov) in accordance with the email conventions described in CBP's Policies and Procedures for eBond (FRN eBond Test Participants), which is available at <http://www.cbp.gov/trade/trade-community/programs-administration/bonds/ebond>. A principal may not terminate an eBond via EDI. The termination will take effect on the date requested in the termination request if that date is at least 15 calendar days from the date of the termination request. If no termination date is requested, the termination will take effect on the 15th calendar day following the date of the termination request. If an eBond is terminated, no new customs transactions may be charged against the eBond. The surety, as well as the principal, remains liable on a terminated eBond for obligations incurred prior to termination.

#### D. Correction of Email Address

The original eBond Test notice contained an erroneous email address for the contact to whom technical questions may be sent. Technical questions may be emailed to John Everett, Entry Summary, Accounts, and Revenue Branch, ACE Business Office, Office of International Trade, at the following email address: [john.r.everett@dhs.gov](mailto:john.r.everett@dhs.gov).

Dated: January 2, 2015.

#### Brenda Smith,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2015-00029 Filed 1-6-15; 8:45 am]

BILLING CODE 9111-14-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5756-N-44]

### 60-Day Notice of Proposed Information Collection: Procedures for Appealing Section 8 Rent Adjustments; OMB Collection: 2502-0446

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* March 9, 2015.

**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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

#### FOR FURTHER INFORMATION CONTACT:

Katherine A. Nzive, Director Program Administration Division, Office of Asset Management and Portfolio Oversight, 202-708-2654 [Katherine.A.Nzive@hud.gov](mailto:Katherine.A.Nzive@hud.gov) Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. 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.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

## A. Overview of Information Collection

*Title of Information Collection:* Procedure for Appealing Section 8 Rent Adjustments.

*OMB Approval Number:* 2502-0446.

*Type of Request:* Extension.

*Form Number:* Owners will submit rent appeal on owner's letterhead providing a written explanation for the appeal.

*Description of the need for the information and proposed use:* Title II, section 221, of the National Housing Act requires the Department of Housing and Urban Development (HUD) to establish rents for certain subsidized rental projects. Under this legislation, HUD is charged with the responsibility of determining the method of rent adjustments and with facilitating these adjustments. Because rent adjustments are considered benefits to project owners, HUD must also provide some means for owners to appeal the decisions made by the Department or the Contract Administrator. This appeal process and the information collection play an important role in preventing costly litigation and in ensuring the accuracy of the overall rent adjustment process.

*Respondents (i.e. affected public):* Owners of certain subsidized multifamily rental projects.

*Estimated Number of Respondents:* 525.

*Estimated Number of Responses:* 525.

*Frequency of Response:* 1.

*Average Hours per Response:* 2.

*Total Estimated Burdens:* 1050.

## 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**

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35.

Dated: December 31, 2014.

**Laura M. Marin,**

*Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.*

[FR Doc. 2015-00016 Filed 1-6-15; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5752-N-116]

**30-Day Notice of Proposed Information Collection: Indian Community Development Block Grant**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* March 9, 2015.

**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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone 202-402-3400; email at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov). Persons with

hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for 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 October 31, 2014.

**A. Overview of Information Collection**

*Title of Information Collection:* Indian Community Development Block Grant Information Collection.

*OMB Approval Number:* 2577-0191.

*Type of Request:* Extension of currently approved collection.

*Form Number:* HUD-4123, HUD-4125.

*Description of the need for the information and proposed use:* Title I of the Housing and Community Development Act of 1974 authorizes Indian Community Development Block Grants (ICDBG) and requires that grants be awarded annually on a competitive basis. The purpose of the ICDBG program is to develop viable Indian and Alaska Native communities by creating decent housing, suitable living environments, and economic opportunities primarily for low- and moderate-income persons. Consistent with this objective, not less than 70 percent of the expenditures are to benefit low and moderate-income persons. Eligible applicants include Federally-recognized tribes, which includes Alaska Native communities, and tribally authorized tribal organizations. Eligible categories of funding include housing rehabilitation, land acquisition to support new housing, homeownership assistance, public facilities and improvements, economic development, and microenterprise programs. For a complete description of eligible activities, please refer to 24 CFR 1003, subpart C.

The ICDBG program regulations are at 24 CFR part 1003. The ICDBG program requires eligible applicants to submit information to enable HUD to select the best projects for funding during annual competitions. Additionally, the information submitted is essential for

HUD in monitoring grants to ensure that grantees are complying with applicable statutes and regulations and implementing activities as approved.

ICDBG applicants must submit a complete application package which includes an Application for Federal Assistance (SF-424), Applicant/Recipient Disclosure/Update Report (HUD-2880), Cost Summary (HUD-4123), and Implementation Schedule (HUD-4125). If the applicant has a waiver of the electronic submission requirement and is submitting a paper application, an Acknowledgement of Application Receipt (HUD-2993) must also be submitted. If the applicant is a tribal organization, a resolution from the tribe stating that the tribal organization is submitting an application on behalf of the tribe must also be included in the application package.

ICDBG recipients are required to submit a quarterly Federal Financial Report (SF-425) that describes the use of grant funds drawn from the recipient's line of credit. The reports are used to monitor cash transfers to the recipients and obtain expenditure data from the recipients. (24 CFR 1003.501(16))

The regulations at 24 CFR part 85 require that grantees and sub-grantees "take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible" (24 CFR 85.36(e)). Consistent with these regulations, 24 CFR 1003.506(b) requires that ICDBG grantees report on these activities on an annual basis, with Contract and Subcontract Activity Report being due to HUD on October 10 of each year (HUD-2516).

The regulations at 24 CFR 1003.506 instruct recipients to submit to HUD an Annual Status and Evaluation Report (ASER) that describes the progress made in completing approved activities with a listing of work to be completed; a breakdown of funds expended; and when the project is completed, a program evaluation expressing the effectiveness of the project in meeting community development needs. The ASER is due by November 15 each year and at grant closeout.

The information collected will allow HUD to accurately audit the program.

*Respondents:* Federally recognized Native American Tribes, Alaska Native communities and corporations, and tribal organizations

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Grant Application (Includes SF-424, HUD-2880, HUD-2993, HUD-4123, HUD-4125) .....	240	1	240	30	7,200	\$19.23	\$138,461.54
Federal Financial Report (SF-425) .....	100	4	400	.5	200	19.23	3,846.15
Contract and Subcontract Activity Report (HUD-2516) .....	100	1	100	1	100	19.23	1,923.08
Annual Status and Evaluation Report (ASER) .....	100	1	100	4	400	19.23	7,692.31
Total .....			840		7,900		151,923.08

## B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

### Authority:

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35.

Dated: December 30, 2014.

**Colette Pollard,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 2015-00018 Filed 1-6-15; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF JUSTICE

### Community Oriented Policing Services: Public Meetings With the President's Task Force on 21st Century Policing Discussing Recommendations on Topics Relating to Policing

**AGENCY:** Community Oriented Policing Services, Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** On December 18, 2014, President Barack Obama signed an

Executive Order titled "Establishment of the President's Task Force on 21st Century Policing" establishing the President's Task Force on 21st Century Policing ("Task Force"). The Task Force seeks to identify best practices and make recommendations to the President on how policing practices can promote effective crime reduction while building public trust and examine, among other issues, how to foster strong, collaborative relationships between local law enforcement and the communities they protect. The Task Force will be holding its first public teleconference.

The meeting agenda is as follows:  
Call to Order  
Review of submitted recommendations  
Discussion

**DATES:** The teleconference will be held Wednesday, January 21, 2014 from 5:00 p.m. to 7:00 p.m. Eastern Time. An opportunity will be provided to the public to comment.

**Accommodations requests:** To request accommodation of a disability, please contact Jessica Drake at 202-457-7771, preferably at least 10 days prior to the meeting, to give DOJ as much time as possible to process your request.

**ADDRESSES:** The meeting will be held by teleconference only. The teleconference number will be posted in advance of the teleconference at the Task Force Web site at [www.cops.usdoj.gov/policingtaskforce](http://www.cops.usdoj.gov/policingtaskforce).

### FOR FURTHER INFORMATION CONTACT:

Director, Ronald L. Davis, 202-514-4229 or [PolicingTaskForce@usdoj.gov](mailto:PolicingTaskForce@usdoj.gov).

Address all comments concerning this notice to [PolicingTaskForce@usdoj.gov](mailto:PolicingTaskForce@usdoj.gov).

### SUPPLEMENTARY INFORMATION:

#### Electronic Access and Filing Addresses

The Task Force is interested in receiving written comments including proposed recommendations from individuals, groups, advocacy organizations, and professional communities. Additional information on how to provide your comments will

be posted to [www.cops.usdoj.gov/policingtaskforce](http://www.cops.usdoj.gov/policingtaskforce).

**Availability of Meeting Materials:** The agenda and other materials in support of the teleconference will be available on the Task Force Web site at [www.cops.usdoj.gov/policingtaskforce](http://www.cops.usdoj.gov/policingtaskforce) in advance of the teleconference.

**Melanca Clark,**

*Chief of Staff.*

[FR Doc. 2014-30978 Filed 1-6-15; 8:45 am]

**BILLING CODE 4410-AT-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Li Ling Hamady, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: [ACApermits@nsf.gov](mailto:ACApermits@nsf.gov).

**SUPPLEMENTARY INFORMATION:** On November 19, 2014 the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on December 30, 2014 to:

Dr. Joseph A. Covi ...	Permit No. 2015-015.
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**Nadene G. Kennedy,**

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2015-00003 Filed 1-6-15; 8:45 am]

**BILLING CODE 7555-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–305 and 72–64; NRC–2014–0280]

### Dominion Energy Kewaunee, Inc.; Kewaunee Power Station

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a June 10, 2013, request from Dominion Energy Kewaunee, Inc. (DEK or the licensee), from certain power reactor security requirements. The exemption would remove the requirement that continuous communication be maintained between the security alarm stations and the control room at Kewaunee Power Station (KPS). The licensee has committed to modify its Physical Security Plan to require continuous communication between the security alarm stations and the shift manager.

**DATES:** January 7, 2015.

**ADDRESSES:** Please refer to Docket ID NRC–2014–0280 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to <http://www.regulations.gov> and search for Docket ID NRC–2014–0280. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: [Carol.Gallagher@nrc.gov](mailto: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 obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One

White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** William Huffman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2046; email: [William.Huffman@nrc.gov](mailto:William.Huffman@nrc.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

The licensee, DEK, is the holder of Renewed Facility License No. DPR–43. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

The facility consists of a permanently shutdown and defueled pressurized water reactor and a general licensed independent spent fuel storage installation (ISFSI) located in Kewaunee County, Wisconsin.

By letter dated February 25, 2013 (ADAMS Accession No. ML13058A065), and in accordance with § 50.82(a)(1)(i) of Title 10 of the *Code of Federal Regulations* (10 CFR), DEK submitted to the NRC a certification indicating it would permanently cease power operations at KPS on May 7, 2013. On May 7, 2013, DEK permanently ceased power operation at KPS. By letter dated May 14, 2013 (ADAMS Accession No. ML13135A209), and in accordance with 10 CFR 50.82(a)(1)(ii), DEK submitted to the NRC a certification that the reactor vessel at KPS was permanently defueled.

#### II. Request/Action

In accordance with 10 CFR 73.5, "Specific exemptions," the licensee has, by letter dated June 10, 2013 (ADAMS Accession No. ML13165A343), requested an exemption from 10 CFR 73.55(j)(4)(ii), which otherwise requires continuous communications between security alarm stations and the control room. Portions of the letter dated June 10, 2013, contain safeguards information and, accordingly, have been withheld from public disclosure. The licensee is requesting exemption from the continuous communications requirements between the control room and the security alarm stations.

The exemption request relates solely to removing the control room from the requirements specified in the regulations that direct the licensee to establish a system for continuous communications between the control room and the security alarm stations. The licensee will have a system for continuous communications between the shift manager and the alarm stations.

As specified in its June 10, 2013, application, DEK will implement

changes to its Physical Security Plan that would require a system of continuous communications between the alarm stations and the shift manager/Certified Fuel Handler (CFH) instead of the control room.

#### III. Discussion

The intent of 10 CFR 73.55(j)(4)(ii) is to maintain continuous effective communication capability between security alarm stations and operations staff with shift command function responsibility to ensure any necessary coordination during security events or other emergencies can be accomplished at all times. The regulation requires maintaining a system for continuous communications between the security alarm stations and the control room for an operating reactor based on the presumption that the shift command function resides in the control room. The control room at an operating reactor contains the controls and instrumentation necessary for complete supervision and response needed to ensure safe operation of the reactor and support systems during normal, off-normal, and accident conditions and, therefore, is the location of the shift command function. Following certification of permanent shutdown and removal of fuel from the reactor, operation of the reactor is no longer permitted. The control room at a permanently shutdown and defueled reactor does not perform the same function as required for an operating reactor. There are no longer any safety related systems or processes that are controlled from the control room. The primary functions of the control room at a permanently shutdown plant is to provide a central location from where the shift command function can be conveniently performed due to existing communication equipment, office computer equipment, and ready access to reference material. The control room also provides a central location from which emergency response activities are coordinated. However, the control room does not always need to be the location of the shift command function since most remaining system processes at a permanently shutdown and defueled reactor are controlled locally. At KPS, the shift manager/CFH has responsibility for the shift command function. The shift manager/CFH is the senior on-shift licensee representative and decision-maker and is responsible for the overall safety of the permanently shutdown and defueled facility and for directing the response to abnormal situations and emergencies. The requested exemption would provide the KPS shift manager/CFH the flexibility to

leave the control room to perform managerial and supervisory activities throughout the plant while retaining the command function responsibility. While the shift command function is normally accomplished from the control room in accordance with applicable KPS procedures, it can also be accomplished anywhere in the facility provided an effective means of continuous communication with the shift manager/CFH is maintained. Because KPS is permanently shutdown and defueled, the ability to leave the control room may benefit the shift manager/CFH's understanding of facility conditions as well as enhance his assessment and response to any abnormal situation or emergency conditions. Although the control room will remain the physical command center, the exemption will allow the location of the KPS command function to be wherever the shift manager/CFH is located. Being absent from the control room will not relieve the shift manager/CFH of the responsibility for the shift command function. The exemption will allow DEK to establish and maintain continuous communication capability with the shift manager/CFH, regardless of his location.

The NRC staff assessed the method proposed by the licensee to maintain continuous communications with the shift manager/CFH in a safety evaluation report dated April 14, 2014 (the NRC staff's safety evaluation report contains safeguards information and is, therefore, not publicly available). The NRC staff determined that the proposed method of maintaining continuous communication with the shift manager/CFH is consistent with the functional requirement of the regulation for maintaining communication with the control room. The NRC staff has concluded that upon implementing a system for continuous communications between the alarm stations and the shift manager/CFH, as documented in the licensee's Physical Security Plan, the requested exemption to 10 CFR 73.55(j)(4)(ii) will meet the intent of the regulation, regardless of the location of the shift manager/CFH.

Pursuant to 10 CFR 73.5, the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of 10 CFR part 73 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

#### A. Authorized by Law

In accordance with 10 CFR 73.5, the Commission may grant exemptions from the regulations in 10 CFR part 73 as the

Commission determines are authorized by law. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. Therefore, the exemption is authorized by law.

#### B. Will Not Endanger Life or Property or the Common Defense and Security

Removing the requirement to have a continuous communication system between the security alarm stations and the control room will not endanger life or property or the common defense and security for the reasons discussed below.

The shift manager/CFH is the senior on-shift licensee representative, is responsible for the shift command function, and directs the action of the operations staff during both normal and emergency conditions. Therefore, the shift manager/CFH is the appropriate individual to have continuous communication capability with the alarm stations. The exemption would not reduce the measures in place to protect against radiological sabotage. In addition, the NRC staff has determined that the exemption will not reduce the overall effectiveness of the KPS Physical Security Plan, Training and Qualification Plan, or Safeguards Contingency Plan. Maintaining a system of continuous communication between the alarm stations and the shift manager/CFH rather than the control room will provide the shift manager with the flexibility to leave the control room and respond to other locations onsite, as necessary, to conduct appropriate management oversight. The NRC staff has determined that maintaining continuous communication capability with the shift manager/CFH, whether in the control room or elsewhere, does not significantly change the current process that ensures that any necessary coordination during security events or other emergencies can be accomplished at all times. Continuous communication capability is essentially unchanged (other than the location of the shift manager/CFH when the communications are initiated).

Therefore, the underlying purpose of 10 CFR 73.55(j)(4)(ii) will continue to be met. The exemption does not reduce the overall effectiveness of the Physical Security Plan and has no adverse impact on DEK's ability to physically secure the site or protect special nuclear material at KPS, and therefore would not have an effect on the common defense and security. The NRC staff has concluded that the exemption would not reduce the effectiveness of security measures currently in place to protect against

radiological sabotage. Therefore, removing the requirement to have continuous communication between the security alarm stations and the control room will not endanger life or property or the common defense and security.

#### C. Is Otherwise in the Public Interest

The licensee is implementing changes to its Physical Security Plan to establish a system of continuous communication between the security alarm stations and the shift manager/CFH that is not dependent on the shift manager's location. By granting DEK's proposed exemption to remove the requirement for a continuous communication system between the security alarm stations and the control room, the shift manager/CFH can roam around the facility in an oversight role and obtain first-hand information of facility conditions and status while still maintaining continuous communication with the alarm stations. The NRC staff has concluded that there would be no decrease in the level of safety by granting this exemption and that the capability to observe conditions directly serves the public interest by assuring that the shift manager/CFH has the best possible information needed to make decisions or to communicate to the alarm stations or to offsite entities. Accordingly, the NRC staff concludes that exempting DEK from the requirement for a continuous communication system between the security alarm stations and the control room is in the public interest, provided the licensee maintains continuous communication capability between the alarm stations and the shift manager/CFH.

#### D. Environmental Considerations

The NRC's approval of the exemption to security requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically the exemption is categorically excluded from further analysis under 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational

radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: safeguard plans, and materials control and accounting inventory scheduling requirements; or involve other requirements of an administrative, managerial, or organizational nature.

The Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that approval of the exemption request involves no significant hazards consideration because removing the requirement for a continuous communications system between the security alarm stations and the control room at KPS does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted security regulation is unrelated to the operation of KPS. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.*, potential amount of radiation in an accident), nor mitigation. Therefore, there is no significant increase in the potential for, or consequences of, a radiological accident. The requirement for a continuous communication system between the security alarm stations and the control room may be viewed as involving either safeguards or managerial matters.

Therefore, pursuant to 10 CFR 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

#### IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, the exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants DEK exemption from the requirement of 10 CFR 73.55(j)(4)(ii) for

a system of continuous communication capability with the control room, provided that DEK maintains a system for continuous communication capability with the shift manager/CFH consistent with the method described in its submittal dated June 10, 2013. This exemption is effective when the system for continuous communication between the alarm stations and the shift manager/CFH is documented in DEK's Physical Security Plan and functionally implemented.

Dated at Rockville, Maryland, this 29th day of December 2014.

For the Nuclear Regulatory Commission.

**George A. Wilson Jr.,**

*Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2015-00027 Filed 1-6-15; 8:45 am]

**BILLING CODE 7590-01-P**

## POSTAL REGULATORY COMMISSION

[Docket No. ACR2014; Order No. 2313]

### FY 2014 Annual Compliance Report

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Postal Service has filed an Annual Compliance Report on the costs, revenues, rates, and quality of service associated with its products in fiscal year 2014. Within 90 days, the Commission must evaluate that information and issue its determination as to whether rates were in compliance with title 39, chapter 36, and whether service standards in effect were met. To assist in this, the Commission seeks public comments on the Postal Service's Annual Compliance Report.

**DATES:** *Comments are due:* February 2, 2015. *Reply Comments are due:* February 13, 2015.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:**

#### Table of Contents

- I. Introduction
- II. Overview of the Postal Service's FY2014 ACR
- III. Procedural Steps
- IV. Ordering Paragraphs

## I. Introduction

On December 29, 2014, the United States Postal Service (Postal Service) filed with the Commission, pursuant to 39 U.S.C. 3652, its Annual Compliance Report (ACR) for fiscal year (FY) 2014.<sup>1</sup> Section 3652 requires submission of data and information on the costs, revenues, rates, and quality of service associated with postal products within 90 days of the closing of each fiscal year. In conformance with other statutory provisions and Commission rules, the ACR includes the Postal Service's FY 2014 Comprehensive Statement, its FY 2014 annual report to the Secretary of the Treasury on the Competitive Products Fund, and certain related Competitive Products Fund material. See respectively, 39 U.S.C. 3652(g), 39 U.S.C. 2011(i), and 39 CFR 3060.20-23. In line with past practice, some of the material in the FY 2014 ACR appears in non-public annexes.

The filing begins a review process that results in an Annual Compliance Determination (ACD) issued by the Commission to determine whether Postal Service products offered during FY 2014 are in compliance with applicable title 39 requirements.

## II. Overview of the Postal Service's FY 2014 ACR

*Contents of the filing.* The Postal Service's FY 2014 ACR consists of a 51-page narrative; extensive additional material appended as separate folders and identified in Attachment One; and an application for non-public treatment of certain materials, along with supporting rationale, filed as Attachment Two. The filing also includes the Comprehensive Statement,<sup>2</sup> Report to the Secretary of the Treasury, and information on the Competitive Products Fund filed in response to Commission rules. This material has been filed electronically with the Commission, and some also has been filed in hard-copy form.

*Scope of filing.* The material appended to the narrative consists of: (1) Domestic product costing material filed on an annual basis summarized in the Cost and Revenue Analysis (CRA); (2) comparable international costing material summarized in the

<sup>1</sup> United States Postal Service FY 2014 Annual Compliance Report, December 29, 2014 (FY 2014 ACR). Public portions of the Postal Service's filing are available on the Commission's Web site at <http://www.prc.gov>.

<sup>2</sup> In years prior to 2013, the Commission reviewed the Postal Service's reports prepared pursuant to 39 U.S.C. 2803 and 39 U.S.C. 2804 (filed as the Comprehensive Statement by the Postal Service) in its Annual Compliance Determination. However, as it did last year, the Commission intends to review these reports separately.

International Cost and Revenue Analysis (ICRA); (3) worksharing-related cost studies; and (4) billing determinant information for both domestic and international mail. FY 2014 ACR at 2. Inclusion of these four data sets is consistent with the Postal Service's past ACR practices. As with past ACRs, the Postal Service has split certain materials into public and non-public versions. *Id.* at 2–3.

*“Roadmap” document.* A roadmap to the FY 2014 ACR appears as Library Reference USPS–FY14–9. This document provides brief descriptions of the materials submitted, as well as the flow of inputs and outputs among them; a discussion of differences in methodology relative to Commission methodologies in last year's ACD; and a list of special studies and a discussion of obsolescence, as required by Commission rule 3050.12. *Id.* at 3.

*Methodology.* The Postal Service states that it has adhered to the methodologies historically used by the Commission subject to changes identified and discussed in a separate section of the roadmap document and in prefaces accompanying the appended folders. *Id.* at 4. Changes in analytical principles proposed by the Postal Service for use in the FY 2014 ACR are identified and summarized in a table. *Id.* at 4–5. The table omits more recent proposed changes that the Postal Service does not hope to implement until preparing reports for Fiscal Year 2015. *Id.* at 4.

*Market dominant product-by-product costs, revenues, and volumes.* Comprehensive cost, revenue, and volume data for all market dominant products of general applicability are shown directly in the FY 2014 CRA or ICRA. *Id.* at 6.

The FY 2014 ACR includes a discussion by class of each market dominant product, including costs, revenues, and volumes, workshare discounts and passthroughs responsive to 39 U.S.C. 3652(b), and FY 2014 incentive programs. *Id.* at 6–38.<sup>3</sup> In addition, in response to Order No. 1427,<sup>4</sup> the Postal Service also provides a schedule of future price increases for Standard Mail Flats. FY 2014 ACR at 20.

*Market dominant negotiated service agreements.* The FY 2014 ACR presents

information on market dominant negotiated service agreements (NSAs). *Id.* at 37–38.

*Forthcoming Information.* The Postal Service represents that due to the unavailability of staff during the holiday season, it was unable to include certain information in this filing. It states that the following information will be filed with the Commission in “early January”:

- A description of all operational changes designed to reduce costs for Standard Mail Flats in FY 2014 as required by the Commission in the FY 2010 ACD. *Id.* at 19 n.7.
- A description of costing methodology or measurement improvements made to the Standard Mail Flats product in FY 2014 and an estimate of the financial effects of such changes as required by the Commission in the FY 2010 ACD. *Id.*
- A statement summarizing the historical and current fiscal year subsidy of the Standard Mail Flats product and an estimated timeline for phasing out that subsidy as required by the Commission in the FY 2010 ACD. *Id.*
- A detailed analysis of progress made in improving Periodicals cost coverage as required by the Commission in the FY 2013 ACD. *Id.* at 32 n.14. The Postal Service is directed to provide this information no later than January 5, 2015.

*Service performance.* The Postal Service notes that the Commission issued rules on periodic reporting of service performance measurement and customer satisfaction in FY 2010. Responsive information appears in Library Reference USPS–FY14–29. *Id.* at 39.

*Customer satisfaction.* The FY 2014 ACR discusses the Postal Service's approach for measuring customer experience and satisfaction; describes the methodology; presents a table with survey results; and compares the results from FY 2013 to FY 2014. *Id.* at 40–43.

*Competitive products.* The FY 2014 ACR provides costs, revenues, and volumes for competitive products of general applicability in the FY 2014 CRA or ICRA. For competitive products not of general applicability, data is provided in non-public Library References USPS–FY14–NP2 and USPS–FY14–NP27. The FY 2014 ACR also addresses the competitive product pricing standards of 39 U.S.C. 3633. *Id.* at 44–47.

*Market tests; nonpostal services.* The Postal Service discusses the market dominant market test conducted during FY 2014, the three competitive market

tests conducted during FY 2014, and nonpostal services. *Id.* at 48–49.

### III. Procedural Steps

*Statutory requirements.* Section 3653 of title 39 requires the Commission to provide interested persons with an opportunity to comment on the ACR and to appoint an officer of the Commission (Public Representative) to represent the interests of the general public. The Commission hereby solicits public comment on the Postal Service's FY 2014 ACR and on whether any rates or fees in effect during FY 2014 (for products individually or collectively) were not in compliance with applicable provisions of chapter 36 of title 39 (or regulations promulgated thereunder). Commenters addressing market dominant products are referred in particular to the applicable requirements (39 U.S.C. 3622(d) and (e) and 3626); objectives (39 U.S.C. 3622(b)); and factors (39 U.S.C. 3622(c)). Commenters addressing competitive products are referred to 39 U.S.C. 3633.

The Commission also invites public comment on the cost coverage matters the Postal Service addresses in its filing; service performance results; levels of customer satisfaction achieved; and such other matters that may be relevant to the Commission's review.

*Access to filing.* The Commission has posted the publicly available portions of the FY 2014 ACR on its Web site at <http://www.prc.gov>.

*Comment deadlines.* Comments by interested persons are due on or before February 2, 2015. Reply comments are due on or before February 13, 2015. The Commission, upon completion of its review of the FY 2014 ACR, public comments, and other data and information submitted in this proceeding, will issue its ACD. Those needing assistance filing electronically may contact the Docket Section supervisor at 202–789–6846 or via email at [prc-dockets@prc.gov](mailto:prc-dockets@prc.gov). Inquiries about access to non-public materials should also be directed to the Docket Section.

*Public Representative.* Tracy Ferguson is designated to serve as the Public Representative to represent the interests of the general public in this proceeding. Neither the Public Representative nor any additional persons assigned to assist her shall participate in or advise as to any Commission decision in this proceeding other than in their designated capacity.

### IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. ACR2014 to consider matters raised

<sup>3</sup> The Postal Service notes that a structural lag resulted from the implementation of prices from Docket Nos. R2013–10 and R2013–11 on January 26, 2014. Because of that lag, it is unable to rely on any of the worksharing exceptions for certain workshare passthroughs exceeding 100 percent. It states that it will correct those passthroughs as quickly as possible in future price adjustments. *Id.* at 6.

<sup>4</sup> Docket No. ACR2010–R, Order on Remand, August 9, 2012 (Order No. 1427).

by the United States Postal Service's FY 2014 Annual Compliance Report.

2. The Postal Service is directed to provide the Commission with the material listed in the Forthcoming Information section of this order no later than January 5, 2015.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Tracy Ferguson as an officer of the Commission (Public Representative) in this proceeding to represent the interests of the general public.

4. Comments on the United States Postal Service's FY 2014 Annual Compliance Report to the Commission, including the Comprehensive Statement of Postal Operations and other reports, are due on or before February 2, 2015.

5. Reply comments are due on or before February 13, 2015.

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

By the Commission.

**Shoshana M. Grove,**  
Secretary.

[FR Doc. 2014-30976 Filed 1-6-15; 8:45 am]

BILLING CODE 7710-FW-P

## RAILROAD RETIREMENT BOARD

### Sunshine Act; Notice of Closed Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on January 15, 2015, 10:00 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

#### *Closed meeting notice:*

(1) Director of Programs Position

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312-751-4920.

Dated: January 5, 2015.

**Martha P. Rico,**  
Secretary to the Board.

[FR Doc. 2015-00060 Filed 1-5-15; 11:15 am]

BILLING CODE 7905-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73971; File No. SR-CTA-2014-04]

### Consolidated Tape Association; Notice of Filing of the Nineteenth Substantive Amendment to the Second Restatement of the CTA Plan

December 31, 2014.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on December 24, 2014, the Consolidated Tape Association ("CTA") Plan participants ("Participants")<sup>3</sup> filed with the Securities and Exchange Commission ("Commission") a proposal to amend the Second Restatement of the CTA Plan (the "CTA Plan").<sup>4</sup> The amendment proposes to shorten the maximum time within which Participants must report trades from 90 seconds to 10 seconds, subject to the Participants' obligation to report trades as soon as practicable. The Commission is publishing this notice to solicit comments from interested persons on the proposed amendment.

#### I. Rule 608(a)

##### A. Purpose of the Amendment

Currently, Section VIII(a) (Responsibility of Exchange Participants) of the CTA Plan provides that each Participant will "(i) report all last sale prices relating to transactions in Eligible Securities as promptly as possible, (ii) establish and maintain collection and reporting procedures and facilities such as to assure that under normal conditions not less than 90% of such last sale prices will be reported within that period of time (not in excess of one and one-half minutes) after the time of execution as may be determined

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc., BATS-Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc. ("EDGA"), EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), International Securities Exchange, LLC, NASDAQ OMX BX, Inc. ("Nasdaq BX"), NASDAQ OMX PHLX, Inc. ("Nasdaq PSX"), Nasdaq Stock Market LLC, National Stock Exchange, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC (formerly NYSE Amex, Inc.), and NYSE Arca, Inc. ("NYSE Arca").

<sup>4</sup> See Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799 (declaring the CTA Plan effective). The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a "transaction reporting plan" under Rule 601 under the Act, 17 CFR 242.601, and a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608.

by CTA from time to time in light of experience, and (iii) designate as "late" any last sale price not collected and reported in accordance with the above-referenced procedures."

The amendment proposes to reduce from one-and-one-half minutes to 10 seconds the maximum amount of time by which each Participant is required to report trades. In addition to reducing the time frame, the Participants propose to revise the language of the requirement so that it requires the Participants to report "as soon as practicable, but not later than 10 seconds," after the time of execution of the trade. The amendment also proposes to remove the qualifier that called for trade reports to meet the time requirement not less than 90 percent of the time under normal conditions.

The Participants note that, during 2013, the Commission approved a FINRA rule amendment that modified FINRA's trade reporting rules to require that FINRA members report over-the-counter transactions in Eligible Securities to FINRA as soon as practicable, but no later than 10 seconds, following execution.<sup>5</sup> The FINRA rule does not qualify the 10-second requirement by providing that one must comply 90 percent of the time under normal conditions. No other Participant has a trade reporting rule that permits trade reporting more than 10 seconds after execution. As a result, shortening the trade reporting time under the CTA Plan seems warranted.

In addition, the Participants understand that, contemporaneously with the filing of this amendment, the Participants in the UTP Plan contemplate submitting a plan amendment that would amend the trade-reporting requirement under that plan to provide for the same trade-reporting requirements as the CTA Plan Participants propose under this Agreement.

#### B. Additional Information Required by Rule 608(a)

##### 1. Impact of the Proposed Amendment

The Participants report the vast majority of trade reports in well less than 10 seconds, so that the Plan amendment is not likely to have a practical impact on trade reporting.

##### 2. Governing or Constituent Documents

Not applicable.

<sup>5</sup> See Securities Exchange Act Release No. 69561 (May 13, 2013), 78 FR 29190 (May, 17, 2013) (SR-FINRA-2013-013).

## 3. Implementation of the Amendment

All of the Participants have manifested their approval of the proposed amendment by means of their execution of the Plan amendment. The Plan amendment would become operational upon approval by the Commission.

## 4. Development and Implementation Phases

Not applicable.

## 5. Analysis of Impact on Competition

The proposed amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the proposed plan amendment introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.<sup>6</sup>

## 6. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

## 7. Approval by Sponsors in Accordance With Plan

Under Section IV(b) of the CTA Plan, each Participant must execute a written amendment to the CTA Plan before the amendment can become effective. The amendment is so executed.

## 8. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

## 9. Terms and Conditions of Access

Not applicable.

## 10. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

## 11. Method of Frequency of Processor Evaluation

Not applicable.

## 12. Dispute Resolution

Not applicable.

**II. Rule 601(a)***A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan*

Not applicable.

*B. Reporting Requirements*

As a result of the amendment, the CTA Plan would require each Participant to report each trade as soon

as practicable, but no more than 10 seconds from the time of the trade. In addition, each Participant would be required to establish and maintain collection and reporting procedures and facilities reasonably designed to assure that such last sale prices will be reported within not more than 10 seconds (rather than the current 90 seconds) following execution, regardless of whether they do so 90 percent of the time under normal conditions. (Currently, each Participant has 90 seconds to report 90 percent of its trades within 10 seconds following execution under normal conditions.)

*C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information*

Not applicable.

*D. Manner of Consolidation*

Not applicable.

*E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports*

The amendment will support the prompt reporting of transaction reports by reducing from 90 seconds to 10 seconds the maximum amount of time by which each Participant must report trades, subject to the Participants' obligation to report trades as soon as practicable.

*F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination*

Not applicable.

*G. Terms of Access to Transaction Reports*

Not applicable.

*H. Identification of Marketplace of Execution*

Not applicable.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendments are consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CTA-2014-04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CTA-2014-04. 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 Amendments that are filed with the Commission, and all written communications relating to the Amendments 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 Amendments also will be available for inspection and copying at the principal office of the CTA. 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-CTA-2014-04 and should be submitted on or before January 28, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014-30975 Filed 1-6-15; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>6</sup> 15 U.S.C. 78k-1(c)(1)(D).

<sup>7</sup> 17 CFR 200.30-3(a)(27).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73970; File No. S7–24–89]

**Joint Industry Plan; Notice of Filing of Amendment No. 34 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.**

December 31, 2014.

Pursuant to section 11A of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on December 24, 2014, the operating committee (“Operating Committee” or “Committee”)<sup>3</sup> of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (“Nasdaq/UTP Plan” or “Plan”) filed with the Securities and Exchange Commission (“Commission”) an amendment to the Plan.<sup>4</sup> This amendment represents Amendment No.

34 (“Amendment No. 34”) to the Plan and proposes to shorten the maximum time within which Participants must report trades from 90 seconds to 10 seconds, subject to the Participants’ obligation to report trades as soon as practicable. The Commission is publishing this notice to solicit comments from interested persons.

### I. Rule 608(a)

#### A. Purpose of the Amendments

Currently, section VIII(B) (Transaction Reports) of the UTP Plan provides that “Each Participant shall, during the time it is open for trading, be responsible promptly to collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market by means prescribed herein. . . . All such Transaction Reports shall be transmitted to the Processor within 90 seconds after the time of execution of the transaction. Transaction Reports transmitted beyond the 90-second period shall be designated as ‘late’ by the appropriate code or message.”

The amendment proposes to reduce from 90 seconds to 10 seconds the maximum amount of time by which each Participant is required to report trades. In addition to reducing the time frame, the Participants propose to change the promptly-collect-and-transmit standard to an as-soon-as-practicable standard. It would now require the Participants to “transmit all Transaction Reports as soon as practicable, but not later than 10 seconds, after the time of execution.”

In addition, the amendment would require each Participant to establish and maintain collection and reporting procedures and facilities reasonably designed to comply with the reporting requirement. This would harmonize with a similar, existing requirement under the CTA Plan.

The Participants note that, during 2013, the Commission approved a FINRA rule amendment that modified FINRA’s trade reporting rules to require that FINRA members report over-the-counter transactions in Eligible Securities to FINRA as soon as practicable, but no later than 10 seconds, following execution.<sup>5</sup> No other Participant has a trade reporting rule that permits trade reporting more than 10 seconds after execution. As a result, shortening the trade reporting time under the UTP Plan seems warranted.

In addition, the Participants understand that, contemporaneously with the filing of this amendment, the

Participants in the CTA Plan contemplate submitting a plan amendment that would amend the trade-reporting requirement under that plan to provide for the same trade-reporting requirements as the UTP Plan Participants propose under this Agreement.

#### B. Impact of the Proposed Amendment

The Participants receive the vast majority of trade reports in well less than 10 seconds, so that the UTP Plan amendment is not likely to have a practical impact on trade reporting.

#### C. Governing or Constituent Documents

Not applicable.

#### D. Implementation of Amendment

All of the Participants have manifested their approval of the proposed amendment by means of their execution of the UTP Plan amendment. The UTP Plan amendment would become operational upon approval by the Commission.

#### E. Development and Implementation Phases

Not applicable.

#### F. Analysis of Impact on Competition

The proposed amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the proposed UTP Plan amendment introduces terms that are unreasonably discriminatory for the purposes of section 11A(c)(1)(D) of the Act.<sup>6</sup>

#### G. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

#### H. Approval by Sponsors in Accordance With Plan

Section IV(C)(1)(a) of the UTP Plan requires the Participants to unanimously approve the amendment. They have so approved it.

#### I. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

#### J. Terms and Conditions of Access

Not applicable.

#### K. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

<sup>1</sup> 15 U.S.C. 78k–1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> The Plan Participants (collectively, “Participants”) are the: BATS Exchange, Inc.; BATS Y-Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; Nasdaq Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc.

<sup>4</sup> The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. See Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007).

<sup>5</sup> See Securities Exchange Act Release No. 69561 (May 13, 2013), 78 FR 29190 (May, 17, 2013) (SR-FINRA–2013–013).

<sup>6</sup> 15 U.S.C. 78k–1(c)(1)(D).

*L. Method and Frequency of Processor Evaluation*

Not applicable.

*M. Dispute Resolution*

Not applicable.

**II. Rule 601(a)***A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan*

Not applicable.

*B. Reporting Requirements*

As a result of the amendment, the UTP Plan would require each Participant to report each trade as soon as practicable, but no more than 10 seconds from the time of the trade. In addition, each Participant's members would be required to establish and maintain collection and reporting procedures and facilities such as to assure that such last sale prices will be reported within not more than 10 seconds (rather than the current 90 seconds) following execution (or such shorter period as the Participants may approve), regardless of whether they do so 90 percent of the time under normal conditions. Currently, each Participant has 90 seconds to report 90 percent of its trades within 10 seconds following execution under normal conditions.

*C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information*

Not applicable.

*D. Manner of Consolidation*

Not applicable.

*E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports*

The amendment will support the prompt reporting of transaction reports by reducing from 90 seconds to 10 seconds the maximum amount of time by which each Participant must receive transaction reports from its members, subject to the Participants' obligation to report trades as promptly as possible.

*F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination*

Not applicable.

*G. Terms of Access to Transaction Reports*

Not applicable.

*H. Identification of Marketplace of Execution*

Not applicable.

**III. Solicitation of Comments**

The Commission seeks general comments on Amendment No. 34. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-24-89 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-24-89. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all written statements with respect to the proposed Plan Amendment that are filed with the Commission, and all written communications relating to the proposed Plan Amendment 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 Web site viewing and printing at the Office of the Secretary of the Committee, currently located at the CBOE, 400 S. LaSalle Street, Chicago, IL 60605. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number S7-24-89 and should be submitted on or before January 28, 2015.

<sup>7</sup> 17 CFR 200.30-3(a)(27).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014-30974 Filed 1-6-15; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-73974; File No. SR-CBOE-2014-093]

**Self-Regulatory Organizations;  
Chicago Board Options Exchange,  
Incorporated; Notice of Filing and  
Immediate Effectiveness of a Proposed  
Rule Change To Amend Rule 6.54**

**December 31, 2014.**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 30, 2014, 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 extend its program that allows transactions to take place at a price that is below \$1 per option contract through January 5, 2016. 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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 6.54, *Accommodation Liquidations (Cabinet Trades)*, which sets forth specific procedures for engaging in cabinet trades. Rule 6.54 currently provides for cabinet transactions to occur via open outcry at a cabinet price of \$1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of \$1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a PAR Official/OBO, a Floor Broker or a Market-Maker, but must yield priority to all resting orders in the PAR Official/OBO cabinet book (which resting cabinet book orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at \$1 per option contract.

The Exchange has temporarily amended the procedures through January 5, 2015 to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option contract.<sup>3</sup> These lower priced

transactions are traded pursuant to the same procedures applicable to \$1 cabinet trades, except that (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also available for trading in option classes participating in the Penny Pilot Program.<sup>4</sup> The Exchange believes that allowing a price of at least \$0 but less than \$1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly due to market conditions which may result in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of \$100 and the underlying stock might now be trading at \$30. In such an instance, there might not otherwise be a market for that person to close-out the position even at the \$1 cabinet price (e.g., the series might be quoted no bid).<sup>5</sup>

The purpose of the instant rule change is to extend the operation of these temporary procedures through

CBOE-2013-063; 69893 (June 28, 2013), 78 FR 40539 (July 5, 2013)(both extending the amended procedures on a temporary basis through January 5, 2014) and 71090 (December 17, 2013), 78 FR 77532 (December 23, 2013)(SR-CBOE-2013-118)(extending the amended procedures on a temporary basis through January 5, 2015).

<sup>4</sup> Currently the \$1 cabinet trading procedures are limited to options classes traded in \$0.05 or \$0.10 standard increment. The \$1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier). Because the temporary procedures allow trading below \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier), the procedures are available for all classes, including those classes participating in the Penny Pilot Program.

<sup>5</sup> As with other accommodation liquidations under Rule 6.54, transactions that occur for less than \$1 are not disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.54, the transactions are exempt from the Consolidated Options Audit Trail ("COATS") requirements of Exchange Rule 6.24, *Required Order Information*. However, the Exchange maintains quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than \$1 must be reported to the Exchange following the close of each business day. The rule also provides that transactions for less than \$1 will be reported for clearing utilizing forms, formats and procedures established by the Exchange from time to time. In this regard, the Exchange initially intends to have clearing firms directly report the transactions to the Options Clearing Corporation ("OCC") using OCC's position adjustment/transfer procedures. This manner of reporting transactions for clearing is similar to the procedure that CBOE currently employs for on-floor position transfer packages executed pursuant to Exchange Rule 6.49A, *Transfer of Positions*.

January 5, 2016, so that the procedures can continue without interruption while CBOE considers whether to seek permanent approval of the temporary procedures.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>7</sup> 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)<sup>8</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that allowing for liquidations at a price less than \$1 per option contract better facilitates the closing of options positions that are worthless or not actively trading. Further, the Exchange believes the proposal is consistent with the Act because the proposed extension is of appropriate length to allow the Exchange and the Commission to continue to assess the impact of the Exchange's authority to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option in accordance with its attendant obligations and conditions, including the process for submitting such transactions to OCC for clearing.

*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 believes that allowing for liquidations at a price less than \$1 per option contract better facilitates the

<sup>3</sup> See Securities Exchange Act Release Nos. 59188 (December 30, 2008), 74 FR 480 (January 6, 2009)(SR-CBOE-2008-133)(adopting the amended procedures on a temporary basis through January 30, 2009), 59331 (January 30, 2009), 74 FR 6333 (February 6, 2009)(extending the amended procedures on a temporary basis through May 29, 2009), 60020 (June 1, 2009), 74 FR 27220 (June 8, 2009)(SR-CBOE-2009-034)(extending the amended procedures on a temporary basis through June 1, 2010), 62192 (May 28, 2010), 75 FR 31828 (June 4, 2010)(SR-CBOE-2010-052)(extending the amended procedures on a temporary basis through June 1, 2011); 64403 (May 4, 2011), 76 FR 27110 (May 10, 2011)(SR-CBOE-2011-048)(extending the amended procedures on a temporary basis through December 30, 2011); 65872 (December 2, 2011), 76 FR 76788 (December 8, 2011)(SR-CBOE-2011-113)(extending the amended procedures on a temporary basis through June 29, 2012) 67144 (June 6, 2012), 77 FR 35095 (June 12, 2012)(SR-CBOE-2012-053)(extending the amended procedures on a temporary basis through June 28, 2013), and 69854 (June 25, 2013), 78 FR 39424 (July 1, 2013)(SR-

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> *Id.*

closing of options positions that are worthless or not actively trading. The Exchange believes this promotes fair and orderly markets, as well as assists the Exchange in its ability to effectively attract order flow and liquidity to its market, and ultimately benefit all CBOE Trading Permit Holders ("TPHs") and all investors.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change does not make any changes to Exchange rules, but simply extends an existing temporary program. Further, the program is available to all market participants through CBOE TPHs. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, again, the proposed rule change does not make any changes to Exchange rules, but simply extends an existing temporary program. Moreover, to the extent that the program makes CBOE a more attractive marketplace, as noted above, the program is available to all market participants through CBOE TPHs.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent 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,<sup>9</sup> the proposed rule change has become effective pursuant to section

19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

Under Rule 19b-4(f)(6) of the Act,<sup>12</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes operative so that the pilot may continue without interruption. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot and allowing members to continue to benefit from the program. Based on the foregoing, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2014-093 on the subject line.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> *Id.*

<sup>13</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2014-093. 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-CBOE-2014-093 and should be submitted on or before January 28, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014-30972 Filed 1-6-15; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>9</sup> The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73969; File No. SR-NYSEMKT-2014-112]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposes To Amend NYSE MKT Rule 500—Equities To Extend the Operation of the Pilot Program That Allows “UTP Securities” To Be Traded on the Exchange Pursuant to a Grant of Unlisted Trading Privileges

December 31, 2014.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on December 23, 2014, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE MKT Rule 500—Equities to extend the operation of the pilot program that allows “UTP Securities” to be traded on the Exchange pursuant to a grant of unlisted trading privileges. The pilot program is currently scheduled to expire on December 31, 2014; the Exchange proposes to extend it until the earlier of Commission approval to make such pilot permanent or July 31, 2015. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, on the Commission’s Web site at [www.sec.gov](http://www.sec.gov), and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend NYSE MKT Rule 500—Equities to extend the operation of the pilot program that allows “UTP Securities” to be traded on the Exchange pursuant to a grant of unlisted trading privileges.<sup>4</sup> The pilot program is currently scheduled to expire on December 31, 2014; the Exchange proposes to extend it until the earlier of Commission approval to make such pilot permanent or July 31, 2015.

NYSE MKT Rules 500–525—Equities, as a pilot program, govern the trading of any “UTP Securities” on the Exchange pursuant to unlisted trading privileges (“UTP Pilot Program”).<sup>5</sup> The Exchange hereby seeks to extend the operation of the UTP Pilot Program, currently scheduled to expire on December 31, 2014, until the earlier of Commission approval to make such pilot permanent or July 31, 2015.

The UTP Pilot Program includes any security, other than a security that is listed on the Exchange, that (i) is designated as an “eligible security”

<sup>4</sup> “UTP Securities” is included within the definition of “security” as that term is used in the NYSE MKT Equities Rules. See NYSE MKT Rule 3—Equities. In accordance with this definition, UTP Securities are admitted to dealings on the Exchange on an “issued,” “when issued,” or “when distributed” basis. See NYSE MKT Rule 501—Equities.

<sup>5</sup> See Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR-NYSEAmex-2010-31). See also Securities Exchange Act Release Nos. 62857 (September 7, 2010), 75 FR 55837 (September 14, 2010) (SR-NYSEAmex-2010-89); 63601 (December 22, 2010), 75 FR 82117 (December 29, 2010) (SR-NYSEAmex-2010-124); 64746 (June 24, 2011), 76 FR 38446 (June 30, 2011) (SR-NYSEAmex-2011-45); 66040 (December 23, 2011), 76 FR 82324 (December 30, 2011) (SR-NYSEAmex-2011-104); 67497 (July 25, 2012), 77 FR 45404 (July 31, 2012) (SR-NYSEMKT-2012-25); 68561 (January 2, 2013), 78 FR 1290 (January 8, 2013) (SR-NYSEMKT-2012-86); 69814 (June 20, 2013), 78 FR 38762 (June 27, 2013) (SR-NYSEMKT-2013-53); 71363 (January 21, 2014), 79 FR 4373 (January 27, 2014) (SR-NYSEMKT-2014-01); and 72624 (July 16, 2014), 79 FR 42595 (July 22, 2014) (SR-NYSEMKT-2014-59). The UTP Pilot Program was originally limited to securities listed on the Nasdaq Stock Market LLC (“Nasdaq Securities”), but the Exchange recently expanded the UTP Pilot Program beyond Nasdaq Securities. See Securities Exchange Act Release No. 71952 (April 16, 2014), 79 FR 22558 (April 22, 2014) (SR-NYSEMKT-2014-32).

pursuant to the “UTP Plan,”<sup>6</sup> (ii) has been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with section 12(f) of the Act,<sup>7</sup> and (iii) if it is an “Exchange Traded Product” (“ETP”) that does not have any component security that is listed or traded on the Exchange or the New York Stock Exchange LLC (“NYSE”); provided, however, that the Invesco PowerShares QQQ™ (the “QQQ”™) may be admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges although one or more component securities of the QQQ may be listed or traded on the Exchange or the NYSE, subject to the conditions of Rule 504(b)(5)—Equities.

The Exchange notes that its New Market Model Pilot (“NMM Pilot”), which, among other things, eliminated the function of specialists on the Exchange and created a new category of market participant, the Designated Market Maker (“DMM”),<sup>8</sup> is also scheduled to end on December 31, 2014.<sup>9</sup> The timing of the operation of

<sup>6</sup> With respect to Nasdaq Securities, the term “UTP Plan” means the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended from time to time, filed with and approved by the Commission. See Securities Exchange Act Release No. 70953 (November 27, 2013), 78 FR 72932 (December 4, 2013) (File No. S7-24-89). The Exchange’s predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. See Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007) (File No. S7-24-89). In March 2009, the Exchange changed its name to NYSE Amex LLC, and, in May 2012, the Exchange subsequently changed its name to NYSE MKT LLC. See Securities Exchange Act Release Nos. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR-NYSEALTR-2009-24) and 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR-NYSEAmex-2012-32). With respect to all other UTP Securities, the term “UTP Plan” means the Consolidated Tape Association Plan for the Dissemination of Last Sale Prices of Transactions in Eligible Securities, as amended from time to time, filed with and approved by the Commission. See Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective). See also Securities Exchange Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05).

<sup>7</sup> 15 U.S.C. 78l.

<sup>8</sup> See NYSE MKT Rule 103—Equities.

<sup>9</sup> See Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR-NYSEAmex-2009-65). See also Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR-NYSEAmex-2009-83); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR-NYSEAmex-2010-28); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR-NYSEAmex-2010-86); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR-NYSEAmex-2010-123); 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR-NYSEAmex-2011-43); 66042 (December 23, 2011), 76 FR 82326 (December 30, 2011) (SR-NYSEAmex-2011-102);

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

the UTP Pilot Program was designed to correspond to that of the NMM Pilot. In approving the UTP Pilot Program, the Commission acknowledged that the rules relating to DMM benefits and duties in trading Nasdaq Securities on the Exchange pursuant to the UTP Pilot Program are consistent with the Act<sup>10</sup> and noted the similarity to the NMM Pilot, particularly with respect to DMM obligations and benefits<sup>11</sup>—the Exchange considers the same to be true with respect to all UTP Securities, including for ETPs that are included in the UTP Pilot Program. Furthermore, the UTP Pilot Program rules pertaining to the assignment of securities to DMMs are substantially similar to the rules implemented through the NMM Pilot.<sup>12</sup> The Exchange has similarly filed to extend the operation of the NMM Pilot until the earlier of Commission approval to make the NMM Pilot permanent or July 31, 2015.<sup>13</sup>

Extension of the UTP Pilot Program in tandem with the NMM Pilot, both from December 31, 2014 until the earlier of Commission approval to make such pilots permanent or July 31, 2015, will provide for the uninterrupted trading of UTP Securities on the Exchange on an unlisted trading privileges basis and thus continue to encourage the additional utilization of, and interaction with, the Exchange, and provide market participants with improved price discovery, increased liquidity, more competitive quotes and greater price improvement for UTP Securities.

The proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

## 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 applicable to a national securities exchange. In particular, the Exchange believes that its proposal to extend the UTP Pilot Program is consistent with (i) section 6(b) of the Act,<sup>14</sup> in general, and

further the objectives of section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; (ii) section 11A(a)(1) of the Act,<sup>16</sup> in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets; and (iii) section 12(f) of the Act,<sup>17</sup> which governs the trading of securities pursuant to unlisted trading privileges consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities.

Specifically, the Exchange believes that extending the UTP Pilot Program would provide for the uninterrupted trading of UTP Securities on the Exchange on an unlisted trading privileges basis and thus continue to encourage the additional utilization of, and interaction with, the Exchange, thereby providing market participants with additional price discovery, increased liquidity, more competitive quotes and potentially greater price improvement for UTP Securities. Additionally, under the UTP Pilot Program, UTP Securities trade on the Exchange pursuant to rules governing the trading of Exchange-Listed securities that previously have been approved by the Commission. Accordingly, this proposed rule change would permit the Exchange to extend the effectiveness of the UTP Pilot Program in tandem with the NMM Pilot, which the Exchange has similarly proposed to extend until the earlier of Commission approval to make such pilot permanent or July 31, 2015.<sup>18</sup>

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with section 6(b)(8) of the Act,<sup>19</sup> the Exchange believes that the proposed rule change would not impose

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that extending the UTP Pilot Program will promote competition in the trading of UTP Securities and thereby provide market participants with opportunities for improved price discovery, increased liquidity, more competitive quotes, and greater price improvement.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>20</sup> and Rule 19b-4(f)(6)<sup>21</sup> thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>22</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>23</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>23</sup> 17 CFR 240.19b-4(f)(6)(iii).

67495 (July 25, 2012), 77 FR 45406 (July 31, 2012) (SR-NYSEMKT-2012-21); 68559 (January 2, 2013), 78 FR 1286 (January 8, 2013) (SR-NYSEMKT-2012-84); 69812 (June 20, 2013), 78 FR 38766 (June 27, 2013) (SR-NYSEMKT-2013-51); 71342 (January 17, 2014), 79 FR 4197 (January 24, 2014) (SR-NYSEMKT-2014-02); and 72622 (July 16, 2014), 79 FR 42600 (July 22, 2014) (SR-NYSEMKT-2014-57).

<sup>10</sup> 15 U.S.C. 78.

<sup>11</sup> See SR-NYSEAmex-2010-31, *supra* note 5, at 41271.

<sup>12</sup> *Id.*

<sup>13</sup> See SR-NYSEMKT-2014-109.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78k-1(a)(1).

<sup>17</sup> 15 U.S.C. 781(f).

<sup>18</sup> See *supra* note 13.

<sup>19</sup> 15 U.S.C. 78f(b)(8).

Exchange has requested that the Commission waive the 30-day operative delay period so that the proposal may become operative before the pilot's expiration. The Exchange stated that an immediate operative date is necessary in order to immediately implement the proposed rule change so that member organizations could continue to benefit from the pilot program without interruption after December 31, 2014.

The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would allow the pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from the temporary interruption in the pilot program. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative on December 31, 2014.<sup>24</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>25</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2014-112 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEMKT-2014-112. This

<sup>24</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>25</sup> 15 U.S.C. 78s(b)(3)(C).

file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2014-112 and should be submitted on or before January 28, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2014-30970 Filed 1-6-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73972; File No. SR-NASDAQ-2014-126]

### Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Nasdaq's Rule Governing Modification of Orders in the Event of an Issuer Corporate Action Related to a Dividend, Payment or Distribution

December 31, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December

<sup>26</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

18, 2014, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

Nasdaq Rule 4761 addresses the treatment of quotes/orders in securities that are the subject of issuer corporate actions related to a dividend, payment or distribution. The rule applies to any trading interest that is carried on the Nasdaq Market Center book overnight. As a general matter, Nasdaq cancels open quotes/orders in the event of any corporate action related to a dividend, payment or distribution, on the ex-date of the action. The cancellation occurs immediately prior to the opening of trading at 4 a.m. on the ex-date of the corporate action, and the member receives a cancellation notice, so that it can, if it desires, reenter the order at the commencement of trading on the ex-date.

Prior to 2013, Nasdaq Rule 4761 provided for a complex variety of adjustments of quotes and orders carried on the Nasdaq book overnight; depending on the nature of the

corporate action, these adjustments might result in the cancellation of a quote/order or an adjustment of its price and/or size to reflect the impact of the corporate action. In April 2013, Nasdaq filed an amendment to the rule to provide that Nasdaq would cancel all open quotes/orders in the event of any corporate action.<sup>3</sup> The proposal reflected a conclusion that the rule was excessively complex and had given rise to certain non-material discrepancies between the rule as written and its application in Nasdaq's systems. Subsequently, in response to member demand for assistance with order management with respect to certain common types of corporate action, Nasdaq amended the rule again to offer limited, optional functionality to allow open orders to be adjusted, rather than cancelled.<sup>4</sup> As written, the rule provides for the possibility of order adjustment in the case of cash dividends, forward stock splits, and combined cash dividends/forward stock splits.

The proposal will expand the rule also to provide for adjustment in the case of stock dividends and combined cash dividends/stock dividends. The proposal reflects the conclusion, based on member feedback, that actions resulting in the distribution of additional stock should be treated similarly, regardless of whether they are denominated as forward stock splits or stock dividends. Nasdaq will make members aware of the effective date of the proposed change by the issuance of a widely disseminated Equity Trader Alert.

Under the current rule, a member may designate that all orders with a time-in-force of good-till-cancelled<sup>5</sup> that are entered through one or more order entry ports specified by the member will be processed in the manner specified below.<sup>6</sup>

(1) Cash Dividend. If an issuer is paying a cash dividend, the price of an order to buy is reduced by the amount

<sup>3</sup> Securities Exchange Act Release No. 69454 (April 25, 2013), 78 FR 25506 (May 1, 2013) (SR-NASDAQ-2013-068).

<sup>4</sup> Securities Exchange Act Release No. 70113 (August 5, 2013), 78 FR 48746 (August 9, 2013) (SR-NASDAQ-2013-096).

<sup>5</sup> Nasdaq notes that the use of good-till-cancelled orders is not prevalent, accounting for significantly less than 1% of all orders entered into Nasdaq. The vast majority of orders expire by their terms at the end of regular market hours.

<sup>6</sup> The member may opt for this processing on a port-by-port basis. Thus, the provisions providing for order adjustment are applied to all good-till-cancelled orders entered through a port that has been specified by the member for such processing. Because members may obtain multiple ports, however, members may opt to apply different processing to different orders based on the ports through which they are entered.

of the sum of all dividends payable, rounded up to the nearest whole cent; provided, however, that there will be no adjustment if the sum of all dividends is less than \$0.01. For example, if the sum of all dividends is \$0.381, the price of the order will be reduced by \$0.39. An order to sell will be retained but will receive no price adjustment.

(2) Forward Stock Split. If an issuer is implementing a forward stock split, the order is cancelled if its size is less than one round lot. If the order's size is greater than one round lot, (i) the size of the order is multiplied by the ratio of post-split shares to pre-split shares, with the result rounded downward to the nearest whole share, and (ii) the price of the order will be multiplied by the ratio of pre-split shares to post-split shares, with the result rounded down to the nearest whole penny in the case of orders to buy and rounded up to the nearest whole penny in the case of orders to sell.

Under the change proposed in this filing, stock dividends will be treated in the same manner as forward stock splits. Thus, any corporate action in which additional shares are issued to holders of outstanding shares will be treated in the manner described above.

For example, if a member has entered a good-till-cancelled order to buy 375 shares at \$10.95 per share and the issuer implemented a split or dividend under which an additional 1.25 shares would be issued for each share outstanding, the size of the order would be adjusted to 843 shares ( $375 \times 2.25/1 = 843.75$ , rounded down to 843) and the price of the order would be adjusted to \$4.86 per share ( $\$10.95 \text{ per share} \times 1/2.25 = \$4.8667 \text{ per share}$ , rounded down to \$4.86 per share). An order to sell at the same price and size would be adjusted to 843 shares with a price of \$4.87 per share ( $\$4.8667 \text{ per share}$ , rounded up).<sup>7</sup>

(3) Combination of Cash Dividend and Forward Stock Split or Stock Dividend. Under the current rule, if an issuer is implementing a cash dividend and a forward stock split on the same date, the adjustments described above will both be applied, in the order described in the notice of the corporate actions received by Nasdaq.<sup>8</sup> Under the proposed rule change, this provision is being expanded to cover stock dividends as well as forward stock splits.

<sup>7</sup> Nasdaq is also amending the example in the rule text to make it clear that the prices provided therein are per share prices.

<sup>8</sup> For securities listed on Nasdaq, Nasdaq receives notice of corporate actions from the issuer and determines the applicable ex-date. See Rule 11140. For securities listed on other exchanges, Nasdaq receives notice from the listing exchange.

As is currently the case, changes to open orders will continue to be effected immediately prior to the opening of the System at 4:00 a.m. on the ex-date of the applicable corporate action. Open orders that are retained are re-entered by the System (as adjusted above) immediately prior to the opening of the System, such that they will retain time priority over new orders entered at or after 4:00 a.m.<sup>9</sup> Under the proposed rule change, for corporate actions other than cash dividends, forward stock splits, and stock dividends (or any combination thereof), open orders are always cancelled, regardless of the port through which they were entered.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general, and with Section 6(b)(5) of the Act<sup>11</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, Nasdaq believes that the change, which is responsive to member input, will facilitate transactions in securities and perfect the mechanism of a free and open market by providing members with additional optional functionality that may assist them with order management with respect to stock dividends in a manner similar to the current functionality with respect to cash dividends and forward splits. Because forward splits and stock dividends both involve the distribution of additional stock to current stockholders, providing them with similar treatment under the rule is logical and may help to prevent confusion on the part of members that expect both types of corporate events to receive consistent treatment.

<sup>9</sup> To the extent that multiple good-till-cancelled orders in a particular security are adjusted and re-entered, such orders may not retain the same time priority vis-à-vis one another that they had on the preceding day. Rather, because such orders are entered simultaneously through multiple order entry ports, their relative priority is a function of the duration of system processing associated with each individual order.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

### B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, by offering market participants additional options with regard to management of open orders, the change has the potential to enhance Nasdaq's competitiveness with respect to other trading venues, thereby promoting greater competition. Moreover, the change does not burden competition in that it does not restrict the ability of members to enter and update trading interest in Nasdaq.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-126 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-126. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2014-126, and should be submitted on or before January 28, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Brent J. Fields,**

Secretary.

[FR Doc. 2014-30971 Filed 1-6-15; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>12</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>13</sup> 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.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73975; File Nos. SR-FICC-2014-810; SR-NSCC-2014-811; SR-DTC-2014-812]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; National Securities Clearing Corporation; The Depository Trust Company; Notice of Extension of Review Period of Advance Notices, as Amended, To Amend and Restate the Third Amended and Restated Shareholders Agreement, Dated as of December 7, 2005

December 31, 2014.

On November 5, 2014, Fixed Income Clearing Corporation ("FICC"), National Securities Clearing Corporation ("NSCC"), and The Depository Trust Company ("DTC," together with FICC and NSCC, "Operating Subsidiaries") filed with the Securities and Exchange Commission ("Commission") advance notices SR-FICC-2014-810, SR-NSCC-2014-811 and SR-DTC-2014-812 ("Advance Notices"), pursuant to section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")<sup>1</sup> and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Exchange Act").<sup>2</sup> On November 17, 2014, the Operating Subsidiaries each filed Amendments No. 1 to the Advance Notices.<sup>3</sup> On November 17, 2014, FICC withdrew Amendment No. 1 and filed Amendment No. 2 to advance notice SR-FICC-2014-810.<sup>4</sup> The Advance Notices were published for comment in the **Federal Register** on December 11, 2014.<sup>5</sup> As of December 31, 2014, the Commission had not received any comment letters on the proposal contained in the Advance Notices.

Section 806(e)(1)(G) of the Clearing Supervision Act provides that the Operating Subsidiaries may implement the changes proposed in the Advance Notices if they have not received an objection to the proposed changes within 60 days of the later of (i) the date that the Commission receives the Advance Notices or (ii) the date that any

<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> NSCC and DTC filed Amendment Nos. 1 to provide additional description of the changes proposed in advance notices SR-NSCC-2014-811 and SR-DTC-2014-812, respectively.

<sup>4</sup> FICC withdrew Amendment No. 1 to advance notice SR-FICC-2014-810 due to an error in filing the amendment. FICC filed Amendment No. 2 to advance notice SR-FICC-2014-810 in order to provide additional description of the changes proposed in the advance notice.

<sup>5</sup> See Release No. 34-73755 (Dec. 5, 2014), 79 FR 73665 (Dec. 11, 2014).

additional information requested by the Commission is received,<sup>6</sup> unless extended as described below.

Pursuant to section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.<sup>7</sup>

Here, as the Commission has not requested any additional information, the date that is 60 days after the Operating Subsidiaries filed the Advance Notices with the Commission is January 4, 2015. However, the Commission finds it appropriate to extend the review period of the Advance Notices, as amended, for an additional 60 days under section 806(e)(1)(H) of the Clearing Supervision Act.<sup>8</sup> The Commission finds the Advance Notices, as amended, are both novel and complex because the material aspects of the proposed amendments to the Shareholders Agreement are substantial, a first for the Clearing Agencies, and are interrelated with other regulatory aspects of the Clearing Agencies.

Accordingly, the Commission, pursuant to 806(e)(1)(H) of the Clearing Supervision Act,<sup>9</sup> extends the review period for an additional 60 days so that the Commission shall have until March 5, 2015 to issue an objection or non-objection to the Advance Notices, as amended (File Nos. SR-FICC-2014-810, SR-NSCC-2014-811, and SR-DTC-2014-812).

By the Commission.

**Brent J. Fields,**  
Secretary.

[FR Doc. 2014-30973 Filed 1-6-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2014-0073]

### Privacy Act of 1974, as Amended: Proposed New Routine Use and Updated Retention and Disposal

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Proposed New Routine Use and Updated Retention and Disposal.

**SUMMARY:** Pursuant to the Privacy Act of 1974, as amended, we are issuing public

notice of our intent to add a new routine use to, and update the retention and disposal schedule of, an existing system of records entitled: Representative Disqualification, Suspension and Non-Recognition Information File, (60-0219). This system was last published in the **Federal Register**, 75 FR 25904 (May 10, 2010). The new routine use will allow broader disclosure to a bar disciplinary authority, court, or administrative tribunal before the agency imposes sanctions against a representative. The Office of General Counsel will use this new routine use to disclose records regarding the agency's investigation of an attorney, as well as records regarding non-attorneys misrepresenting themselves as attorneys, and non-attorneys continuing to practice despite non-recognition, suspension, or disqualification by the agency. The new routine use will allow for broader disclosure of representative misconduct to promote the integrity of our programs. The update to the retention and disposal section is based on the agency's specific records schedules. The new routine use and update to the retention and disposal section are described below.

**DATES:** We invite public comment on this proposal. In accordance with 5 U.S.C. 552a(e)(4) and (e)(11), the public is given a 30-day period in which to submit comments. Therefore, please submit any comments by February 6, 2015.

**ADDRESSES:** The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401 or through the Federal e-Rulemaking Portal at <http://www.regulations.gov>. All comments we receive will be available for public inspection at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jasson Seiden, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, telephone: (410) 597-4307, Email: [Jasson.Seiden@ssa.gov](mailto:Jasson.Seiden@ssa.gov).

In accordance with 5 U.S.C. 552a(r), we have provided a report to OMB and Congress on the proposed new routine

use and update to the retention and disposal section.

Dated: December 11, 2014.

**Kirsten J. Moncada,**

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

## Social Security Administration

**SYSTEM NUMBER: 60-0219**

### SYSTEM NAME:

Representative Disqualification, Suspension and Non-Recognition Information File

\* \* \* \* \*

### ROUTINE USES OF RECORDS COVERED BY THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

\* \* \* \* \*

17. To a Federal court, State court, administrative tribunal, bar disciplinary authority or other authority, by the Office of the General Counsel, as necessary, to permit these authorities to investigate and conduct proceedings relating to potential professional disciplinary actions or other measures relating to the authorities' regulation of professional conduct.

\* \* \* \* \*

### RETENTION AND DISPOSAL:

\* \* \* \* \*

We retain and destroy this information in accordance with National Archives and Records Administration approved authorities. We will destroy those cases in which the agency receives an allegation of misconduct but determines that the representative did not violate SSA's Rules of Conduct and Standards of Responsibility two years after the investigation ends, in accordance with SSA's agency specific records schedule, N1-047-10-004/I.E.1. We will destroy all other cases 25 years after closure, in accordance with N1-047-10-004/I.E.2. We will erase or destroy records in electronic form and shred records in paper form.

[FR Doc. 2014-30969 Filed 1-6-15; 8:45 am]

**BILLING CODE 4191-02-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of Unified Carrier Registration Plan Board of Directors meeting.

**TIME AND DATE:** The meeting will be held on January 22, 2015, from 12:00 Noon to 3:00 p.m., Eastern Standard Time.

**PLACE:** This meeting will be open to the public via conference call. Any interested person may call 1-877-422-1931, passcode 2855443940, to listen and participate in this meeting.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

**FOR FURTHER INFORMATION CONTACT:** Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827-4565.

Issued on: December 30, 2014.  
**Larry W. Minor,**  
*Associate Administrator, Office of Policy,*  
*Federal Motor Carrier Safety Administration.*  
 [FR Doc. 2015-00094 Filed 1-5-15; 4:15 pm]  
**BILLING CODE 4910-EX-P**

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**Actions on Special Permit Applications**

**AGENCY:** Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on special permit applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special

permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (October to October 2014). The mode of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on December 8, 2014.

**Donald Burger,**  
*Chief, Special Permits and Approval Branch.*

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
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**MODIFICATION SPECIAL PERMIT GRANTED**

11150-M .....	Maine State Ferry Service Augusta, ME.	49 CFR 172.101 and 172.301(c).	To modify the special permit to authorize cylinders having a water capacity exceeding 100 pounds.
9610-M .....	Alliant Techsystems Operations LLC Eden Prairie, MN.	49 CFR 172.201(c), Subpart F of Part 172, 172.301(c), 172.203(a), 174.59, and 174.61(a).	To modify the special permit to authorize Class I smokeless powder UN0161 in combination packaging.
14506-M .....	SLR International Corporation Bothell, WA.	49 CFR 173.4(a)(1)(i), 173.4a(c) and (d).	To modify the special permit to authorize inner packagings without the removable closure secured in place, and all shipments not necessarily be packaged identically but similarly.
15448-M .....	U.S. Department of Defense Scott AFB, IL.	49 CFR 172.320, 173.51, 173.56, 173.57 and 173.58.	To modify the special permit to authorize packagings that have not been specifically approved.
14919-M .....	TK Holdings Inc. Armada, MI ..	49 CFR 173.301(a), 173.302a, and 178.65(f)(2).	To modify the special permit to remove the specifications for cylinder sizes and water capacities.
14447-M .....	Taminco US Inc Allentown, PA	49 CFR 177.834(i), 172.203(a), and 172.302(c).	To modify the special permit to authorize the addition of Division 2.1, new Division 6.1, and new Class 3 and 8 materials.

**NEW SPECIAL PERMIT GRANTED**

16218-N .....	Mountain Blade Runner, LLC Montrose, CO.	49 CFR 172.101, Column (9B), 172.204(c)(3), 173.27(6)(2), 175.30(a)(1) 172.200, 172.301(c), Part 178 and 175.75.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR part 133. Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4).
16267-N .....	Korean Air Los Angeles, CA ...	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27, and 175.30(a)(1).	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4).
15955-N .....	Thompson Tank, Inc. Lake-wood, CA.	49 CFR 173.315 .....	To authorize the manufacture, marking, sale and use of non-DOT specification cargo tanks manufactured to ASME Section XII stamped with a "T" Stamp instead of the "U" stamp. (mode 1).
15971-N .....	National Aeronautics and Space Administration (NASA) Houston, TX.	49 CFR 173.301(a)(1), 173.301(a)(2), 173.301(0)(1), 173.302(a) and 173.302a(a).	To authorize the transportation in commerce of non-DOT specification pressure receptacles containing nitrogen, compressed. (modes 1, 2, 3, 4).
15973-N .....	Codman & Shurtleff, Inc. Raynham, MA.	49 CFR parts 171-180 .....	To authorize the transportation in commerce of small amounts of butane contained within a Medstream Pump as unregulated. (modes 4, 5).

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
16022-N .....	Zhejiang Juhua Equipment Manufacturing Co., Ltd. Quzhou, Zhejiang.	49 CFR 178.274(b), 178.276(6)(1) and 178.276(a)(2).	To authorize the manufacture, marking, sale and use of non-DOT specification portable tanks mounted within an ISO frame that have been designed, constructed and stamped in accordance with Section VIII, Division 2 of the ASME Code. (modes 1, 2, 3).
16103-N .....	Insituform Technologies, LLC Chesterfield, MO.	49 CFR 173.203 and 173.242	To authorize the transportation in commerce of resin-impregnated, coated polyester felt tubing used as a means of restoring structural integrity to aging or damaged wastewater, potable water and industrial pipelines through use of a trenchless, cured-in-place pipe ("CIPP") technology. (mode 1).
16142-N .....	Nantong CIMC Tank Equipment Co. Ltd. Jiangsu, Province.	49 CFR 178.274(6) and 178.276(6)(1).	To authorize the manufacture, marking, sale and use of UN T75 Code portable tanks that are designed, constructed, certified and stamped in accordance with Section VIII Division 1, latest edition of the ASME Code. (modes 1, 2, 3).
16163-N .....	The Dow Chemical Company Midland, MI.	49 CFR 180.605(h)(3) .....	To authorize that the required 5 year periodic pressure test on UN portable tanks used in the transport of a Division 4.3 material be performed pneumatically (with nitrogen) rather than with water. (modes 1, 2, 3, 4).
16172-N .....	Entegris, Inc. Danbury, CT .....	49 CFR 173.301(f) .....	To authorize the transportation in commerce of a Zone B toxic by inhalation gas in a DOT3AA cylinder that is fitted with an alternative pressure relief device. (modes 1, 3).
16178-N .....	National Aeronautics and Space Administration (NASA) Washington, DC.	49 CFR 173.302a .....	To authorize the transportation in commerce of compressed gases in non-DOT specification cylinders. (modes 1, 3).

**EMERGENCY SPECIAL PERMIT GRANTED**

16108-M .....	Carleton Technologies Inc. Westminster, MD.	49 CFR 173.302a, 173.304a and 180.205.	To modify the special permit to bring it in line with SIO 11119-2 and DOT-SP 14756. (modes 1, 2, 3, 4, 5).
15999-M .....	National Aeronautics and Space Administration (NASA) Washington, DC.	49 CFR parts 172 and 173 .....	To modify the special permit by adding a Division 1.4S material (modes 1, 3).
16263-M .....	Kalitta Air, LLC Ypsilanti, MI ...	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2) and (3) and 175.30(a)(1).	(mode 4).
16263-M .....	Kalitta Air, LLC Ypsilanti, MI ...	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2) and (3) and 175.30(a)(1).	(mode 4).
16219-N .....	Structural Composites Industries (SCI) Pomona, CA.	49 CFR 173.302a and 173.304a.	To authorize the manufacture, marking, sale and use of aluminum-lined carbon-fiber composite cylinders for use in transporting certain Division 2.1 and 2.2 hazardous materials. (modes 1, 2, 3, 4).
16311-N .....	Raytheon Missile Systems Tucson, AR.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2) and (3).	To authorize the offering in air transportation of certain Class I explosives which are forbidden or exceed the quantity limitations authorized for transportation by cargo aircraft. (mode 4).
16170-N .....	Hydro Stat LLC Holly, MI .....	49 CFR 180.213(b)(2) .....	To authorize the removal of certain requalification markings from DOT-3AL cylinders that have previously been retested in accordance with DOT-SP 14546 or DOT-SP 14854, to allow them to be returned to a 5 year hydrostatic retest schedule and eliminate the need for quality control for the gases to be used. (modes 1, 2, 3, 4, 5).

**DENIED**

16289-N .....	Request by NYS Department of Environmental Conservation Albany, NY November 21, 2014. To authorize the transportation in commerce of ebola contaminated waste in alternative packaging.
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[FR Doc. 2014-30546 Filed 1-6-15; 8:45 am]

BILLING CODE 4910-60-M

**DEPARTMENT OF THE TREASURY****Office of Foreign Assets Control****Sanctions Actions Pursuant to Executive Orders**

**AGENCY:** Office of Foreign Assets Control, Treasury Department.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of 9 persons whose property and interests in property are blocked pursuant to one or more of the following authorities: Executive Order (E.O.) 13553, E.O. 13622, or E.O. 13628. OFAC is also publishing revised information on OFAC's list of Specially Designated

Nationals and Blocked Persons (SDN List) for 30 vessels identified as blocked property of one or more persons whose property and interests in property are blocked pursuant to EO 13382.

**DATES:** OFAC's actions described in this notice were effective December 30, 2014.

**FOR FURTHER INFORMATION CONTACT:**

Associate Director for Global Targeting, tel.: 202/622-2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622-2490, Assistant Director for Licensing, tel.: 202/622-2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622-2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

**Electronic and Facsimile Availability**

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site ([www.treas.gov/ofac](http://www.treas.gov/ofac)). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

**Notice of OFAC Actions**

On December 30, 2014, OFAC blocked the property and interest in property of the following 7 persons pursuant to E.O. 13622, "Authorizing Additional Sanctions With Respect to Iran."

*Individuals*

1. AMERI, Teymour (a.k.a. AMERI, Teymur; a.k.a. BARAKI, Teimur Ameri; a.k.a. BARAKY, Teymur Ameri; a.k.a. BARKI, Teymur Ameri); DOB 12 Jul 1958 (individual) [EO13622].

2. SEIFI, Asadollah (a.k.a. SAYFI, Esdaleh; a.k.a. SEIFY, Asadollah); DOB 04 Apr 1965 (individual) [EO13622].

3. YASINI, Seyed Kamal (a.k.a. YASINI, Syyed Kamal; a.k.a. YASINI, Syyed Kamal); DOB 23 Sep 1956; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Passport H95629553 (Iran); National ID No. 1229838619 (individual) [EO13622].

4. ZEIDI, Hossein (a.k.a. ZEIDI, Hosein; a.k.a. ZEIDI, Hossein Mansour); DOB 11 Sep 1965; citizen Saint Kitts and Nevis; citizen Saint Vincent and the Grenadines; Former Citizenship Country Iran; Passport RE0003553 (Saint Kitts and Nevis); National ID No. 444169 (United Arab Emirates) (individual) [EO13622].

5. QULANDARY, Azizullah Asadullah (a.k.a. QALANDARI, Azizabdullah); DOB 06 May 1978; POB Ghazni, Afghanistan; citizen Afghanistan; Passport OR306200 (Afghanistan); National ID No. 83669179 (United Arab Emirates) (individual) [EO13622].

6. NASIRBEIK, Anahita; DOB 10 Jan 1983; nationality Iran; Additional Sanctions

Information—Subject to Secondary Sanctions; Passport A5190428 (Iran) (individual) [EO13622].

*Entity*

1. BELFAST GENERAL TRADING LLC, Room 1602 Twin Tower Building, Baniyas Rd, Dubai, United Arab Emirates [EO13622].

On December 30, 2014, OFAC blocked the property and interest in property of the following 1 person pursuant to E.O. 13553, "Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions."

*Entity*

1. ABYSSEC, Madar Square, Bouvar-e-Mirdamad, Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN-HR].

On December 30, 2014, OFAC blocked the property and interest in property of the following 1 person pursuant to E.O. 13628, "Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions With Respect to Iran."

*Entity*

1. DOURAN SOFTWARE TECHNOLOGIES, Gha'em Magham Farahani St., Sho'a Square, Khadri St, Block 20, Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN-TRA].

On December 30, 2014, OFAC published revised information on the SDN List to reflect new names or other information for 30 vessels previously identified as blocked property of one or more persons whose property or interests in property are blocked pursuant to E.O. 13382.

1. ARDAVAN (f.k.a. CHAPAREL; f.k.a. HAKIM; f.k.a. IRAN HAKIM) Bulk Carrier 53,100DWT 31,117GRT Iran flag (IRISL); Former Vessel Flag Moldova; Vessel Registration Identification IMO 9465863 (vessel) [NPWMD].

2. ARIES (f.k.a. ELVIRA; f.k.a. FILBERT; f.k.a. GRACEFUL) Bulk Carrier 76,000DWT 41,226GRT Iran flag (IRISL); Former Vessel Flag Bolivia; Vessel Registration Identification IMO 9369722 (vessel) [NPWMD].

3. ARSHAM (f.k.a. CHASTITY; a.k.a. IRAN SHAAFI; a.k.a. SHAAFI) Bulk Carrier 53,000DWT 32,474GRT Iran flag (IRISL); Former Vessel Flag Malta; Vessel Registration Identification IMO 9386500 (vessel) [NPWMD].

4. ARTAVAND (f.k.a. DORSAN; f.k.a. IRAN KHORASAN; f.k.a. KHORASAN) Bulk Carrier 72,622DWT 39,424GRT Iran flag (IRISL); Former Vessel Flag Malta; Vessel Registration Identification IMO 9193214 (vessel) [NPWMD].

5. ARTMAN (f.k.a. BAAGHI) Bulk Carrier 53,457DWT 32,474GRT Iran flag (IRISL);

Former Vessel Flag Tanzania; Vessel Registration Identification IMO 9405930 (vessel) [NPWMD].

6. ARVIN (f.k.a. BLUEBELL; f.k.a. EGLANTINE; f.k.a. IRAN GILAN) Bulk Carrier 63,400DWT 39,424GRT Iran flag (IRISL); Former Vessel Flag Bolivia; Vessel Registration Identification IMO 9193202 (vessel) [NPWMD].

7. AVANG (f.k.a. CHAPLET; f.k.a. IRAN RAHIM; f.k.a. RAHIM) Bulk Carrier 53,100DWT 31,117GRT Iran flag (IRISL); Former Vessel Flag Malta; Vessel Registration Identification IMO 9465746 (vessel) [NPWMD].

8. AZARGOUN (f.k.a. ARMIS; f.k.a. IRAN ZANJAN; f.k.a. VISEA) Container Ship 33,850DWT 25,391GRT Iran flag (IRISL); Former Vessel Flag Tanzania; Vessel Registration Identification IMO 9283019 (vessel) [NPWMD].

9. BAHJAT (f.k.a. BAANI) Bulk Carrier 53,500DWT 32,474GRT Iran flag (IRISL); Former Vessel Flag Moldova; Vessel Registration Identification IMO 9405954 (vessel) [NPWMD].

10. BASKAR (f.k.a. AALI) Bulk Carrier 53,500DWT 32,474GRT Iran flag (IRISL); Former Vessel Flag Moldova; Vessel Registration Identification IMO 9405942 (vessel) [NPWMD].

11. BATIS (f.k.a. AZIM; f.k.a. CHAPMAN; f.k.a. IRAN AZIM) Bulk Carrier 53,100DWT 31,117GRT Iran flag (IRISL); Former Vessel Flag Malta; Vessel Registration Identification IMO 9465760 (vessel) [NPWMD].

12. BEHDAD (f.k.a. BRILLIANCE; f.k.a. CLOVER; f.k.a. DORITA; f.k.a. IRAN BRILLIANCE; f.k.a. MULBERRY) General Cargo 24,065DWT 16,621GRT Iran flag (IRISL); Former Vessel Flag Bolivia; Vessel Registration Identification IMO 9051636 (vessel) [NPWMD].

13. BEHSHAD (f.k.a. BLANCA; f.k.a. LIMNETIC; f.k.a. MAGNOLIA; f.k.a. SEA FLOWER) General Cargo 23,176DWT 16,694GRT Iran flag (IRISL); Former Vessel Flag Bolivia; Vessel Registration Identification IMO 9167289 (vessel) [NPWMD].

14. ELYANA (f.k.a. EVITA; f.k.a. GOLDENROD; f.k.a. IRAN LUCKY LILY; f.k.a. LUCKY LILY) General Cargo 22,882DWT 15,670GRT Iran flag (IRISL); Former Vessel Flag Bolivia; Vessel Registration Identification IMO 9165827 (vessel) [NPWMD].

15. GOLAFRUZ (f.k.a. DIANTHE; f.k.a. HORSHAM; f.k.a. IRAN BAM) Bulk Carrier 73,664DWT 40,166GRT Iran flag (IRISL); Former Vessel Flag Barbados; Vessel Registration Identification IMO 9323833 (vessel) [NPWMD].

16. GOLSAR (f.k.a. CARMELA; f.k.a. IRAN AZARBAYJAN; f.k.a. NAFIS; f.k.a. ZAWA) Bulk Carrier 72,642DWT 39,424GRT Iran flag (IRISL); Former Vessel Flag Bolivia; Vessel Registration Identification IMO 9193185 (vessel) [NPWMD].

17. GULAFSHAN (f.k.a. ATLANTIC; f.k.a. DREAMLAND; f.k.a. IRAN DREAMLAND) Bulk Carrier 43,302DWT 25,770GRT Iran flag (IRISL); Former Vessel Flag Hong Kong; Vessel Registration Identification IMO 8320183 (vessel) [NPWMD].

18. JAIRAN (f.k.a. CAMELLIA; f.k.a. CATALINA; f.k.a. IRAN SEA BLOOM; f.k.a.

LODESTAR; f.k.a. SEA BLOOM) General Cargo 23,176DWT 16,694GRT Iran flag (IRISL); Former Vessel Flag Bolivia; Vessel Registration Identification IMO 9167291 (vessel) [NPWMD].

19. KIAZAND (f.k.a. CHARIOT; f.k.a. IRAN KARIM; f.k.a. KARIM) Bulk Carrier 53,100DWT 31,117GRT Iran flag (IRISL); Former Vessel Flag Malta; Vessel Registration Identification IMO 9465758 (vessel) [NPWMD].

20. MAHNAM (f.k.a. ATENA; f.k.a. CONSUELO; f.k.a. IRAN YAZD; f.k.a. LANCELIN) Bulk Carrier 72,642DWT 40,609GRT Iran flag (IRISL); Former Vessel Flag Bolivia; Vessel Registration Identification IMO 9213387 (vessel) [NPWMD].

21. NAGHMEH (f.k.a. APOLLO; f.k.a. IRAN DESTINY; f.k.a. IRAN NAVAB) Bulk Carrier 43,329DWT 25,768GRT Iran flag (IRISL); Former Vessel Flag Hong Kong; Vessel Registration Identification IMO 8320145 (vessel) [NPWMD].

22. NEGAR (f.k.a. ELICIA; f.k.a. GARLAND; f.k.a. IRAN LUCKY MAN; f.k.a. LUCKY MAN) General Cargo 22,882DWT 15,670GRT Iran flag (IRISL); Former Vessel Flag Bolivia; Vessel Registration

Identification IMO 9165839 (vessel) [NPWMD].

23. NESHAT (f.k.a. BEGONIA; f.k.a. IRAN PRETTY SEA (KHUZESTAN); f.k.a. LAVENDER; f.k.a. PRETTY SEA) General Cargo 23,116DWT 16,694GRT Iran flag (IRISL); Former Vessel Flag Moldova; Vessel Registration Identification IMO 9167277 (vessel) [NPWMD].

24. PARSHAD (f.k.a. CHIMES; f.k.a. IRAN VAAFI; f.k.a. VAAFI) Bulk Carrier 53,000DWT 32,474GRT Iran flag (IRISL); Former Vessel Flag Tanzania; Vessel Registration Identification IMO 9387786 (vessel) [NPWMD].

25. RONAK (f.k.a. ANIL; f.k.a. DANDY; f.k.a. IRAN DANDY) Bulk Carrier 43,279DWT 25,768GRT Iran flag (IRISL); Former Vessel Flag Hong Kong; Vessel Registration Identification IMO 8320157 (vessel) [NPWMD].

26. SHABGOUN (f.k.a. ALVA; f.k.a. IRAN SABALAN; f.k.a. SABALAN) Container Ship 66,900DWT 53,453GRT Iran flag (IRISL); Former Vessel Flag Sierra Leone; Vessel Registration Identification IMO 9346524 (vessel) [NPWMD].

27. SHADFAR (f.k.a. ADMIRAL; f.k.a. DAIS; f.k.a. IRAN DAIS) Bulk Carrier

43,406DWT 25,768GRT Iran flag (IRISL); Former Vessel Flag Hong Kong; Vessel Registration Identification IMO 8309696 (vessel) [NPWMD].

28. TABANDEH (f.k.a. ATRIUM; f.k.a. IRAN HAMZEH) Bulk Carrier 43,288DWT 25,770GRT Iran flag (IRISL); Former Vessel Flag Hong Kong; Vessel Registration Identification IMO 8320171 (vessel) [NPWMD].

29. TERMEH (f.k.a. ACENA; f.k.a. CELESTINA; f.k.a. IRAN KERMANSHAH) Bulk Carrier 75,249DWT 40,609GRT Iran flag (IRISL); Former Vessel Flag Bolivia; Vessel Registration Identification IMO 9213399 (vessel) [NPWMD].

30. WARTA (f.k.a. ALIM; f.k.a. CHAIRMAN; f.k.a. IRAN ALIM) Bulk Carrier 53,100DWT 31,117GRT Iran flag (IRISL); Former Vessel Flag Tanzania; Vessel Registration Identification IMO 9465849 (vessel) [NPWMD].

Dated: December 30, 2014.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2015-00028 Filed 1-6-15; 8:45 am]

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# FEDERAL REGISTER

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Part II

## Office of Personnel Management

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5 CFR Part 890

48 CFR Parts 1602, 1615, and 1652

Federal Employees Health Benefits Program; Proposed Rules

## OFFICE OF PERSONNEL MANAGEMENT

### 48 CFR Parts 1602, 1615, and 1652

RIN 3206-AN00

#### Federal Employees Health Benefits Program; Rate Setting for Community- Rated Plans

**AGENCY:** U.S. Office of Personnel  
Management.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing a Notice of Proposed Rulemaking to make changes to the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). These changes would: Define which subscriber groups may be included for consideration as similarly sized subscriber groups (SSSGs); require the SSSG to be traditional community rated; establish that traditional community-rated Federal Employees Health Benefits (FEHB) plans must select only one rather than two SSSGs; and make conforming changes to FEHB contract language to account for the new medical loss ratio (MLR) standard for most community-rated FEHB plans.

**DATES:** Comments are due on or before March 9, 2015.

**ADDRESSES:** Send written comments to Delon Pinto, Senior Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4312, 1900 E Street NW., Washington, DC; or FAX to (202) 606-4640 Attn: Delon Pinto. You may also submit comments using the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Delon Pinto, Senior Policy Analyst, at [Delon.Pinto@opm.gov](mailto:Delon.Pinto@opm.gov) or (202) 606-0004.

**SUPPLEMENTARY INFORMATION:** The U.S. Office of Personnel Management is issuing a notice of proposed rulemaking to update the Federal Employees Health Benefits Acquisition Regulation to accommodate the new FEHB specific medical loss ratio (MLR) requirement for most community-rated plans as well as to update the similarly sized subscriber group (SSSG) requirement for traditional community-rated plans.

#### Background on Federal Employees Health Benefits Rate-Setting for Community Rated Plans

The Patient Protection and Affordable Care Act, Pub. L. 111-148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act, Pub. L.

111-152, was enacted on March 30, 2010 (these are collectively known as the “Affordable Care Act”). In April 2012, OPM issued a final rule establishing an FEHB specific MLR requirement to replace the SSSG comparison requirement for most community rated FEHB plans (77 FR 19522). The FEHB specific MLR rules are based on the medical loss ratio standard established by the Affordable Care Act and defined by the U.S. Department of Health and Human Services, the U.S. Department of Labor, and the U.S. Department of Treasury in 26 CFR part 54, 29 CFR part 2590, 45 CFR part 146, and 45 CFR part 158. Community-rated FEHB plans were permitted to elect to follow the FEHB specific MLR requirements instead of the SSSG requirements for calendar year 2012. Beginning with the 2013 calendar year, the FEHB specific MLR requirements were mandatory for all community-rated carriers except those that are State-mandated to use traditional community rating (TCR). State mandated TCR plans will continue to be subject to the SSSG comparison requirements.

#### Provisions of This Proposed Regulation

This proposed rule makes three changes to the requirements for SSSGs. In the past, OPM has required that plans identify two non-FEHB subscriber groups (employer groups covered by an issuer) that are closest in size to the FEHB group and, if either or both of those groups received a discounted rate, the carrier must provide the largest discount to FEHB. This proposed rule defines the entities whose groups may be selected for comparison as an SSSG. In addition, this rule states any SSSG must also be rated TCR in order to maintain alignment between the TCR-rated FEHB group and the subscriber group used for comparison. Last, OPM is requiring plans to identify one, rather than two, SSSG subscriber groups used for the comparison. OPM considers it unnecessary to require more than one comparison group if the SSSG must also be rated TCR for the reasons set forth below.

TCR plans are those that, usually by State law, are required to set the same rates for all subscriber groups regardless of the health risks and other characteristics of any specific group. Under TCR, an FEHB group must be charged the same premium as all other groups in its service area that receive the same set of benefits. The health plan cannot adjust premiums for a specific group to reflect the healthcare utilization characteristics of that specific group.

Since the TCR premium does not necessarily reflect the experience of a specific group, an FEHB specific MLR requirement is not appropriate. However, if a State-mandated TCR carrier has no other groups that are TCR, and therefore no SSSG, the carrier will be subject to the FEHB specific MLR requirements. In that situation, applying the FEHB specific MLR requirement is appropriate.

#### Definition of Entities Included for SSSG Comparison

This proposed regulation identifies which SSSGs are available for comparison under 48 CFR 1602.170-13. A subscriber group purchasing healthcare benefits from an entity may be an SSSG if the entity is the carrier, a division or subsidiary of the carrier, a separate line of business or qualified separate line of business of the carrier, or if the entity maintains a contractual arrangement with the carrier to provide healthcare benefits. If the entity is any of the preceding, any of its subscriber groups may be included as an SSSG so long as the entity reports financial statements on a consolidated basis with the carrier or shares, delegates, or otherwise contracts with the carrier, any portion of its workforce that involves the management, design, pricing, or marketing of the healthcare product.

#### Conforming Changes Due to MLR-Based FEHB Rate Requirements

The FEHBAR contains language required in all FEHB contracts with health insurance carriers. In the April 2, 2012 final rule, OPM did not update all of the FEHBAR contract language to account for the new FEHB-specific MLR requirement. Omitted from that regulation were some changes, described below, to 48 CFR 1652.215-70, “Rate Reduction for Defective Pricing or Defective Cost or Pricing Data,” to account for the new rules.

48 CFR 1652.215-70 describes how a contracting officer at OPM may make an offset from premiums if pricing or cost and pricing data are defective. This proposed rule adds a provision stating that such an offset can be made if a Carrier, which is not mandated by the State to use traditional community rating, has developed FEHB rates inconsistent with the FEHB-specific MLR requirement. This proposed rule also adds a provision that simple interest must be paid to the Government when an MLR penalty is assessed as a result of an audit finding by the OPM Office of the Inspector General (OIG). This is not a policy change, but a conforming change so all FEHB

contracts account for the new FEHB-specific MLR requirement.

The April 2, 2012 final rule included two different "Certificates of accurate cost or pricing data" in 48 CFR 1615.406-2: One for SSSG pricing, and one for MLR pricing. Previously there was only one certificate for all carriers. This proposed rule changes some references from "certificate" to "certificates" to reflect this change.

#### Technical Corrections

This proposed rule includes two technical corrections that correct inadvertent errors from earlier amendments to chapter 16 of the FEHBAR.

In the June 2011 interim final rule, the word "issuer" was used erroneously in place of the word "carrier" in two places. Per chapter 89 title 5 U.S. Code, OPM is authorized to contract with carriers. This technical correction is made in 48 CFR 1602.170-14(a) and 1652.216-70(b)(2)(i).

This proposed rule also clarifies, in 48 CFR 1652.216-70(b), how community-rated carriers must develop their FEHB rates. Previously, this section erroneously stated that carriers should "base their rating methodology on the MLR threshold." The corrected language states that all community-rated plans must develop the FEHB's rates using their State-filed rating methodology or, if not required to file with the State, their standard written and established rating methodology.

#### Regulatory Flexibility Act

OPM certifies that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health insurance carriers in the FEHB Program.

#### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866. OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. This rule is not considered a major rule

because there will be no increased costs to Federal agencies, Federal Employees, or Federal retirees in their health insurance premiums.

#### Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

#### List of Subjects in 48 CFR Parts 1602, 1615, and 1652

Government employees, Government procurement, Health insurance, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

#### Katherine Archuleta, Director.

For the reasons set forth in the preamble, OPM proposes to amend chapter 16 of title 48 CFR (FEHBAR) as follows:

#### TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

#### CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

#### Subchapter A—General

#### PART 1602—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for part 1602 continues to read as follows:

**Authority:** 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 2. Revise 1602.170-13 to read as follows:

#### 1602.170-13 Similarly sized subscriber groups.

(a) A *Similarly sized subscriber group* (SSSG) is a non-FEHB employer group that:

(1) As of the date specified by OPM in the rate instructions, has a subscriber enrollment closest to the FEHBP subscriber enrollment;

(2) Uses traditional community rating; and

(3) Meets the criteria specified in the rate instructions issued by OPM.

(b) Any group with which an entity enters into an agreement to provide health care services is a potential SSSG (including groups that are traditional community rated and covered by separate lines of business, government entities, groups that have multi-year contracts, and groups having point-of-service products) except as specified in paragraph (c) of this section.

(1) An entity's subscriber groups may be included as an SSSG if the entity is any of the following:

(i) The carrier;

(ii) A division or subsidiary of the carrier;

(iii) A separate line of business or qualified separate line of business of the carrier; or

(iv) An entity that maintains a contractual arrangement with the carrier to provide healthcare benefits.

(2) A subscriber group covered by an entity meeting any of the criteria under paragraph (b)(1) of this section may be included for comparison as a SSSG if the entity meets any of the following criteria:

(i) It reports financial statements on a consolidated basis with the carrier; or

(ii) Shares, delegates, or otherwise contracts with the carrier, any portion of its workforce that involves the management, design, pricing, or marketing of the healthcare product.

(c) The following groups must be excluded from SSSG consideration:

(1) Groups the carrier rates by the method of retrospective experience rating;

(2) Groups consisting of the carrier's own employees;

(3) Medicaid groups, Medicare-only groups, and groups that receive only excepted benefits as defined at section 9832(c) of title 26, United States Code;

(4) A purchasing alliance whose rate-setting is mandated by the State or local government;

(5) Administrative Service Organizations (ASOs);

(6) Any other group excluded from consideration as specified in the rate instructions issued by OPM.

(d) OPM shall determine the FEHBP rate by selecting the lowest rate derived by using rating methods consistent with those used to derive the SSSG rate.

(e) In the event that a State-mandated TCR carrier has no SSSG, then it will be subject to the FEHB specific MLR requirement.

■ 3. Revise 1602.170-14(a) to read as follows:

#### 1602.170-14 FEHB-specific medical loss ratio threshold calculation.

*Medical Loss Ratio* (MLR) means the ratio of plan incurred claims, including the carrier's expenditures for activities that improve health care quality, to total premium revenue determined by OPM, as defined by the Department of Health and Human Services in 45 CFR part 158.

\* \* \* \* \*

Subchapter C—Contracting Methods and Contract Types

PART 1615—CONTRACTING BY NEGOTIATION

■ 4. The authority citations for part 1615 continue to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 5. In 1615.402, revise paragraphs (c)(2), (c)(3)(i)(A) and (B), and (c)(4) to read as follows:

1615.402 Pricing policy.

\* \* \* \* \*

(c) \* \* \*

(2) For contracts with fewer than 1,500 enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403-4(a)(1), OPM will require the carrier to submit its rate proposal, utilization data, and a certificate of accurate cost or pricing data required in 1615.406-2. In addition, OPM will require the carrier to complete the proposed rates form containing cost and pricing data, and the Community-Rate Questionnaire, but will not require the carrier to send these documents to OPM. The carrier will keep the documents on file for periodic auditor and actuarial review in accordance with 1652.204-70. OPM will perform a basic reasonableness test on the data submitted. Rates that do not pass this test will be subject to further OPM review.

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) For contracts with 1,500 or more enrollee contracts for which the FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403-4(a)(1), OPM will require the carrier to provide the data and methodology used to determine the FEHB Program rates. OPM will also require the data and methodology used to determine the rates for the carrier's SSSG. The carrier will provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM will evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(B) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the SSSG. Such adjustments will be based on the rate determined by using the methodology

(including discounts) the carrier used for the SSSG.

\* \* \* \* \*

(4) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the similarly-sized subscriber group (SSSG). Such adjustments will be based on the rate determined by using the methodology (including discounts) the carrier used for the SSSG.

\* \* \* \* \*

■ 6. In 1615.406-2, revise the section heading and the first certificate to read as follows:

1615.406-2 Certificates of accurate cost or pricing data for community-rated carriers.

\* \* \* \* \*

(Beginning of first certificate)

Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers (SSSG methodology)

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting officer or the Contracting officer's representative or designee, in support of the \* FEHB Program rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHB Program contract and are accurate, complete, and current as of the date this certificate is executed; and (2) the methodology used to determine the FEHB Program rates is consistent with the methodology used to determine the rates for the carrier's Similarly Sized Subscriber Group.

\* Insert the year for which the rates apply.

Firm: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

(End of first certificate)

\* \* \* \* \*

Subchapter H—Clauses and Forms

PART 1652—CONTRACT CLAUSES

■ 7. The authority citation for part 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 8. In 1652.215-70, revise paragraphs (a) and (c) to read as follows:

1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

\* \* \* \* \*

(a) If any rate established in connection with this contract was increased because:

(1) The Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in one of the Certificates of Accurate Cost or Pricing Data (FEHBAR 1615.406-2);

(2) The Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate reconciliation documents or MLR Calculation;

(3) The Carrier developed FEHBP rates for traditional community-rated plans with a rating methodology and structure inconsistent with that used to develop rates for a similarly sized subscriber group (see FEHBAR 1602.170-13) as certified in the Certificate of Accurate Cost or Pricing Data for Community-Rated Carriers;

(4) The Carrier, who is not mandated by the State to use traditional community rating, developed FEHBP rates with a rating methodology and structure inconsistent with its State-filed rating methodology (or if not required to file with the State, their standard written and established rating methodology) or inconsistent with the FEHB specific medical loss ratio (MLR) requirements (see FEHBAR 1602.170-13); or

(5) The Carrier submitted or, kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

\* \* \* \* \*

(c) When the Contracting Officer determines that the rates shall be reduced and the Government is thereby entitled to a refund or that the Government is entitled to a MLR penalty, the Carrier shall be liable to and shall pay the FEHB Fund at the time the overpayment is repaid or at the time the MLR penalty is paid—

(1) Simple interest on the amount of the overpayment from the date the overpayment was paid from the FEHB Fund to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used;

(2) A penalty equal to the amount of overpayment, if the Carrier knowingly

submitted cost or pricing data which was incomplete, inaccurate, or noncurrent; and

(3) Simple interest on the MLR penalty from the date on which the penalty should have been paid to the FEHB Fund to the date on which the penalty was or will be actually paid to the FEHB fund. The interest rate shall be calculated as specified in paragraph (c)(1) of this clause.

■ 9. In 1652.216–70, revise paragraphs (b)(2), (3), (7), and (8) to read as follows:

**1652.216–70 Accounting and price adjustment.**

\* \* \* \* \*

(b) \* \* \*

(2) Effective January 1, 2013 all community-rated plans must develop the FEHBP's rates using their State-filed rating methodology or, if not required to file with the State, their standard written and established rating methodology. A carrier who mandated by the State to use traditional community rating will be subject to paragraph (b)(2)(ii) of this clause. All other carriers will be subject to paragraph (b)(2)(i) of this clause.

(i) The subscription rates agreed to in this contract shall meet the FEHB-specific MLR threshold as defined in FEHBAR 162.170–14. The ratio of a plan's incurred claims, including the carrier's expenditures for activities that improve health care quality, to total premium revenue shall not be lower than the FEHB-specific MLR threshold published annually by OPM in its rate instructions.

(ii) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier's similarly sized subscriber group (SSSG) as defined in FEHBAR 1602.170–13. The subscription rates shall be determined according to the carrier's established policy, which must be applied consistently to the FEHBP and to the carrier's SSSG. If the SSSG receives a rate lower than that determined according to the carrier's established policy, it is considered a discount. The FEHBP must receive a discount equal to or greater than the carrier's SSSG discount.

(3) If subject to paragraph (b)(2)(ii) of this clause, then:

(i) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the SSSG, the carrier may include an adjustment to the Federal group's rates for the next contract period, except as noted in paragraph (b)(3)(iii) of this clause.

(ii) If, at the time of the rate reconciliation, the subscription rates are

found to be higher than the equivalent rates for the SSSG, the carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the SSSG, except as noted in paragraph (b)(3)(iii) of this clause.

(iii) Carriers may provide additional guaranteed discounts to the FEHBP that are not given to the SSSG. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

\* \* \* \* \*

(7) Carriers may provide additional guaranteed discounts to the FEHBP. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(8) Carriers may not impose surcharges (loadings not defined based on an established rating method) on the FEHBP subscription rates or use surcharges in the rate reconciliation process. If the carrier is subject to the SSSG rules and imposes a surcharge on the SSSG, the carrier cannot impose the surcharge on FEHB.

\* \* \* \* \*

[FR Doc. 2014–30633 Filed 1–6–15; 8:45 am]

**BILLING CODE 6325–63–P**

**OFFICE OF PERSONNEL  
MANAGEMENT**

**5 CFR Part 890**

**RIN 3206–AN07**

**Federal Employees Health Benefits  
Program: Enrollment Options  
Following the Termination of a Plan or  
Plan Option**

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees Health Benefits (FEHB) Program regulations regarding enrollment options following the termination of a plan or plan option.

**DATES:** OPM must receive comments on or before March 9, 2015.

**ADDRESSES:** Send written comments to Chelsea Ruediger, Planning and Policy Analysis, U.S. Office of Personnel

Management, Room 4312, 1900 E Street NW., Washington, DC 20415. You may also submit comments using the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Chelsea Ruediger at (202) 606–0004.

**SUPPLEMENTARY INFORMATION:** When a plan or plan option in the Federal Employees Health Benefits (FEHB) Program terminates, OPM provides the enrollees of that plan or plan option a time period in which they may elect to enroll in a new plan or plan option. This proposed rule clarifies the actions that OPM and employing agencies may take when an enrollee fails to make an enrollment election during the time period provided.

Current regulation ends an employee's enrollment in the FEHB Program if he or she fails to make an enrollment election during the time period provided by OPM following a plan termination. This proposed regulation amends 5 CFR 890.301 to require the employing office to enroll automatically these employees into the lowest-cost nationwide plan option based on the enrollee share of the cost of a self only enrollment. Under the proposed regulation, a plan will not be considered the lowest-cost nationwide plan option if it is a High Deductible Health Plan (HDHP) or if it requires a membership fee or an association fee.

For annuitants, current regulation provides that individuals who fail to make an enrollment election during the time provided by OPM following a plan termination shall be considered to be enrolled in the option of the Blue Cross and Blue Shield Service Benefit Plan that OPM determines most closely approximates the terminated plan. The proposed regulation amends 5 CFR 890.306 to provide that these annuitants will be enrolled into the lowest-cost nationwide plan option that is available to the individual based on the same criteria listed above.

Current regulation provides that when a plan discontinuation occurs due to a disaster, employees and annuitants who fail to make an enrollment election within 60 days of the disaster, as announced by OPM, shall be considered to be enrolled in the Standard Option of the Blue Cross and Blue Shield Service Benefit Plan. The proposed rule amends the regulation to provide that these individuals will be enrolled into the lowest-cost nationwide plan option that is available to the individual based on the same criteria listed above. It also provides related enrollment authority for individuals who, for causes beyond

their control, are unable to make enrollment changes and are enrolled in the lowest-cost nationwide plan.

Since 2004, OPM has allowed up to three plan options under a plan. See 69 FR 31721. Accordingly, the proposed rule also updates outdated language in 5 CFR 890.301 and 890.306 that considers the termination of a plan option under a plan with a total of only two plan options. Under the proposed rule, when two or more plan options remain after a different plan option is terminated, the employing office will enroll the employee in the lowest-cost remaining plan option that is not an HDHP.

Conforming edits have been made to 5 CFR 890.806 for former spouses and 5 CFR 890.1108 for enrollees in temporary continuation of coverage status.

We are seeking comment on these provisions.

**Paperwork Reduction Act (PRA)**

OPM has reviewed this proposed rule for PRA implications and have determined that it does not apply to this action.

**Regulatory Impact Analysis**

OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. After completing this analysis, OPM has determined that this rule is not considered a major rule.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only impacts options available for FEHB enrollees when the plan or plan option in which they are enrolled terminates.

**Executive Order 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

**Federalism**

We have examined this rule in accordance with Executive Order 13132,

Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

**List of Subjects in 5 CFR Part 890**

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

**Katherine Archuleta,**  
*Director.*

Accordingly, OPM proposes to amend title 5, Code of Federal Regulations, part 890 as follows:

**PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM**

■ 1. The authority citation for part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061; Pub. L. 111–148, as amended by Pub. L. 111–152.

■ 2. Amend § 890.301 by revising paragraphs (i)(4)(ii), (iii), and (iv) and adding paragraphs (i)(4)(v) and (n) to read as follows:

**§ 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.**

\* \* \* \* \*

- (i) \* \* \*
- (4) \* \* \*

(ii) If the whole plan is discontinued, an employee who does not change the enrollment within the time set in paragraph (i)(4)(i) of this section will be enrolled in the lowest-cost nationwide plan option, as defined in paragraph (n) of this section;

(iii) If one or more options of a plan are discontinued, an employee who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP).

(iv) If the discontinuance of the plan, whether permanent or temporary, is due

to a disaster, an employee must change the enrollment within 60 days of the disaster, as announced by OPM. If an employee does not change the enrollment within the time frame announced by OPM, the employee will be enrolled in the lowest-cost nationwide plan option, as defined in paragraph (n) of this section. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) An employee who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in paragraph (n) of this section, may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

\* \* \* \* \*

(n) OPM will annually determine the lowest-cost nationwide plan option calculated based on the enrollee share of the cost of a self only enrollment. The plan option identified may not be a High Deductible Health Plan (HDHP) or an option from a health benefits plan that charges an association or membership fee.

■ 3. Amend § 890.306 by revising paragraphs (l)(4)(ii), (iii), (iv), and (v) and adding paragraph (l)(4)(vi) to read as follows:

**§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?**

\* \* \* \* \*

- (l) \* \* \*
- (4) \* \* \*

(ii) If a plan discontinues all of its existing options, an annuitant who does not change his or her enrollment is deemed to have enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n); except when the annuity is insufficient to pay the withholdings, then paragraph (q) of this section applies.

(iii) If one or more options of a plan are discontinued, an annuitant who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP). In the event that the annuity is insufficient to pay the withholdings, then paragraph (q) of this section applies;

(iv) After an involuntary enrollment under paragraph (l)(4)(ii) or (iii) of this section becomes effective, the annuitant may change the enrollment to another option of the plan into which he or she

was enrolled or another health plan of his or her choice retroactively within 90-days after OPM advises the annuitant of the new enrollment;

(v) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an annuitant must change the enrollment within 60 days of the disaster, as announced by OPM. If an annuitant does not change the enrollment within the time frame announced by OPM, the annuitant will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(vi) An annuitant who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in § 890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

\* \* \* \* \*

■ 4. Amend § 890.806 by revising paragraphs (j)(4)(ii), (iii), and (iv) and adding paragraph (j)(4)(v) to read as follows:

**§ 890.806 When can former spouses change enrollment or reenroll and what are the effective dates?**

\* \* \* \* \*

(j) \* \* \*

(4) \* \* \*

(ii) If the whole plan is discontinued, a former spouse who does not change the enrollment within the time set will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n);

(iii) If one or more options of a plan are discontinued, a former spouse who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP);

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the former spouse must change the enrollment within 60 days of the disaster, as announced by OPM. If a former spouse does not change the enrollment within the time frame announced by OPM, the former spouse will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) A former spouse who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in § 890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

\* \* \* \* \*

■ 5. Amend § 890.1108 by revising paragraphs (h)(4)(ii), (iii), and (iv) and adding paragraph (h)(4)(v) to read as follows:

**§ 890.1108 Opportunities to change enrollment; effective dates.**

\* \* \* \* \*

(h) \* \* \*

(4) \* \* \*

(ii) If the whole plan is discontinued, an enrollee who does not change the enrollment within the time set will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n);

(iii) If one or more options of a plan are discontinued, an enrollee who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP);

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the enrollee must change the enrollment within 60 days of the disaster, as announced by OPM. If the enrollee does not change the enrollment within the time frame announced by OPM, the enrollee will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) An enrollee who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in § 890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

\* \* \* \* \*

[FR Doc. 2014-30636 Filed 1-6-15; 8:45 am]

**BILLING CODE 6325-63-P**

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 890**

**RIN 3206-AN14**

**Federal Employees Health Benefits Program; Subrogation and Reimbursement Recovery**

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees Health Benefits (FEHB) Program regulations to clarify the conditional nature of FEHB Program benefits and benefit payments under the plan's coverage as subject to a carrier's entitlement to subrogation and reimbursement recovery, and therefore, that such entitlement falls within the preemptive scope of the U.S.C. FEHB contracts must include a provision incorporating the carrier's subrogation and reimbursement rights and FEHB plan brochures must explain the carrier's subrogation and reimbursement policy.

**DATES:** Comments are due on or before February 6, 2015.

**ADDRESSES:** Send written comments to Marguerite Martel, Senior Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4312, 1900 E Street NW., Washington, DC; or FAX to (202) 606-4640 Attn: Marguerite Martel. You may also submit comments using the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Marguerite Martel at [Marguerite.Martel@opm.gov](mailto:Marguerite.Martel@opm.gov) or (202) 606-0004.

**SUPPLEMENTARY INFORMATION:** The FEHB Act, as codified at 5 U.S.C. 8902(m)(1) provides: "The terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans." This proposed regulation reaffirms that a covered individual's entitlement to FEHB benefits and benefit payments is conditioned upon, and limited by, a carrier's entitlement to subrogation and reimbursement recoveries pursuant to a subrogation or reimbursement clause in the FEHB contract. This proposed regulation also reaffirms that a FEHB carrier's rights and responsibilities

pertaining to subrogation and reimbursement relate to the nature, provision and extent of coverage or benefits and benefit payments provided under title 5, United States Code Chapter 89, and therefore are effective notwithstanding any state or local law or regulation relating to health insurance or plans. This interpretation comports with longstanding Federal policy, lowers the cost of benefits, and creates greater uniformity in benefits and benefits administration.

Currently, and consistent with longstanding practice, FEHB Program contracts and the applicable statement of benefits (brochures) generally require carriers to seek reimbursement and/or subrogation recoveries, and covered individuals to reimburse the plan in the event of a third party recovery, in accordance with the terms of their FEHB contracts. The funds received by experience-rated carriers from these recoveries are required to be credited to the Employees Health Benefits Fund established by 5 U.S.C. 8909, held by the Treasury of the United States. For experience-rated carriers and most community-rated carriers, subrogation and reimbursement recoveries serve to lower subscription charges for individuals enrolled in the Federal Employees Health Benefits Program. These recoveries occur when an enrollee who is injured obtains benefits from his or her FEHB Program plan and either (1) the carrier recovers payment for those benefits from a third party as a subrogee of the enrollee or (2) the enrollee recovers payment for those benefits from a third party and the terms of the plan require the enrollee, as a result of recovery, to reimburse the carrier for benefits initially paid.

As OPM explained in carrier letter 2012-18 (June 18, 2012), and as this proposed regulation would reaffirm, the carrier's right to subrogation and/or reimbursement recovery is a condition of the payments that enrollees are eligible to receive for benefits, and a limitation on their entitlement to the provision of these benefits. Subrogation and reimbursement clauses in turn relate to the nature, provision, and extent of coverage or benefits (and the payment of benefits) by making those payments conditional upon a right to subrogation or reimbursement of equivalent amounts, either from a third party, or from the enrollee, in the event a third party is obligated to pay for the same injury or illness. The carrier's right to pursue these recoveries therefore falls within the purview of 5 U.S.C. 8902(m)(1), and supersedes state laws that relate to health insurance or health plans.

Interpreting subrogation and reimbursement clauses to fall within Section 8902(m)(1) is consistent with the definition of subrogation and reimbursement described above and their relationship to benefits and the payment of benefits. This interpretation also furthers Congress's goals of reducing health care costs and enabling uniform, nationwide application of FEHB contracts. The FEHB program insures approximately 8.2 million federal employees, annuitants, and their families, a significant proportion of whom are covered through nationwide fee-for-service plans with uniform rates. The government pays on average approximately 70% of Federal employees' plan premiums. 5 U.S.C. 8906(b), (f). The government's share of FEHB premiums in 2014 was approximately \$33 billion, a figure that tends to increase each year. OPM estimates that FEHB carriers were reimbursed by approximately \$126 million in subrogation recoveries in that year. Subrogation recoveries translate to premium cost savings for the federal government and FEHB enrollees. These cost savings are consistent with Congress's intent as expressed in the legislative history of the 1998 amendment to 5 U.S.C. 8902(m)(1), indicating that Congress intended 5 U.S.C. 8902(m)(1) to "prevent carriers' cost-cutting initiatives from being frustrated by State laws," H. Rept. No. 105-374 at 9, 105th Cong., 1st Sess. (1997), and with uniform administration and cost-savings principles first envisioned as major goals of Congress as it initially enacted the FEHBA in 1959. See, H.R. Rep No. 86-957, 86th Cong. 1st Sess. (1959).

In addition to its cost-savings goals, OPM recognizes a strong federal interest in national uniformity in coverage and benefits to include uniform administration of the FEHB program across state lines. This principle encompasses the need to apply uniform rules that affect the rights and obligations of enrollees in a given plan without regard to where they live. Disuniform application of FEHB contract terms as they apply to enrollees in different states is administratively burdensome, gives rise to uncertainty and litigation, and results in treating enrollees differently, although enrolled in the same plan and paying the same premium. It is OPM's understanding that Congress enacted the preemption provision to avoid such disparities, and to enhance the ability of the Federal Government to offer its employees a program of health benefits governed by a uniform set of legal rules.

This proposed rule also clarifies that where a covered individual challenges a carrier's right of subrogation and reimbursement, that challenge is not a "claim," which current OPM regulations define as "a request for payment of a health-related bill" or the "provision of a health-related service or supply." 5 CFR 890.101. Because subrogation and reimbursement challenges are not claims, they are not subject to the disputed claims process set forth at 5 CFR 890.105, 890.107.

The proposed rule adds definitions of subrogation and reimbursement to 5 CFR 890.101. In addition, the regulation replaces the current section 890.106, which is no longer needed due to creation of the Civilian Board of Contract Appeals. The proposed section 890.106 defines an FEHB carrier's right to subrogation and reimbursement in accordance with this part. As the Federal agency with regulatory authority over the FEHB Program, OPM has consistently taken the position that the FEHB Act preempts state laws that restrict or prohibit FEHB Program carrier reimbursement and/or subrogation recovery efforts, and we continue to maintain this position.

OPM is issuing proposed rule-making that further clarifies this provision of law.

### Regulatory Impact Analysis

OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. This rule is not considered a major rule because there will be a minimal impact on costs to Federal agencies.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health insurance benefits of Federal employees and annuitants. Executive Order 12866.

### Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 13563 and 12866.

## Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule restates existing rights, roles and responsibilities of State, local, or tribal governments.

### List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

Accordingly, OPM proposes to amend title 5, Code of Federal Regulations, part 890 as follows:

### PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061; Pub. L. 111–148, as amended by Pub. L. 111–152.

■ 2. In § 890.101(a), add definitions for “Reimbursement” and “Subrogation” in alphabetical order to read as follows:

#### § 890.101 Definitions; time computations.

(a) \* \* \*

*Reimbursement* means a carrier’s pursuit of a recovery if a covered individual has been injured and has received a payment from a responsible third party and the terms of the plan require the covered individual, as a result of recovery, to pay the carrier out

of the recovery to the extent of the benefits initially paid or provided.

\* \* \* \* \*

*Subrogation* means a carrier’s pursuit of a recovery from a responsible third party as successor to the rights of an injured covered individual who has obtained benefits from that health benefits plan.

\* \* \* \* \*

■ 3. Section 890.106 is revised to read as follows:

#### § 890.106 Carrier entitlement to pursue subrogation and reimbursement recoveries.

(a) All health benefit plan contracts shall provide that the Federal Employees Health Benefits (FEHB) carrier is entitled to pursue subrogation and reimbursement recoveries, and shall have a policy to pursue such recoveries in accordance with the terms of this section.

(b) In any health benefits plan that contains a subrogation or reimbursement clause, including contracts entered into before the effective date of this regulation, benefits and benefit payments are extended to a covered individual on the condition that the FEHB carrier may pursue and receive subrogation and reimbursement recoveries if such benefits or benefit payments are for an injury or illness that is the responsibility of a third party. FEHB carriers’ right to pursue and receive subrogation and reimbursement recoveries constitutes a condition of and a limitation on the nature of benefits or benefit payments and on the provision of benefits under the plan’s coverage.

(c) Contracts shall provide that the FEHB carriers’ rights to pursue and receive subrogation or reimbursement recoveries arise upon the occurrence of the following:

(1) The covered individual has received benefits or benefit payments as a result of an illness or injury; and

(2) The covered individual has accrued a right of action against a third party for causing that illness or injury; or has received a judgment, settlement or other recovery on the basis of that illness or injury; or is entitled to receive compensation or recovery on the basis of the illness or injury, including from

insurers of individual (non-group) policies of liability insurance that are issued to and in the name of the enrollee or a covered family member.

(d) A FEHB carrier’s exercise of its right to pursue and receive subrogation or reimbursement recoveries does not give rise to a claim within the meaning of § 890.101 and is therefore not subject to the disputed claims process set forth at § 890.105.

(e) Any subrogation or reimbursement recovery on the part of a FEHB carrier shall be effectuated against the recovery first (before any of the rights of any other parties are effectuated) and is not impacted by how the judgment, settlement, or other recovery is characterized, designated, or apportioned.

(f) Pursuant to a subrogation or reimbursement clause, the FEHB carrier may recover directly from the covered individual all amounts received by or on behalf of the covered individual by judgment, settlement, or other recovery from any third party or its insurer, or the covered individual’s insurer, to the extent of the amount of benefits that have been paid or provided by the carrier.

(g) Any contract must contain a provision incorporating the carrier’s subrogation and reimbursement rights as a condition of and a limitation on the nature of benefits or benefit payments and on the provision of benefits under the plan’s coverage. The corresponding health benefits plan brochure must contain an explanation of the carrier’s subrogation and reimbursement policy.

(h) A carrier’s rights and responsibilities pertaining to subrogation and reimbursement under a FEHB contract relate to the nature, provision, and extent of coverage or benefits (including payments with respect to benefits) within the meaning of 5 U.S.C. 8902(m)(1). These rights and responsibilities are therefore effective notwithstanding any state or local law, or any regulation issued thereunder, which relates to health insurance or plans.

[FR Doc. 2014–30638 Filed 1–6–15; 8:45 am]

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# FEDERAL REGISTER

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Part III

## Department of Commerce

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National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; New Cost Recovery Fee Programs; Proposed Rule

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 140304192-4999-01]

RIN 0648-BE05

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; New Cost Recovery Fee Programs**

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

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

**SUMMARY:** NMFS issues a proposed rule to implement cost recovery fee programs for the Western Alaska Community Development Quota (CDQ) Program for groundfish and halibut, and three limited access privilege programs: The American Fisheries Act (AFA), Aleutian Islands Pollock, and Amendment 80 Programs. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes and requires the collection of cost recovery fees for the CDQ Program and limited access privilege programs. Cost recovery fees recover the actual costs directly related to the management, data collection, and enforcement of the programs. The Magnuson-Stevens Act mandates that cost recovery fees not exceed 3 percent of the annual ex-vessel value of fish harvested by a program subject to a cost recovery fee. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP), and other applicable laws.

**DATES:** Comments must be received no later than February 6, 2015.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2014-0031, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov)#!/docketDetail;D=NOAA-NMFS-2014-0031, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn:

Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address and by email to [OIRA.Submission@omb.eop.gov](mailto:OIRA.Submission@omb.eop.gov) or fax to (202) 395-5806.

Electronic copies of the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Karen Palmigiano, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the Federal exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The North Pacific Fishery Management Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing this FMP appear at 50 CFR parts 600 and 679.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce (Secretary). NMFS publishes the IPHC's regulations as annual

management measures pursuant to 50 CFR 300.62. The Halibut Act, at sections 773c (a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act.

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**I. Statutory Authority**

The primary statutory authority for this proposed action is section 304(d) of the Magnuson-Stevens Act. Section 304(d) of the Magnuson-Stevens Act specifies that the Secretary is authorized and shall collect a fee to recover the

actual costs directly related to the management, data collection, and enforcement of any limited access privilege program and community development quota program that allocates a percentage of the total allowable catch of a fishery to such program. Section 304(d) also specifies that such fee shall not exceed three percent of the ex-vessel value of fish harvested under any such program.

#### A. Limited Access Privilege Programs

Relevant to section 304(d)(2)(A)(i), and the specific programs to which this proposed action would apply, section 3 of the Magnuson-Stevens Act defines a "limited access privilege" as including "an individual fishing quota." Section 3 of the Magnuson-Stevens Act defines "individual fishing quota" as "a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 305(i)." The Magnuson-Stevens Act and Federal regulations further define the terms "permit," "limited access system," "total allowable catch," and "person."

Federal regulations at 50 CFR 679.2 define a "permit" as "documentation granting permission to fish." Section 3 of the Magnuson-Stevens Act defines "limited access system" as "a system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulation."

Federal regulations at § 679.20 define the process for establishing a "total allowable catch" (TAC) on an annual basis for each groundfish fishery managed under the FMP. Each year, NMFS publishes a final rule to implement an annual harvest specification establishing a TAC amount for each groundfish fishery managed under the FMP. For the most recent example of the annual harvest specifications, see the final 2014 and 2015 harvest specifications (79 FR 12108, March 4, 2014). Each year, the IPHC establishes an annual catch limit that represents the TAC in the commercial halibut fishery pursuant to its authority under the Convention. The annual catch limit is adopted by the IPHC each year, and the Secretary of State of the United States, with the concurrence of the Secretary, can accept annual management measures adopted by the IPHC. If accepted, NMFS publishes the annual management

measures adopted by the IPHC pursuant to 50 CFR 300.62. For the most recent example of the annual catch limit, see the 2014 annual management measures (79 FR 13906, March 12, 2014).

Section 3 of the Magnuson-Stevens Act defines "person" as "any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government."

These definitions mean that the Secretary is authorized and required to collect a cost recovery fee for fisheries in which the person receiving a permit to harvest a percentage of the TAC is an individual or some other type of non-individual entity, including a corporation, partnership, or fishery cooperative. Further, these definitions mean that the Secretary is authorized and required to collect a cost recovery fee for limited access systems established under section 303A of the Magnuson-Stevens Act, as well as individual fishing quotas that are not established under section 303A of the Magnuson-Stevens Act. The programs that would be subject to a cost recovery fee under this proposed action were not established under the provisions of section 303A of the Magnuson-Stevens Act, but would be subject to a cost recovery fee under the provisions applicable to individual fishing quota programs.

Section 304(d)(2)(A) of the Magnuson-Stevens Act authorizes and requires the Secretary to collect a cost recovery fee for limited access privilege programs. By definition under section 3 of the Magnuson-Stevens Act, limited access privilege programs include individual fishing quota programs. By definition under the Magnuson-Stevens Act, the AFA Program, Aleutian Islands Pollock Program, and Amendment 80 Program are individual fishing quota programs, because: (1) NMFS issues permits as part of a limited access system established under each of these programs; (2) these permits allow the harvest of a quantity of specific fisheries representing a portion of the TAC of the fisheries managed under each of these programs; and (3) these permits are received or held for exclusive use by specific persons as defined for each of these programs. Therefore, NMFS proposes to implement cost recovery fees for these programs as authorized and required in section 304(d)(2) of the Magnuson-Stevens Act. Sections III and IV of this preamble provide additional detail on the specific fisheries subject to

cost recovery fees, the portions of the TACs allocated as a limited access privilege, the permits issued, and the persons receiving the permits for each of these limited access privilege programs.

NMFS also considered implementing a cost recovery fee program, under section 304(d) of the Magnuson-Stevens Act, for the BSAI Pacific cod allocation to the hook-and-line catcher/processors that are part of the Freezer Longline Coalition Cooperative. However, the BSAI Pacific cod allocation to the hook-and-line catcher/processors does not currently meet the definition of a limited access privilege program because the Freezer Longline Coalition Cooperative does not have an exclusive harvest privilege. This issue is addressed under the "Additional Alternatives Considered" heading in section V of this preamble.

#### B. CDQ Program Provisions

Section 304(d)(2)(ii) of the Magnuson-Stevens Act provides the Secretary with the authority and requirement to collect fees to recover costs from the CDQ Program for fisheries in which a percentage of the TAC of a fishery is allocated to the CDQ Program. Section 305(i) of the Magnuson-Stevens Act authorizes the CDQ Program and specifies the annual percentage of the TAC allocated to the CDQ Program in each directed fishery of the BSAI. Section 305(i) also specifies the method for further apportioning the TAC allocated to the CDQ Program to specific persons, *i.e.*, CDQ groups. Section 305(i) also defines these CDQ groups. NMFS previously implemented cost recovery fees for the amount of BSAI crab fishery TACs allocated to the CDQ Program under regulations implementing the Crab Rationalization Program (70 FR 10174, March 2, 2005, see regulations at § 680.44) under the authority of section 304(d)(2) of the Magnuson-Stevens Act. NMFS proposes to implement cost recovery fees for BSAI groundfish and halibut TACs allocated to the CDQ Program under the authority of section 304(d)(2) of the Magnuson-Stevens Act.

#### C. Maximum Amount and Collection of Cost Recovery Fees

Sections 304(d)(2)(B) and (C) of the Magnuson-Stevens Act specify an upper limit on cost recovery fees, when the fees must be collected, and where the fees must be deposited. Section 304(d)(2)(B) provides that the fee shall not exceed three percent of the ex-vessel value of fish harvested under either a limited access privilege program or a CDQ program that allocates a percentage of the TAC of a fishery to such a program. NMFS does not have the

authority to collect cost recovery fees under section 304(d)(2)(i) when a person does not hold or receive exclusive use of a percentage of the TAC.

Section 304(d)(2)(B) also states that the cost recovery fee must be collected at either the time of the landing, filing of a landing report, or sale of such fish during the fishing season, or in the last quarter of the calendar year in which the fish were harvested. NMFS proposes that all fees for all four programs included in this action would be due annually by December 31 of the calendar year in which the landings were made. This complies with the requirements of section 304(d)(2)(B). Section 304(d)(2)(C) requires that all fees be deposited in the Limited Access System Administration Fund, which was established under section 305(h)(5)(B). NMFS proposes to collect all fees electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account. Those fees would be deposited in the Limited Access System Administration Fund. Sections III and IV of this preamble provide further details on how the fees will be assessed and collected for each of the limited access privilege programs and the CDQ Program.

*D. Applicability of Section 303A of the Magnuson-Stevens Act*

NMFS has determined that cost recovery fee provisions in section 303A do not apply to the cost recovery fee program proposed in this rule, specifically the requirements in section 303A(e). The CDQ Program is not a limited access privilege program as defined in section 3 of the Magnuson-Stevens Act. Therefore, section 303A(e) does not apply to the CDQ Program.

Section 303A(e) also does not apply to the AFA, Aleutian Islands Pollock, and Amendment 80 Programs. NMFS based this determination on section 303A(i) of the Magnuson-Stevens Act. Section 303A(i) states: “[t]he requirements of this section [303A] shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the

Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.” The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 was enacted on January 12, 2007 (Public Law 109–479). Therefore, a quota program, including any individual quota program, cooperative program, or sector allocation is not subject to the requirements of section 303A(e) if a Council took final action on the program, a Council submitted the program, or the program was approved by the Secretary before July 10, 2007. All three of the limited access privilege programs included in this proposed rule were either recommended by the North Pacific Fishery Management Council, or approved by the Secretary and implemented prior to July 10, 2007.

The AFA Program was approved by the Secretary as an FMP amendment on February 27, 2002, and implemented in a final rule on December 30, 2002 (67 FR 79692, December 30, 2002). The Aleutian Islands Pollock Program was approved by the Secretary as an FMP amendment on February 9, 2005 and implemented as a final rule on March 1, 2005 (70 FR 9856, March 1, 2005). The North Pacific Fishery Management Council took final action to recommend the Amendment 80 Program on June 9, 2006. Additional detail on the North Pacific Fishery Management Council’s final action to recommend the Amendment 80 Program is found in the final rule implementing the Amendment 80 Program (72 FR 52668, September 14, 2007). Therefore, the requirements of section 303A(e) of the Magnuson-Stevens Act do not apply to the AFA, the Aleutian Islands Pollock, or the Amendment 80 Program.

Although the AFA, Aleutian Islands Pollock, and Amendment 80 Programs were not established under the authority of section 303A of the Magnuson-Stevens Act, they do meet the definition of a “limited access privilege” under section 3 of the Magnuson-Stevens Act. A “limited access privilege” includes an “individual fishing quota.” The AFA, Aleutian Islands Pollock, and Amendment 80 Programs meet the definition of an “individual fishing

quota” under section 3 of the Magnuson-Stevens Act. Specifically, under each of these programs, NMFS issues “a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person.”

*E. Summary of Relevant Magnuson-Stevens Act Provisions*

To summarize, the Magnuson-Stevens Act specifies the following with respect to the collection of cost recovery fees:

- Fees must be collected for all limited access privilege programs;
- Fees must be collected for the CDQ Program;
- Fees must recover actual costs directly related to management, data collection, and enforcement of the programs;
- Fees must not exceed three percent of the ex-vessel value of a fish harvested under a program subject to cost recovery;
- Fees are in addition to any other fees charged under the Magnuson-Stevens Act;
- Fees must be deposited in the Limited Access System Administrative Fund (LASAF) in the U.S. Treasury; and
- Fees must be collected at either the time of a legal landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

For more detail on the Secretary and NMFS’ authority to implement cost recovery fees, please see section 1.1 of the RIR/IRFA.

*F. Existing Cost Recovery Fee Programs, Policies, and Guidance*

NMFS has previously established cost recovery fee programs to implement the requirements of section 304(d)(2) of the Magnuson-Stevens Act. The specific fisheries, the NMFS Region where those cost recovery fee programs were implemented, and the date the cost recovery fee programs were implemented, are provided in Table 1. For a more detailed discussion of these programs, see section 1.8.2 of the RIR/IRFA.

TABLE 1—LIMITED ACCESS PRIVILEGE PROGRAMS WITH A COST RECOVERY COMPONENT BY NMFS REGION

NMFS Region	Limited Access Privilege Program
Greater Atlantic Region	Atlantic Sea Scallop Individual Fishing Quota (73 FR 20090, April 14, 2008). Golden Tilefish Individual Transferable Quota (74 FR 42580, August 24, 2009).
Southeast Region	Red Snapper Individual Fishing Quota (71 FR 67447, November 22, 2006). Grouper-Tilefish Individual Fishing Quota (74 FR 44732, August 31, 2009).

TABLE 1—LIMITED ACCESS PRIVILEGE PROGRAMS WITH A COST RECOVERY COMPONENT BY NMFS REGION—Continued

NMFS Region	Limited Access Privilege Program
West Coast Region .....	Groundfish Trawl Rationalization (75 FR 78344, December 15, 2010).
North Pacific Region .....	Halibut and Sablefish Individual Fishing Quota Program (65 FR 14919, March 20, 2000). Crab Rationalization Program (70 FR 10174, March 2, 2005). Rockfish Program (76 FR 81248, December 27, 2011).

The U.S. Government Accountability Office (GAO) examined cost recovery fee programs in 2005 (March 2005, GAO Report to Congressional Requestors GAO-05-24, available at <http://www.gao.gov/new.items/d05241.pdf>). At the time, NMFS had only established one cost recovery fee program for the Halibut and Sablefish Individual Fishing Quota Program (Halibut and Sablefish IFQ Program). NMFS had determined that the actual costs to recover for the Halibut and Sablefish IFQ Program were the incremental costs of the program, (*i.e.*, those costs that would not have been incurred but for the program).

The GAO report examined the Halibut and Sablefish IFQ Program and found that NMFS was recovering the costs of management and enforcement, as required by the Magnuson-Stevens Act (see p. 4 of GAO-05-241). The GAO report noted that the Magnuson-Stevens Act does not define “actual costs” as directly related to the management and enforcement of an “individual fishing quota” program. The GAO report noted that actual costs could be interpreted as the full costs of managing an individual fishing quota program rather than those costs that are directly attributable to the implementation of an individual fishing quota program (*e.g.*, incremental costs). However, after reviewing the methodology for calculating recoverable costs in the Halibut and Sablefish IFQ Program, the GAO report did not recommend that NMFS change its policy of collecting incremental costs (see p. 23 of GAO-05-241).

One of the two key recommendations of the GAO report is that NOAA should establish cost recovery fee programs as required and authorized by section 304(d)(2) of the Magnuson-Stevens Act for all management programs to which they would apply. The other recommendation was to develop guidance as to which costs are to be recovered and, when actual information is unavailable, how to estimate the costs (see p. 22 of GAO-05-241).

NoAA has established policy guidance to define the methods for determining costs and implementing cost recovery fee programs for limited access privilege programs (November 2007, NOAA Technical Memorandum

NMFS-F/SPO-86, available at <http://spo.nwr.noaa.gov/tm/tm86.pdf>). NOAA clarified this policy guidance in the NOAA Catch Share Policy (November 2011, NOAA Catch Share Policy, available at [http://www.nmfs.noaa.gov/sfa/management/catch\\_shares/about/documents/noaa\\_cs\\_policy.pdf](http://www.nmfs.noaa.gov/sfa/management/catch_shares/about/documents/noaa_cs_policy.pdf)). The NOAA Catch Share Policy states that:

It is NOAA policy to compute and recover from participants only the incremental operating costs associated with limited access privilege programs. . . . The relevant costs to recover are the incremental costs, *i.e.*, those costs that would not have been incurred but for the limited access privilege program, since cost recovery is not authorized for non-limited access privilege program fisheries. Conceptually, measuring these costs involves a “with and without” comparison of the cost of running the management program for the specified fishery under the status quo non-limited access privilege program regime, relative to the costs attributable to implementing the limited access privilege program.

NoAA has determined that recovering incremental costs is appropriate because the Magnuson-Stevens Act specifies collection of a fee to recover the actual costs directly related to the management, data collection, and enforcement of limited access privilege program or the CDQ Program. Incremental costs refer only to the costs that are added because of the implementation of a limited access privilege program or the CDQ Program. For example, a fishery stock assessment would be required whether or not a limited access privilege program or CDQ Program existed. Under section 304(d)(2) of the Magnuson-Stevens Act, NMFS is not authorized to recover costs from non-limited access privilege program or non-CDQ Program fishery participants. Therefore, having participants in the limited access privilege programs or the CDQ Program pay fees to cover the costs of a stock assessment would not be consistent with current NOAA policy. However, if specific permits, monitoring and catch accounting provisions, or enforcement requirements are needed to manage, collect data, or enforce a limited access privilege program or CDQ Program, it would be appropriate to recover fees for those costs. See the “Reimbursable Costs” section of this preamble for

additional detail on the costs subject to cost recovery fee collection. This proposed action is intended to be consistent with the recommendations of the 2005 GAO report and established NOAA policy on cost recovery fee programs.

## II. Background

The following sections provide a brief background on each of the programs for which NMFS proposes to implement a cost recovery fee program. For a more detailed description of each of these programs, please see section 1.5 of the RIR/IRFA.

### A. AFA Program

On October 21, 1998, the President signed into law the AFA, which was Title II-Fisheries, Subtitles I and II, within the Omnibus Appropriations Bill FY 1999, Public Law 105-277. The AFA, as enacted in 1998, is available on the NMFS Alaska Region Web site: <https://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa1998.pdf>. The purpose of the AFA was to clarify U.S. ownership standards for U.S. fishing vessels and to provide the Bering Sea pollock fleet the opportunity to eliminate the race to harvest Bering Sea pollock through the allocation of a percentage of the TAC of Bering Sea pollock that may be received or held for exclusive use by a person. The AFA established specific allocations of Bering Sea pollock; requirements for participation by catcher vessels, catcher/processors, motherships, and processors; excessive share limits; monitoring and enforcement provisions; and annual reporting requirements.

NMFS allocates the Bering Sea pollock TAC to the AFA Program as a directed fishery allowance after subtracting the CDQ Program allocation of 10 percent of the TAC, and after subtracting a portion of the TAC as an incidental catch allowance to accommodate the incidental catch of pollock in non-pollock directed fisheries (*e.g.*, the incidental catch of pollock in the directed fishery for Pacific cod). The remaining TAC is further allocated to three AFA sectors: 50 percent allocation to catcher vessels harvesting pollock for processing by shoreside processors (inshore sector); 40

percent allocation to catcher vessels and catcher/processors harvesting pollock for processing by catcher/processors (catcher/processor sector); and a 10 percent allocation to catcher vessels harvesting pollock for processing by motherships (mothership sector). Under the AFA, a catcher vessel may only harvest pollock; a catcher/processor may harvest and process pollock; and a mothership may only receive and process pollock.

Section 208 of the AFA determined which vessels and which processors were eligible to participate in the inshore sector, the catcher/processor sector, and the mothership sector. NMFS issued AFA permits to 112 catcher vessels, 21 catcher/processors, and three mothership vessels. Section 210 of the AFA allowed the formation of fishery cooperatives in each AFA sector. Under a fishery cooperative, the members of a cooperative agree to divide the pollock allocation that the cooperative members. The AFA, in section 210(b), specifically regulated the formation of inshore cooperatives for catcher vessels. A catcher vessel with an AFA inshore endorsement has a choice of participating in the open access sector, and delivering pollock to any AFA inshore processor, or contributing its catch history to a cooperative, and delivering at least 90 percent of its pollock catch to the processor associated with the cooperative (AFA section 210(b); 50 CFR 679.4(l)(6)). Participants in the AFA open access sector would not be subject to cost recovery under this proposed rule because these persons do not receive an exclusive harvest privilege. Currently, all AFA vessels harvest and deliver pollock through a cooperative, rather than in open access.

Seven inshore cooperatives have formed. The amount of pollock allocated to an inshore cooperative is based on the amount of harvests of the members of the cooperative specified under section 206(b) of the AFA. For additional information on AFA inshore allocations, see NMFS Alaska Region Web site, <http://alaskafisheries.noaa.gov/sustainablefisheries/afa>.

A cooperative has formed in the catcher/processor sector to harvest the exclusive harvest allocation provided to this sector. Participants in the catcher/processor sector have a joint agreement called the "Cooperative Agreement between Offshore Pollock Catchers' Cooperative and Pollock Conservation Cooperative" (AFA Offshore Joint Cooperative) to facilitate efficient harvest management and accurate harvest accounting between the participants in the catcher/processor

sector. The AFA Offshore Joint Cooperative is defined under annual cooperative reports submitted to NMFS (Cooperative Reports, NMFS Alaska Region Web site, [http://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa\\_sf.htm](http://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa_sf.htm)). All but one participant who harvests pollock allocated to the catcher/processor sector is a member of the AFA Offshore Joint Cooperative. Section 208(e)(21) of the AFA expressly limits the amount of harvest by the one participant in the catcher/processor sector who is not a member of the AFA Offshore Joint Cooperative to 0.5 percent of the TAC assigned to the catcher/processor sector, thereby providing an exclusive harvest privilege to all the AFA Offshore Joint Cooperative members. The participant who is not a member of the AFA Offshore Joint Cooperative would not be subject to a cost recovery fee for its harvest of pollock under this proposed rule. Section 1.5.3 of the RIR/IRFA provides additional detail on allocations to the AFA catcher/processor sector.

The owners of all 19 catcher vessels eligible to deliver to a mothership in the Bering Sea pollock fishery have joined a single cooperative to coordinate harvests. This cooperative harvests the exclusive harvest allocation provided to the mothership sector as specified under section 206(b) of the AFA. For additional detail see the Cooperative Reports, NMFS Alaska Region Web site, [http://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa\\_sf.htm](http://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa_sf.htm).

Section 1.5.3 of the RIR/IRFA and the final rule implementing the AFA provide more detailed information (67 FR 79692, December 30, 2002). The amounts of the Bering Sea pollock TAC currently allocated to each AFA cooperative and sector are specified in the final 2014 and 2015 harvest specifications for the BSAI groundfish fisheries (79 FR 12108, March 4, 2014).

#### *B. Aleutian Islands Pollock Program*

Originally, the AFA applied to the directed pollock fishery in the entire BSAI (section 205(4), section 205(6), section 205(10) of original AFA). The BSAI consists of the Bering Sea subarea and the Aleutian Islands subarea (see regulatory definitions in § 679.2). In 2004, Congress separated the management of pollock between the Bering Sea and Aleutian Islands pursuant to the requirements of the Consolidated Appropriations Act of 2004 (Public Law 108–199). Under the requirements of the Consolidated Appropriations Act of 2004, NMFS allocates an exclusive harvest allocation representing a portion of the Aleutian

Islands subarea pollock TAC to the Aleut Corporation.

NMFS implemented the requirements of the Consolidated Appropriations Act of 2004 with Amendment 82 to the FMP in 2005 (70 FR 9856, March 1, 2005). Regulations implementing Amendment 82 define the amount of pollock TAC that may be allocated in the Aleutian Islands subarea and how the Aleut Corporation may harvest its portion of this allocation. The Aleutian Islands pollock TAC is allocated to the Aleut Corporation for a directed pollock fishery after subtracting the CDQ Program allocation of 10 percent of the TAC, and after subtracting an incidental catch allowance to accommodate the incidental catch of pollock in non-pollock directed fisheries.

Prior to 2015, NMFS prohibited directed fishing for pollock inside Steller sea lion critical habitat in the Aleutian Islands as a measure to protect the endangered Steller sea lion (68 FR 204, January 2, 2003). Pollock in the Aleutian Islands occurs primarily inside Steller sea lion critical habitat. These closures of critical habitat in the Aleutian Islands to directed fishing precluded directed fishing in the Aleutian Islands. Therefore, prior to 2015, the allocation to the Aleut Corporation was not fully harvested and was reallocated each year to the Bering Sea pollock fishery. NMFS has implemented new regulations that allow directed fishing for pollock within critical habitat in the Aleutian Islands (79 FR 70286, November 25, 2014). This may provide additional harvest opportunities for the Aleut Corporation.

Section 1.5.3 of the RIR/IRFA and the final rule implementing the Aleutian Islands Pollock Program provide more detailed information (70 FR 9856, March 1, 2005). The amount of the Aleutian Islands pollock TAC currently allocated to the Aleut Corporation and reallocation to the Bering Sea is specified in the final 2014 and 2015 harvest specifications for the BSAI groundfish fisheries (79 FR 12108, March 4, 2014).

#### *C. Amendment 80 Program*

Amendment 80 to the FMP identified participants using trawl catcher/processors in the BSAI who are active in groundfish fisheries other than Bering Sea pollock (*i.e.*, the head-and-gut fleet or Amendment 80 vessels) and established a framework, known as the Amendment 80 Program, to regulate fishing by this fleet (72 FR 52668, September 14, 2007). The Amendment 80 Program allocates a portion of the TACs of six species in the BSAI: Atka mackerel, Pacific cod, flathead sole,

rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch between the Amendment 80 Program and other trawl fishery participants.

The Amendment 80 program created Amendment 80 quota share based on the historic catch of quota share species by Amendment 80 vessels, facilitated the development of cooperative arrangements (Amendment 80 cooperatives) among quota shareholders, and assigned an exclusive harvest privilege for a portion of the TAC of quota share species for participants in Amendment 80 cooperatives. The Amendment 80 Program also allocates crab and halibut prohibited species catch (PSC) limits to constrain bycatch of these species while Amendment 80 vessels harvest groundfish. The Amendment 80 Program added sideboard limits to protect other fisheries from the potential adverse effects arising from the exclusive harvest privileges provided under the Amendment 80 Program.

NMFS identified 28 catcher/processor vessels that are eligible to participate in the Amendment 80 Program and NMFS has issued quota share based on the historic catch of these vessels. NMFS has issued Amendment 80 quota share to 27 eligible persons. One person who owns an eligible catcher/processor did not elect to apply for and receive Amendment 80 quota share and would not be subject to the provisions of this proposed rule because this person does not receive an exclusive harvest privilege for a portion of the Amendment 80 species TACs. Amendment 80 quota shareholders may annually elect to form a cooperative with other Amendment 80 quota shareholders to receive an exclusive harvest privilege for the portion of Amendment 80 species TACs resulting from the cooperative member's aggregated quota share holdings. This "cooperative quota" (CQ) is the amount of Amendment 80 species TACs dedicated for exclusive use by that cooperative.

Annually, each Amendment 80 quota shareholder elects to participate either in a cooperative or the limited access fishery. Participants in the limited access fishery do not receive an exclusive allocation for a portion of the TACs allocated to the Amendment 80 Program. Participants in the Amendment 80 limited access fishery would not be subject to cost recovery under this proposed rule because these persons do not receive an exclusive harvest privilege. Since 2011, all quota shareholders have participated in one of two cooperatives. (For additional detail see Cooperative Reports, NMFS Alaska

Region Web site, <http://alaskafisheries.noaa.gov/sustainablefisheries/amds/80/default.htm>).

Section 1.5.1 of the RIR/IRFA and the final rule implementing the Amendment 80 Program provide more detailed information (72 FR 52668, September 14, 2007). The allocations of Amendment 80 species TACs to each of the Amendment 80 cooperatives are provided in the final 2014 and 2015 harvest specifications for the BSAI groundfish fisheries (79 FR 12108, March 4, 2014).

#### *D. CDQ Program*

The CDQ Program was implemented by NMFS in 1992 (57 FR 46133, October 7, 1992). Since the implementation of the CDQ Program, Congress has amended the Magnuson-Stevens Act to define specific allocations to the CDQ Program, as well as eligibility to participate in the CDQ Program.

A total of 65 villages are authorized under section 305(i)(1)(D) of the Magnuson-Stevens Act to participate in the CDQ Program. Six CDQ groups represent these villages. The CDQ groups include the Aleutian Pribilof Island Community Development Association (APICDA), the Bristol Bay Economic Development Corporation (BBEDC), the Central Bering Sea Fishermen's Association (CBSFA), the Coastal Villages Region Fund (CVRF), the Norton Sound Economic Development Corporation (NSEDC), and the Yukon Delta Fisheries Development Association (YDFDA). CDQ groups manage and administer CDQ allocations and use the revenue derived from the harvest of their CDQ allocations to fund economic development activities and provide employment opportunities on behalf of the villages they represent. See section 1.5.2 of the RIR/IRFA for additional information on the CDQ Program.

Section 305(i)(B) of the Magnuson-Stevens Act specifies the proportion of the crab, groundfish, and halibut TACs in the BSAI allocated to the CDQ Program. Section 305(i)(C) of the Magnuson-Stevens Act specifies the proportion of the overall CDQ Program allocations assigned to each CDQ group. The proportion of the CDQ Program allocations of each species assigned to each of the six CDQ groups is described in a final rule defining the regulation of the CDQ Program (71 FR 51804, August 31, 2006). Each year, NMFS publishes the specific annual allocations of CDQ groundfish and halibut TACs to each CDQ group on the Alaska Region Web site at <http://>

[www.alaskafisheries.noaa.gov/cdq/current\\_historical.htm](http://www.alaskafisheries.noaa.gov/cdq/current_historical.htm).

NMFS first allocates crab, halibut and groundfish TACs to the CDQ Program, and then apportion the remaining TAC among other non-CDQ fishery participants. Because CDQ crab allocations are already subject to a cost recovery fee program (70 FR 10174, March 2, 2005), they are not addressed further in this preamble. The groundfish species and species groups currently allocated to the CDQ Program, and that would be subject to this proposed cost recovery fee program, are specified in the final 2014 and 2015 harvest specifications for the BSAI groundfish fisheries (79 FR 12108, March 4, 2014). The process for allocating halibut TACs to the CDQ Program is described in a final rule implementing the Halibut and Sablefish IFQ Program (58 FR 59375, November 9, 1993). The allocation of halibut to the CDQ Program varies by halibut management area and ranges from 20 to 100 percent of the area TACs.

The fishery resources allocated to the CDQ Program and the CDQ groups are under Federal jurisdiction, and NMFS remains primarily responsible for groundfish and halibut CDQ fisheries management. However, the State of Alaska (State) also retains some management responsibility for the CDQ Program. The State may incur costs in the management and enforcement of the CDQ Program that would be subject to a cost recovery fee. Section 304(d)(2)(C)(ii) of the Magnuson-Stevens Act provides that NMFS transfer up to 33 percent of any cost recovery fee collected for the CDQ Program "in order to reimburse such State for actual costs directly incurred in the management and enforcement of [the CDQ Program]." This proposed rule anticipates that the State may apply to NMFS for reimbursement of its management and enforcement costs. The potential costs subject to reimbursement are described in section 1.5.2 of the RIR/IRFA and the "CDQ Program" section of this preamble.

Section 305(i)(1)(G) of the Magnuson-Stevens Act designates specific administrative oversight responsibilities for the CDQ Program to an Administrative Panel. Section 305(i)(1)(G) specifies that the Administrative Panel shall coordinate and facilitate activities of the CDQ groups and administer those aspects of the CDQ Program not otherwise addressed in section 305(i)(1), including economic development aspects of the CDQ Program. Currently, the Western Alaska Community Development Association (WACDA) serves as the

Administrative Panel specified in the Magnuson-Stevens Act.

### III. Cost Recovery—General

As described in the “Statutory Authority” section of this preamble, cost recovery is the process by which NMFS would recover the actual costs associated with the management, data collection, and enforcement (also referred to as program costs) of the CDQ, AFA, Aleutian Islands Pollock, and Amendment 80 Programs. These program costs would be recovered annually through a fee paid by persons who hold a permit granting an exclusive harvesting privilege for a portion of the TAC in a fishery subject to cost recovery.

NMFS proposes to calculate the cost recovery fee for fish species that are allocated as exclusive harvest privileges under the CDQ groundfish and halibut, AFA, Aleutian Islands Pollock, and Amendment 80 Programs as a percentage of the ex-vessel value of allocated fish species harvested by the participants in each program. The cost recovery fee percentage would be determined annually by the Regional Administrator of the NMFS Alaska Region and published in a **Federal Register** notice each year. NMFS would calculate cost recovery fees only for fish that are landed and deducted from the TAC in the fisheries subject to cost recovery under the proposed action. NMFS would not calculate cost recovery fees for any portion of a permit holder’s exclusive harvest privilege that was not landed and deducted from the TAC. For the purposes of this rule, “permit holder” refers to the person who holds the exclusive harvest privilege in the specific fishery. These methods for assessing cost recovery fees on landed catch and the designation of the permit holder are consistent with the cost recovery fee programs already implemented and NOAA policy guidance.

Section 304(d)(2)(B) of the Magnuson-Stevens Act specifies that a cost recovery fee “shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.” NMFS proposes to collect the cost recovery fee for the CDQ groundfish and halibut, AFA, Aleutian Islands Pollock, and Amendment 80 Programs by December

31 of each year, which is in the last quarter of the calendar year in which the fish were harvested. NMFS would notify each permit holder of their calculated fee liability for the fishing year by December 1 each year in which the landings were made. Each permit holder would be responsible for submitting the fee to NMFS by December 31 of the year in which the landings were made. The fee liability payment would need to be submitted to NMFS electronically by the December 31 deadline.

This approach is consistent with other cost recovery fee programs implemented by NMFS. Annual collection of cost recovery fees minimizes the administrative burden on fishery participants and NMFS by limiting fee assessment and collection to one time per year rather than requiring assessment and collection at the time of each landing or at multiple times throughout the year. The use of electronic payment of cost recovery fees would reduce the administrative costs of processing payments, and provides an efficient method for permit holders to submit fees. In addition, all of the permit holders subject to a cost recovery fee regularly report to NMFS using electronic means and it is a submission method readily available to them. The details of the proposed procedures for the collection of cost recovery fees for the CDQ, AFA, Aleutian Islands Pollock, and Amendment 80 Programs are discussed in detail below in the “Proposed Action” section of this preamble.

To calculate the annual fee liability for each permit holder in the CDQ, AFA, Aleutian Islands Pollock, and Amendment 80 Programs, NMFS would (1) calculate the standard price for each fishery species allocated under a program; (2) calculate the ex-vessel value of each fishery species allocated under a program by multiplying the standard price by the total amount of landings in each fishery under a program; (3) calculate the total ex-vessel value of all fisheries landed under a program by adding together the ex-vessel values of each fishery species under a program; (4) calculate the total program cost by adding together the costs of managing each fish species under a program; (5) calculate a fee percentage (not to exceed three percent of the ex-vessel value of fish harvested under any such program) for a program

by dividing total program costs by the total ex-vessel value for all fishery species under a program; and (6) calculate the fee amount that will be assessed for each permit holder by multiplying the fee percentage by the permit holder’s total ex-vessel value of the fishery landings under a program. The final figure would be the annual fee owed by each permit holder.

An effective cost recovery fee program requires using existing data or collecting additional data to calculate species ex-vessel values, using a standardized methodology to assess program costs, assigning the appropriate fee to each person holding a permit, and ensuring that fees are submitted in full and on time. The primary components of the cost recovery fee programs proposed in this action include defining the: (1) Person and permit subject to cost recovery fee liability; (2) fee percentage; (3) ex-vessel value; (4) ex-vessel prices; (5) information sources; (6) reimbursable costs; (7) fee liability notice and submission method; (8) payment compliance; and (9) annual reporting. Each of these components is discussed in the following sections of the preamble.

#### *A. Person and Permit Subject to Cost Recovery Fee Liability*

To implement a cost recovery fee program, NMFS must identify the person and permit that are subject to the fee liability. As described above in the “Statutory Authority” section, the Magnuson-Stevens Act definition of “person” includes any individual, corporation, partnership, association, or other non-individual entity. The permit is the documentation that grants a person an exclusive harvest privilege.

In each of the cost recovery fee programs proposed in this action there is documentation that grants a person permission to fish for a certain percentage or specific amount of the TACs allocated to that program. The person receiving the exclusive harvesting privilege and the nature of the permit providing that privilege is different for each of the proposed cost recovery fee programs, as shown in Table 2. A more detailed description of the person and permit that would be subject to cost recovery for each program is provided in the “Proposed Action” section of this preamble.

TABLE 2—SUMMARY OF PROPOSED COST RECOVERY FEE PROGRAMS, PERSON(S) RECEIVING THE EXCLUSIVE HARVEST PRIVILEGE, AND THE “PERMIT” AUTHORIZING THE HARVEST PRIVILEGE

Proposed Cost Recovery Fee Program	Person receiving an exclusive harvest privilege for a portion of a fishery TAC	Annual permit authorizing exclusive harvest privilege for a portion of a fishery TAC
CDQ Program .....	CDQ group .....	Annual CDQ Group Quota Allocations matrix on Alaska Region Web site at <a href="http://alaskafisheries.noaa.gov">http://alaskafisheries.noaa.gov</a> .
AFA Inshore Sector .....	AFA Inshore Cooperative .....	AFA inshore cooperative fishing permit.
AFA Catcher/Processor Sector .....	AFA Offshore Joint Cooperative ...	Table 3 of the BSAI final groundfish harvest specifications published in the <b>Federal Register</b> .
AFA Mothership Sector .....	AFA Mothership Cooperative .....	Table 3 of the BSAI final groundfish harvest specifications published in the <b>Federal Register</b> .
Aleutian Islands Pollock .....	Aleut Corporation .....	Table 3 of the BSAI final groundfish harvest specifications published in the <b>Federal Register</b> .
Amendment 80 .....	Amendment 80 cooperative .....	Amendment 80 CQ permit.

In addition to specifying the person subject to cost recovery, NMFS would require program participants to designate an individual who would be responsible for submitting the cost recovery fee to NMFS. A more detailed description of this proposed requirement is provided in section IV of this preamble.

#### B. Fee Percentage

Section 304(d)(2) of the Magnuson-Stevens Act specifies that a cost recovery fee may not exceed three percent of the ex-vessel value of the fish harvested under the fisheries subject to cost recovery. Sections 1.8.4, 1.8.5, and 1.8.6 of the RIR/IRFA estimate the cost recovery fee percentage for the CDQ, AFA, Aleutian Islands Pollock, and Amendment 80 Programs based on estimated ex-vessel revenue and program costs from 2010 through 2013. The estimated annual cost recovery fee percentages for the proposed cost recovery fee programs range from a minimum of 0.29 percent of the ex-vessel value of Bering Sea pollock allocated to AFA inshore cooperatives to a maximum of 1.62 percent of the ex-vessel value of fisheries allocated to Amendment 80 cooperatives. To reach the maximum fee percentage, program costs would have to increase significantly or fishery revenue would need to decline significantly. NMFS does not anticipate increases in management costs or declines in fishery revenue by amounts large enough to reach the three percent level in the foreseeable future in any of the proposed cost recovery fee programs.

The cost recovery fee percentage for a cost recovery program would be equal to the program costs divided by the ex-vessel value of the fishery species covered by that program. The program costs would be the program costs for the most recent Federal fiscal year, and the ex-vessel value of the fishery species is the ex-vessel value of the landings

subject to the cost recovery fee liability for the current calendar year. Under the proposed regulations, the fee percentage is calculated using the program costs from the most recent Federal fiscal year. Specifically, a cost recovery fee program participant would be required to pay their fee by December 31 of a calendar year, based on the costs incurred for management, data collection, and enforcement of that program from October 1 of the previous calendar year through September 30 of the current calendar year.

NMFS intends to use this accounting method to ensure that program costs associated with the management, data collection, and enforcement of a limited access privilege program and the CDQ Program can be reviewed, by NMFS, prior to the time that the cost recovery fee is due. It would also reduce administrative burden and costs to track program costs as they currently accrue and are debited from specific accounts, on a Federal fiscal year basis. NMFS would calculate and publish the fee percentage for the CDQ groundfish and halibut, AFA and Aleutian Islands Pollock, and Amendment 80 Programs in the **Federal Register** by December 1 of the year in which landings subject to cost recovery were made.

#### C. Ex-Vessel Value

The ex-vessel value of fish harvested under a permit would equal the sum of all payments of monetary worth made for the sale of raw, unprocessed catch of the species subject to cost recovery. This would include any retroactive payments (e.g. bonuses, delayed partial payments, post-season payments) made for fish harvested under a permit for previously landed fishery species. Retroactive payments would be part of the ex-vessel value and as such have a fee liability. The fee liability for retroactive payments would be based on the fee percentage in effect at the time the fish was received by the processor.

For example, if a retroactive payment is received after the initial payment was made at the time of landing, but during the same calendar year in which the landing was made, the cost recovery fee for those retroactive payments also would be due by December 31 of the year in which the landings were made. If retroactive payments are received by permit holders during the year following the calendar year when those fish were landed, then cost recovery fees associated with those post-season retroactive payments would be due by December 31 of the calendar year the retroactive payments were received and be subject to the cost recovery fee in effect for the calendar year in which the retroactive payment was made. This method for calculating ex-vessel value is similar to the method used in the cost recovery fee program for the Rockfish Program (76 FR 81248, December 27, 2011). Section 1.7.2 of the RIR/IRFA provides additional detail on the calculation of ex-vessel value and retroactive payments.

#### D. Ex-Vessel Prices

NMFS would use standard prices rather than actual prices to calculate the ex-vessel value of landings for each fishery species. A standard price would be determined using information on landings purchased (volume) and ex-vessel value paid (value). The processors of fish harvested under the CDQ groundfish and halibut, AFA, Aleutian Islands Pollock, and Amendment 80 Programs would provide this information. NMFS would annually summarize volume and value information for landings of all fishery species subject to cost recovery in order to estimate a standard price for each fishery species, except for rock sole.

Rock sole is allocated to and harvested by vessels participating in the Amendment 80 and CDQ Programs. Rock sole volume and value reports would be reported once each year, but

fees would be assessed based on the volume and value of landings of rock sole that occur in the first quarter of the year (January 1 through March 31), and fees would be assessed based on the aggregated volume and value of landings in the last three quarters of the year (April 1 through December 31). The difference in reporting requirements for rock sole arises from the need to capture significant differences in price and value in the rock sole that are landed in the first quarter of the year compared to the price and value in the remaining part of the year. See Section 1.7.2.2.5 of the RIR/IRFA for additional detail on rock sole prices.

Use of a standard price is not precluded under section 304(d)(2) of the Magnuson-Stevens Act. NMFS uses a standard price in the cost recovery fee programs for the Crab Rationalization Program and the Rockfish Program. The use of an actual price would require that the permit holder or a designated representative document all landings and prices for fishery species subject to cost recovery. This additional documentation can impose additional costs on permit holders to document and retain information on all landings and prices. The cost recovery fee program for the Halibut and Sablefish IFQ Program allows permit holders to use either standard or actual prices. However, very few Halibut and Sablefish IFQ permit holders have used actual prices. Based on that experience, NMFS proposes to use a standard price in all cost recovery fee programs proposed under this action. NMFS would publish the standard prices by fishery species in the **Federal Register** by December 1 of year in which the landings subject to cost recovery were made.

#### *E. Information Used to Calculate Ex-Vessel Value*

NMFS proposes three methods for collecting and aggregating volume and value data to calculate standard prices. The first method would implement data collection using two new volume and value reports to calculate standard prices for all fishery species other than halibut and pollock. The second method would use data already collected under the IFQ Buyer Report to calculate standard prices for halibut. The third method would use data already collected under the Commercial Operator's Annual Report (COAR) to calculate standard prices for pollock. NMFS proposes to implement the two new volume and value reports for fishery species other than halibut and pollock because sufficient information is not otherwise available on a timely

basis from other sources to determine a standard price paid by processors for a fishery species subject to cost recovery. This approach minimizes the cost and burden of recordkeeping and reporting requirements on fishery participants.

In developing the proposed rule, NMFS held public workshops in Anchorage, AK, and Seattle, WA, in 2013 to receive input from affected industry participants on appropriate methods for calculating the standard price for specific fishery species (78 FR 25426, May 1, 2013). Participants in these public workshops supported the methods proposed for calculating the standard price in this rule. The following sections of the preamble describe the methods NMFS would use to collect and aggregate volume and value data to calculate standard prices and ex-vessel values.

#### 1. Volume and Value Reports

Two types of new volume and value reports would be required under the proposed action—a Pacific Cod Ex-Vessel Volume and Value Report and a First Wholesale Volume and Value Report.

This proposed rule would require shoreside processors, designated on a Federal Processor Permit (FPP), and motherships, designated on a Federal Fisheries Permit (FFP), that process landings of either CDQ Pacific cod or BSAI Pacific cod harvested by a vessel using trawl gear to submit a Pacific Cod Ex-vessel Volume and Value Report. The Pacific Cod Ex-vessel Volume and Value Report would require shoreside processors and motherships to submit information including the total pounds of Pacific cod purchased, the total gross ex-vessel value paid by gear type (trawl and fixed gear), as well as identifying information for the processor (*i.e.*, Federal processor permit number, mailing address, contact phone number, etc.). The total pounds of Pacific cod purchased and the total gross ex-vessel value paid by each gear type from January 1 through October 31 of each year would be reported as aggregated data. NMFS notes that shoreside processors and motherships already collect these data as part of their existing business operations, and to comply with other data collection requirements. Therefore, only the submission of this information to NMFS by November 10 would be a new requirement.

The information submitted would be used by NMFS to calculate an annual standard price for Pacific cod for Amendment 80 cooperatives and CDQ groups. NMFS would calculate a separate standard price for Pacific cod

harvested by trawl gear and Pacific cod harvested by fixed gear. The fixed gear standard price would apply to all landings made by vessels subject to cost recovery and using hook-and-line, jig, or pot gear. A standard price would be determined for trawl and fixed gear separately because the ex-vessel value of Pacific cod can differ between trawl and fixed gear (see section 1.7.2.2 of the RIR/IRFA for additional detail).

The standard price for trawl gear would be used for Amendment 80 cooperatives and for trawl vessels harvesting Pacific cod allocated to CDQ groups. The standard price for fixed gear would be used for vessels harvesting Pacific cod for CDQ groups using hook-and-line, jig, or pot gear. Because Amendment 80 cooperatives only harvest Pacific cod using trawl gear, NMFS does not anticipate using a standard price derived from fixed gear vessels for Amendment 80 cooperatives.

The second type of new volume and value report that would be required is the First Wholesale Volume and Value Report. A First Wholesale Volume and Value Report would be used to collect volume and value data for all fishery species of groundfish allocated to the Amendment 80 and CDQ Program except for fixed gear sablefish, halibut, Pacific cod, and pollock. Section 1.7 of the RIR/IRFA lists each fishery species that would be subject to the requirements of a First Wholesale Volume and Value Report. The instructions on the First Wholesale Volume and Value Report would also list these species on an annual basis.

This proposed rule would require that Amendment 80 vessel owners submit a First Wholesale Volume and Value Report. NMFS would use data from Amendment 80 vessels to calculate standard prices for species covered by the First Wholesale Volume and Value Report because these species are harvested primarily, if not almost exclusively, by Amendment 80 vessels (see Section 1.7.2.1 of the RIR/IRFA for additional detail). The First Wholesale Volume and Value Report would require information on the fishery species and pounds harvested, the first wholesale value of the fishery species, as well as identifying information for the catcher/processor (*i.e.*, Federal Fisheries Permit number, mailing address, contact phone number, etc.). The pounds harvested and first wholesale value from January 1 through October 31 each year would be reported as aggregated data, with one exception for rock sole. Section 1.7.2.2.5 of the RIR/IRFA notes that rock sole wholesale values differ substantially between first quarter values and second to fourth quarter values. During the first

quarter of the year (January 1 through March 31) rock sole contain roe and this product is worth substantially more than rock sole product that does not contain roe landed later in the year. Therefore, NMFS would collect data from January 1 through March 31 to establish a standard price for rock sole landed during this period, and use data from April 1 through October 31 to establish a standard price for rock sole landed for the remainder of the calendar year. Amendment 80 vessel owners already collect these data to comply with other data collection requirements. Therefore, only the submission of this information to NMFS in the First Wholesale Volume and Value Report by November 10 of the year in which the landings were made would be a new requirement.

The data from the First Wholesale Volume and Value Report would satisfy requirements in section 304(d)(2) of the Magnuson-Stevens Act that cost recovery fees be based on the ex-vessel value of fish. The First Wholesale Volume and Value Report would be used to obtain volume and value information for directed fisheries where fishery species are harvested and processed exclusively, or almost exclusively, by trawl catcher/processors. For these fishery species, there is no reliable ex-vessel price generated from the sale of fish from a harvester to a processor. Therefore, the ex-vessel price for those fishery species must be estimated. An ex-vessel price can be estimated by using information on the first wholesale price. The first wholesale price is the market price of the primary processed fishery product.

Since the late 1990s, the Alaska Fisheries Science Center (AFSC) has imputed an ex-vessel price for fish from the first wholesale price based on a fraction of the processed-product price. The imputed ex-vessel price, also referred to as the proxy price, is the value of processed products from catcher/processor vessels divided by the retained round-weight (unprocessed weight) of catch and multiplied by a factor of 0.4 to correct for the value added to the fish product by processing. Processed product values and round weights would be derived from the First Wholesale Volume and Value reports submitted by Amendment 80 vessels. A more detailed discussion of the methods for determining a proxy price can be found in section 1.7.2 of the RIR/IRFA prepared for this action.

The reporting period for the Pacific Cod Ex-vessel Volume and Value Report and the First Wholesale Volume and Value Report would be from January 1 to October 31. These reports would be

due on November 10. NMFS proposes this time period to allow enough time for submitter to prepare the reports and for NMFS to prepare the standardized prices to be published in the **Federal Register** by December 1 of the year in which the landings were made. These reports would need to be submitted electronically through the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Electronic submittal would reduce costs, administrative burden, and ensure that the reports are submitted in a timely fashion.

The standard price for the entire calendar year for species subject to cost recovery fees other than fixed-gear sablefish, halibut, and pollock would be based on volume and value data from January 1 through October 31. NMFS expects these data would provide an accurate ex-vessel price for fish harvested in November and December for several reasons. First, for many fisheries, effort in November and December subsides. Therefore, landings in those fisheries in November and December represent a small proportion of overall annual harvests. For example, landings of Atka mackerel, sablefish, Pacific cod, and Pacific ocean perch have generally concluded by October 31 and few landings are made in November and December relative to the rest of the year. Second, NMFS reviewed information from existing data sources, such as the COAR, and determined that ex-vessel values for fishery species proposed for cost recovery do not differ substantially in November and December relative to ex-vessel values prior to October. Therefore, even if data were collected from landings in November and December it would not be expected to have a substantive effect on the annual estimate of ex-vessel price for a fishery species (See Section 1.7.2.2 of the Analysis for additional detail). Although rock sole prices do fluctuate during a calendar year, NMFS would be collecting data during the first quarter of the year (from January 1 through March 31) and from the remainder of the year (April 1 through October 31) to reflect those intra-annual variations in prices. In the specific case of rock sole, prices after April 1 and through October 31 are relatively constant and similar to prices in November and December. Therefore, collecting data on rock sole prices after October would not provide additional detail needed to establish a standard price for rock sole for the last three quarters of the year (April through December 31). Finally, during public workshops, NMFS discussed limiting the volume and value reporting period

to the first ten months of the year (January 1 through October 31). Members of the industry that participated in the public workshops did not raise concerns about this approach. NMFS notes that it would continue to monitor ex-vessel prices received through the COAR, as well as through feedback from affected industry participants. If needed, NMFS can adjust the reporting period in the future through subsequent rulemaking to reflect any variations in prices that may be observed.

## 2. IFQ Buyer Report

NMFS currently requires participants in the Halibut and Sablefish IFQ Program to submit a cost recovery fee based on either actual prices, or standard prices, for IFQ halibut and sablefish. Standard prices are determined based on information from an IFQ Buyer Report (see § 679.5(l)(7)(i)). An IFQ Buyer Report is required from each IFQ registered buyer that operates as a shoreside processor and that receives and purchases IFQ halibut or sablefish or CDQ halibut. The IFQ Buyer Report includes information regarding volume and value of IFQ halibut and sablefish and CDQ halibut landings by month, port, and IFQ registered buyer.

The IFQ Buyer Report is based upon a reporting period from October 1 of the previous year to September 30 of the current year. The IFQ Buyer Report is due on October 15 each year. NMFS proposes using the standard prices calculated from the IFQ Buyer Report for the Halibut and Sablefish IFQ Program to establish standard prices and ex-vessel values for CDQ halibut and fixed gear sablefish by month. NMFS would use standard prices and ex-vessel values calculated from information already required to be submitted under current regulations to avoid duplication with other data collection programs, and eliminate the costs and burden associated with developing a new data collection method for establishing standard prices and ex-vessel value for the CDQ fisheries. NMFS would be able to determine a standard prices and ex-vessel values for the CDQ halibut and fixed-gear sablefish fisheries harvested from October 1 of the previous calendar year through September 30 of the current year and provide that information to CDQ groups by December 1 of the current calendar year as part of their annual fee liability statement.

## 3. Commercial Operator's Annual Report (COAR)

NMFS proposes to use the COAR to determine the standard price and ex-

vessel value for the Bering Sea and Aleutian Islands pollock fisheries. Federal regulations at § 679.5(p) require all processors of fishery resources harvested in Alaska to submit the COAR. The COAR collects data on the species landed, area where the fish were harvested, processor receiving delivery, gear used, pounds purchased, and total amount paid. The information collected in the COAR provides the data needed to establish a standard price and ex-vessel value for AFA and Aleutian Islands pollock based on deliveries made to AFA inshore processors.

Because data from the COAR are not available until November following the calendar year in which they are collected, they are not suitable for use for establishing a standard price where values change substantially from year to year. Section 1.7.2.2.1 of the RIR/IRFA notes that aggregate prices of pollock do not change substantially from year to year, particularly when aggregated over an entire calendar year as proposed in this rule. Therefore, COAR data collected in the previous calendar year could effectively be used to establish a standard price for BSAI pollock fisheries during the current calendar year.

Because the aggregate prices of pollock tend to remain stable from year-to-year, the quantity of harvest is the

most significant factor in determining the ex-vessel value of pollock. Therefore, NMFS does not anticipate that using standard prices calculated from the COAR would substantively affect the amount of cost recovery fees an AFA cooperative or the Aleut Corporation would have to pay if the fee liability is not expected to exceed three percent of the standard ex-vessel value. As noted earlier, NMFS does not expect the fee for the AFA or Aleutian Island Pollock Programs to exceed three percent in the foreseeable future. Since the estimates of the cost recovery fees are less than the three-percent limit, the precision of the data used to establish the standard price and the standard ex-vessel value will have negligible impact on the fee liability that would be paid by each entity.

Input from members of the affected industry during the public workshops indicated that they support using annual COAR data to estimate prices for the AFA and Aleutian Islands pollock fisheries, even though it would require that previous year's prices are used to establish a standard ex-vessel value. The use of COAR data to establish a standard ex-vessel value for the BSAI pollock fisheries would provide a reasonable method to establish a standard price, would avoid duplication with existing

data collection programs, and eliminate the costs and burden associated with developing a new data collection method. The standard price, as calculated using COAR data from AFA inshore processors, would be used to determine the standard price for all AFA and Aleutian Islands pollock landings. For more information on the COAR, please see <http://www.adfg.alaska.gov/index.cfm?adfg=fishlicense.coar>.

*F. Reimbursable Costs*

NMFS proposes to recover the incremental costs associated with the management, data collection, and enforcement of the CDQ groundfish and halibut, AFA, Aleutian Islands pollock, and Amendment 80 Programs. As described above in the "Statutory Authority" section of this preamble, this is consistent with NOAA policy for implementing cost recovery fee programs. Section 1.8.3 of the RIR/IRFA and Tables 1–34 and 1–35 in the RIR/IRFA includes detailed information about the types of costs that NMFS incurs in the management of the CDQ groundfish and halibut, AFA, Aleutian Islands pollock, and Amendment 80 Programs. These types of incremental costs that NMFS incurs are summarized in Table 3 below.

TABLE 3—SUMMARY OF THE TYPES OF INCREMENTAL COSTS ASSOCIATED WITH COST RECOVERY PROGRAMS

Cost	Example
Equipment Inspections .....	Inspecting at-sea scales that are required and implemented as part of the a cost recovery program to accurately weight harvests (e.g., AFA catcher/processors, Amendment 80 vessels).
Information collection and data management .....	Creating and maintaining software programs necessary to track the use of exclusive harvest privileges allocated under a program subject to cost recovery.
Rulemaking .....	Labor costs associated with developing and implementing regulations that modify a program subject to cost recovery.
Investigations .....	Investigating and enforcing violations associated with a cost recovery program (e.g., costs incurred investigating and enforcing provisions intended to limit the maximum permissible amount of quota share a person may hold and use).
Staff meeting travel and outreach .....	Attending and participating in meetings required to address issues related to a cost recovery meeting (e.g., travel associated with providing outreach on new regulatory provisions applicable to a program subject to cost recovery).
Catch accounting .....	Modifying catch accounting to specifically track the use of exclusive harvest privileges.
Catch monitoring .....	Deploying staff to monitor and track catch for a program subject to a cost recovery program (e.g., the Catch Monitoring and Control Plan Specialist used to monitor catch in the Rockfish Program).

NMFS does not currently account for incremental costs for each of these programs, because there is not a cost recovery fee program in place for these programs. NMFS has provided estimates of costs for managing the AFA, Aleutian Islands pollock, Amendment 80, and CDQ groundfish and halibut Programs based on the best available information, but lacks information to provide more precise estimates. NMFS would provide

a detailed accounting of costs once this rule became effective, if approved.

NMFS would capture the incremental costs of managing the fisheries through an established accounting system that allows NMFS to track labor, travel, and procurement. This process is described in Section 1.8.3 of the RIR/IRFA. This accounting system for management costs is consistent with the methods NMFS uses to account for costs in the

Halibut and Sablefish IFQ Program, Crab Rationalization Program, and Rockfish Program.

Once the incremental costs for the most recent Federal fiscal year are identified, that amount is recovered from all permit holders in the program. NMFS would adjust the total management costs, annually, to account for any adjustments or payments received during the previous calendar

year. For example, if payments received by CDQ groups in 2017 were slightly greater than the actual management costs incurred for the CDQ Program for that fee collection period, then NMFS would adjust the total management costs, which would then slightly lower the fee percentage due by the CDQ groups in 2018. Some slight adjustment in the total management costs to account for rounding, overpayment, or corrections to actual costs after the fee liability is due is anticipated. NMFS would accommodate these factors on an annual basis by adjusting the fee percentages in the following year for the affected program. In all cases, the fee percentage could not be set at an amount higher than three percent of the ex-vessel value of a program fisheries even if the actual costs for the previous year exceeded three percent of the standard ex-vessel value for the landings subject to cost recovery.

During public workshops held on this proposed action, participants in some fisheries that would be subject to a cost recovery fee requested that NMFS consider crediting, or reducing, the cost recovery fee for expenses that participants incur to cooperatively manage and monitor harvests. NMFS acknowledges that industry has taken an active role in establishing industry-based measures to coordinate and communicate information in fisheries for which participants receive an exclusive harvest privilege for a portion of the TAC, particularly in fisheries that utilize harvest cooperatives. However, regardless of these industry-based measures, NMFS has identified actual costs that it incurs that are directly related to the management, data collection, and enforcement of these programs.

Expenses that industry incurs that directly reduce the NMFS' costs for implementing and maintaining the program would reduce the cost recovery fee. That is, NMFS would not assess a fee for any costs it does not incur due to changes in fishing patterns with the implementation of a limited access privilege program. Section 1.8 of the RIR/IRFA provides additional detail on costs that are due to the implementation of the AFA, Aleutian Islands Pollock, Amendment 80, and CDQ Programs including the establishment of new permitting, regulatory provisions, monitoring requirements, data management, and other costs.

#### *G. Fee Liability Notice and Submission*

Each year by December 1, NMFS would send each permit holder or their designated representative a fee liability summary letter for the fees required for

that year. The fee liability summary letter would calculate each permit holders' fee liability. The fee liability would be calculated by NMFS based on: (1) The standard price determined by using data from the applicable volume and value report, IFQ Buyer Report, or the COAR; (2) the total amount of landings by a permit holder from January 1 through November 30 of that year; (3) NMFS's estimate of landings for a permit holder from December 1 through December 31 of that year; and (4) and NMFS' actual costs from October 1 of the previous calendar year through September 30 of the current calendar year. The total cost recovery fee would need to be submitted electronically to NMFS no later than December 31 of the calendar year in which the landings were made.

Because the fee liability notice would be sent on December 1, and the fee liability is assessed through the end of the year (December 31), NMFS would estimate landings for each permit holder that would be made between December 1 and December 31. NMFS would provide an estimate of landings between December 1 and December 31 because it is not possible to prepare and provide a fee liability notice to each permit holder for landings through December 31, and require payment from each permit holder before fishing begins on January 1 of the following year.

NMFS notes that estimates of landings would only be required for some of the fisheries subject to a cost recovery fee. In the case of the AFA and Aleutian Islands Pollock Programs, directed fishing for pollock is prohibited after November 1 (see regulations at § 679.23(e)(2)(ii)), therefore there would be no need to estimate landings from December 1 through December 31. Some CDQ fisheries are closed prior to December 1, including Atka mackerel, fixed-gear sablefish, and halibut (see regulations at § 679.23(e)(4)(iii)). Therefore, there would be no additional landings in December for these fisheries, and an estimate of landings would not be required from December 1 through December 31.

For other Amendment 80 and CDQ groundfish fisheries (e.g., Pacific ocean perch, Pacific cod, yellowfin sole, and other flatfish fisheries), historic data indicate that the amount of landings during December are small relative to landings during the previous 11 months, and NMFS is likely to be able to accurately estimate landings based on the amount of a permit holder's remaining allocation during a year and projections of landings after December 1. Section 1.10 of the RIR/IRFA contains additional information on landings of

catch in December and methods NMFS would use to estimate landings for each program.

Any actual landings from December 1 through December 31 that were less than the estimated landings during this period would be accounted for in reporting for the following year and would result in a credit to the permit holder and would be deducted from the permit holder's fee liability for the following year. Any actual landings that were greater than the estimated landings would be accounted for in reporting for the following year and would result in a debit to the permit holder and would be added to the permit holder's fee liability for the following year. Section 1.10 of the RIR/IRFA also describes how NMFS would adjust the fee liability for a permit holder from one year to the next to account for differences in actual and estimated landings from December 1 through December 31.

A permit holder would incur a fee liability for all fish that is landed and debited against the permit authorizing the permit holder to land fish in a program subject to cost recovery. This proposed rule would require a permit holder to designate a representative who would be responsible for submitting this payment to NMFS on or before the due date of December 31 of the year in which the landings were made. NMFS notes that the permit holder must self-collect the amount due for all landings on his or her permit(s). NMFS advises program participants subject to cost recovery to ensure that adequate funds are retained on an annual basis to ensure that the fee liability can be paid. For example, during the first year of implementation, it may be advisable for the permit holder to retain a fixed percentage of the value of ex-vessel prices paid to harvesters for CDQ groundfish and halibut, AFA, Aleutian Islands Pollock, and Amendment 80 species throughout the year. This would ensure that the permit holder could pay the required fees for fishing during the calendar year when the fee is due on December 31 of that calendar year. The "Proposed Action" section of this preamble provides estimates of the range of fee percentages that may be required for each of the cost recovery fee programs, and could be used as a basis to establish a reasonable amount for each permit holder to retain.

#### *H. Payment Compliance*

This proposed rule would require a permit holder to designate a representative to submit the fee on the permit holder's behalf. Any permit holder who has incurred a fee liability would be required to pay the fee

electronically to NMFS by December 31 of the year in which the landings were made. A permit holder would need to ensure full payment for their cost recovery fee liability by December 31 of the year in which the landings were made.

This proposed rule would establish an exception to this general requirement for the full payment of a cost recovery fee liability for the AFA Offshore Joint Cooperative. During public workshops prior to the development of this proposed rule, participants in the AFA Offshore Joint Cooperative noted the challenges of adequately coordinating among all members of their cooperative given the relatively large numbers of participants in the AFA Offshore Joint Cooperative. Industry participants suggested that withholding the entire Bering Sea pollock directed fishery allocation to the AFA Offshore Joint Cooperative if a complete and timely payment is not received would not be an appropriate management response. NMFS proposes that if the designated representative for the AFA Offshore Joint Cooperative has made a timely payment to NMFS of an amount less than the fee liability NMFS estimated, NMFS may choose to issue a quota allocation corresponding to the same percentage of the cost recovery fee received from the cooperative or group. For example, if only 90 percent of the fee liability were received on a timely basis, NMFS would only issue 90 percent of the Bering Sea pollock directed fishery TAC to the AFA Offshore Joint Cooperative.

NMFS does not propose to extend this provision to AFA inshore cooperatives, or the AFA mothership cooperative, because participants in other AFA cooperatives did not raise similar concerns about coordination. NMFS would not propose to extend this same provision to the Amendment 80 or CDQ Programs because these programs receive allocations from more than one species, and determining which allocation to withhold due to a partial payment is not possible. In addition, NMFS has not received a request from participants in the Amendment 80 or CDQ Programs to establish such a provision. NMFS specifically requests comment on the need and applicability of this proposed provision for the AFA Offshore Joint Cooperative.

If a permit holder or designated representative fails to submit full payment for their cost recovery fee liability by December 31 of the year in which the landings were made, under this proposed rule, NMFS could 1) at any time thereafter send an initial administrative determination (IAD) to

the permit holder or designated representative stating their fee liability; and 2) disapprove any application to transfer quota to or from the permit holder or group which receives an annual allocation. The IAD would state that the permit holder's estimated fee liability due from the permit holder had not been paid. Any such formal determination may be appealed.

NMFS has recently established a National Appeals Office (NAO) located at NMFS Headquarters in Silver Spring, Maryland. In 2014, NMFS adopted rules of procedure for NAO appeals in 15 CFR part 906 (79 FR 7056, February 6, 2014). The appeal procedures in 15 CFR part 906 are mandatory for appeals in limited access privilege programs developed under section 303A of the Magnuson-Stevens Act. None of the programs subject to cost recovery in this proposed rule were developed under section 303A of the Magnuson-Stevens Act, and appeals are not required to be heard under the procedural rules at 15 CFR part 906. NMFS may, however, use the NAO to review appeals in programs where NAO does not have mandatory jurisdiction. NMFS proposes that the NAO review any appeals submitted under the provisions of this proposed action. These appeals would use NAO procedural rules.

Under NAO procedural rules, an applicant, a permit holder in this case, who appeals an IAD would not receive a permit designating an exclusive harvest privilege for a portion of the TAC in limited access privilege program or CDQ fisheries until the appeal was resolved in the applicant's favor. Finally, upon final agency action, NMFS may continue to prohibit issuance of permits or quota allocation for any subsequent calendar years until NMFS receives full payment of any unpaid fees. If payment is not received within 30 days after final agency action, the agency may pursue collection of the unpaid fees.

Upon issuance of final agency action, payment submitted to NMFS in excess of any cost recovery fee liability determined to be due by the final agency action will be returned to the permit holder unless he or she requests the agency to credit the excess amount against the permit holder's future cost recovery fee liability. Payment processing fees may be deducted from any fees returned to the permit holder or designated representative.

Administrative fees may be assessed if the account drawn on to pay cost recovery fee liability has insufficient funds, or if the account is delinquent. Additionally, interest would begin accruing the day after the due date up

until payment is received. The interest rate is set annually by the Department of Treasury. If payment has not been received 90 days after the due date, NMFS may also assess a one-time penalty fee of six percent of the amount owned.

#### *I. Annual Reports*

NMFS would annually publish a report for each of the proposed cost recovery fee programs about the performance of the program. The annual report would provide information regarding the amount of the fees received by NMFS, the disposition of the fees, and the program costs used in determining the fee for the previous year. The annual report is consistent with the reports NMFS provides for the three other cost recovery fee programs implemented in the Alaska Region.

#### **IV. The Proposed Action**

The proposed action would implement a cost recovery fee program for the AFA, Aleutian Islands Pollock, Amendment 80, and CDQ groundfish and halibut Programs. The following sections provide additional detail on the primary components of each of the proposed cost recovery fee programs, and a discussion of the estimated reimbursable costs and cost recovery fees for each program. A detailed description of each proposed cost recovery fee program can be found in section 1.10 of the RIR/IRFA.

##### *A. Pollock Cost Recovery Fee Programs*

###### **1. AFA Cost Recovery Fee Program Applicable Entities**

As described in the "American Fisheries Act Program" section of this preamble, the AFA allocates the Bering Sea pollock TAC to three sectors—catcher/processor, mothership, and inshore. Each of these sectors created one or more cooperatives to promote the rational and orderly harvest and processing of pollock (see Table 5 of this preamble). Because management costs can differ among these three sectors, NMFS proposes to assess management fees for the each of the AFA sectors separately. These are explained in greater detail in Table 7 of this preamble, and section 1.8.6 of the RIR/IRFA.

NMFS proposes adding regulations at § 679.61(e)(1)(vi) that require each AFA cooperative include a requirement that lists the obligations of members of a cooperative to ensure the full payment of all AFA fee liabilities that may be due. This proposed regulation does not proscribe the specific measures that an AFA cooperative may choose to

establish, but does require that those provisions are listed in the cooperative agreement. This requirement is intended to encourage and facilitate coordination among AFA cooperative members for the timely and complete payment of fees. NMFS implemented a similar requirement in the Rockfish Program to facilitate coordination in that cost recovery fee program, and the provisions proposed in this rule would be appropriate for the AFA cooperatives. NMFS is proposing a similar requirement for Amendment 80 cooperatives.

The AFA Offshore Joint Cooperative would be subject to an AFA cost recovery fee. The AFA Offshore Joint Cooperative receives an exclusive harvest privilege of up to 99.5 percent of the TAC allocated to the catcher/processor sector. As noted earlier in this preamble, the one statutorily defined

catcher/processor participant who is not a member of the AFA Offshore Joint Cooperative is not subject to an AFA cost recovery fee. The individual responsible for submitting the cost recovery fee for the catcher/processor sector would be the AFA Offshore Joint Cooperative's designated representative.

The AFA Mothership Fleet Cooperative would be subject to an AFA cost recovery fee. The AFA Mothership Fleet Cooperative receives an exclusive harvest privilege for the AFA mothership sector. All participants in the AFA mothership sector are members of the AFA Mothership Fleet Cooperative. The individual responsible for submitting the cost recovery fee for the mothership sector is the Mothership Fleet Cooperative's designated representative.

AFA inshore sector cooperatives would be subject to an AFA cost

recovery fee. The AFA Inshore Catcher Vessel Cooperative Permit (see § 679.5(l)(6)) lists the AFA catcher vessels and processors that are members of an inshore cooperative and the percentage of the AFA inshore sector allocation that a cooperative receives. The individual responsible for submitting the cost recovery fee for each inshore cooperative would be the designated cooperative representative identified in a cooperative's application for an AFA Inshore Catcher Vessel Cooperative Permit.

Table 4 summarizes the information used to determine standard prices, any additional reporting requirement, calculation of the standard ex-vessel value, the person responsible for submitting the fee payment, and submittal requirements and deadlines for each AFA cooperative.

TABLE 4—SUMMARY OF THE AFA COST RECOVERY FEE PROGRAM ELEMENTS

What species are subject to a cost recovery fee? How is the standard price determined?	Bering sea pollock. NMFS would calculate a standard price based on data from the COAR from the previous calendar year.
Are there additional reporting requirements for AFA cooperatives to determine the standard price? How will NMFS determine the Standard Ex-vessel Value?	No. NMFS will add total reported landings of Bering Sea pollock from January 1 through November 30, estimate total landings from December 1 through December 31, if any, for each AFA cooperative and multiply that amount by the standard price determined by COAR data to calculate a Standard Ex-vessel value for each AFA cooperative.
Who is responsible for fee payment and (how many cooperatives are estimated to receive a fee liability notice)?	AFA Catcher/Processor Sector: AFA Offshore Joint Cooperative designated representative (1). AFA Mothership Sector: AFA Mothership Fleet Cooperative designated representative (1). AFA Inshore Sector: designated cooperative representative on each AFA Inshore Catcher Vessel Cooperative Permit application (7).
When are the standard prices published in the <b>Federal Register</b> and when are fee liability notices sent?	The standard prices are published in the <b>Federal Register</b> by December 1 of each calendar year, and the fee liability notices will be sent to each designated representative by December 1 of each calendar year.
When are fee liability payments due and how are they submitted?	Fee liability notices are due by December 31 of each year, and must be submitted online. Submittal forms are available online at: <a href="http://www.alaskafisheries.noaa.gov">http://www.alaskafisheries.noaa.gov</a> .

2. Aleutian Islands Pollock Cost Recovery Fee Program Applicable Entities

The annual Aleutian Islands pollock TAC is allocated to the Aleut Corporation. The representative designated by the Aleut Corporation

would be responsible for submitting the cost recovery fee. The CEO of the Aleut Corporation is the designated representative, unless the Aleut Corporation Board of Directors notifies the Regional Administrator in writing of an alternate designated representative. Table 5 summarizes the information

used to determine standard prices, any additional reporting requirement, calculation of the standard ex-vessel value, the person responsible for submitting the fee payment, and submittal requirements and deadlines for each AFA cooperative.

TABLE 5—SUMMARY OF THE ALEUTIAN ISLANDS POLLOCK COST RECOVERY FEE PROGRAM ELEMENTS

What species are subject to a cost recovery fee? How is the standard price determined?	Aleutian Islands pollock. NMFS would calculate a standard price based on data from the COAR from the previous calendar year. The standard price would be applied to all landings during a calendar year.
Are there additional reporting requirements for the Aleut Corporations to determine the standard price? How will NMFS determine the Standard Ex-vessel Value?	No. NMFS will add total reported landings of Aleutian Islands pollock from January 1 through November 30, estimate total landings from December 1 through December 31, if any, and multiply that amount by the standard price determined by COAR data to calculate a Standard Ex-vessel value for each AFA cooperative.

TABLE 5—SUMMARY OF THE ALEUTIAN ISLANDS POLLOCK COST RECOVERY FEE PROGRAM ELEMENTS—Continued

Who is responsible for fee payment and (how many cooperatives are estimated to receive a fee liability notice)?	Aleut Corporation (1).
When are the standard prices published in the <b>Federal Register</b> and when are fee liability notices sent?	The standard prices are published in the <b>Federal Register</b> by December 1 of each calendar year, and the fee liability notices will be sent to each designated representative by December 1 of each calendar year.
When are fee liability payments due and how are they submitted?	Fee liability notices are due by December 31 of each year, and must be submitted online. Submittal forms are available online at: <a href="http://www.alaskafisheries.noaa.gov">http://www.alaskafisheries.noaa.gov</a> .

3. Costs, Values, and Fee Percentage

Table 6 provides a summary of AFA and Aleutian Islands pollock gross ex-vessel revenue, recoverable costs, and what the resulting cost recovery fee percentage would have been for 2009 through 2013. Recoverable costs are based on management costs estimated to be incurred by several divisions within the Alaska Region of NMFS, NOAA Office of Law Enforcement (NMFS OLE), and the NMFS Observer Program (Observer Program). NMFS notes that recoverable costs were not identified in the RIR/IRFA for the Alaska Department of Fish and Game (ADF&G), the Alaska Fisheries Science Center (AFSC), or the North Pacific Fishery Management Council. NMFS notes that a directed fishery for Aleutian Islands pollock has not occurred since the implementation

of the Aleutian Islands Pollock Program in 2005, and NMFS has reallocated the available allocation of Aleutian Islands pollock to the Bering Sea fishery. Because the directed pollock fishery in the Bering Sea is managed under the AFA, the revenues and costs from the reallocated Aleutian Islands pollock are associated with the AFA. This means that during this time period, the recoverable costs would have been associated with the AFA Program. Those revenues and costs are described in Table 6 of this preamble. If directed pollock fishing occurs in the Aleutian Islands in future years, NMFS would assess the Aleut Corporation a cost recovery fee for the directed Aleutian Islands pollock fishery.

If the same fee percentage were applied to all AFA sectors, the fee would have ranged from a high of 0.58

percent in 2010 to a low of 0.29 percent in 2012. Because the management costs associated with the AFA catcher/processor, inshore, and mothership sectors are known to vary, Table 6 provides estimates of the cost recovery fee percentage when it is established for each sector—catcher/processor (C/P), mothership (MS), and inshore. Those data indicate that the catcher/processor sector would pay a greater cost recovery fee than the mothership or inshore sector. The catcher/processor sector would pay a greater cost recovery fee percentage because enforcement and observer program costs are greater for that sector, relative to the others. Additional detail on the costs associated with each of the AFA sectors is provided in section 1.8.6 of the RIR/IRFA.

TABLE 6—SUMMARY OF AFA AND ALEUTIAN ISLANDS POLLOCK PROGRAM ESTIMATED COSTS, EX-VESSEL VALUE, AND FEE PERCENTAGE BY YEAR AND BY SECTOR

Entity incurring costs	Cost incurred for each AFA sector			
	C/P	MS	Inshore	Total
<b>Costs (estimated for all years)</b>				
NMFS Alaska Region .....	\$97,832	\$47,518	\$179,452	\$324,802
NMFS OLE .....	246,460	49,292	197,168	492,920
Observer Program .....	239,096	53,911	96,454	389,461
Total (Millions) .....	0.58	0.15	0.47	1.21
AFA Sector	Year			
	2010	2011	2012	2013
<b>Ex-vessel Value per year (\$ Millions)</b>				
C/P .....	\$83	\$141	\$168	\$155
MS .....	21	35	42	39
Inshore .....	104	176	208	194
AFA sector	Year			
	2010	2011	2012	2013
<b>Estimated Fee Percentage (Percent of Ex-vessel Value)</b>				
C/P .....	0.70%	0.41	0.35	0.38
MS .....	0.72%	0.43	0.36	0.39
Inshore .....	0.45%	0.27	0.23	0.24

In each year considered in Table 6, the fee percentage for each sector was

less than 0.75 percent of the ex-vessel value of the fishery. This means that

AFA program costs would need to increase by a minimum of 400 percent,

or program revenue would need to fall by the same percentage in order for the fee percentage to reach the maximum fee limit of three percent of ex-vessel value. Therefore, the fee percentage that would be implemented for this program is expected to be small.

4. Calculation of Standard Price Information

BSAI ex-vessel pollock prices will be derived from the COAR. The rationale for using the COAR has been described earlier in this preamble. Pollock standard prices would be the average ex-vessel price for the year. The average ex-vessel price, calculated using the inshore sectors' COAR data, would be used to determine the annual standard price for all AFA, Aleutian Islands, and CDQ pollock landings. The assessment of fees for pollock harvested by CDQ Groups is described in the "CDQ Cost Recovery Fee Program" section of this preamble. The inshore price would be used as a standard price for all BSAI pollock landings because it provides an ex-vessel price based on the sale of pollock, rather than imputing an ex-vessel price from wholesale value to estimate a standard price.

Once the standard price has been calculated, NMFS would determine the fee percentages and announce the percentage in a **Federal Register** notice

by December 1 of the year in which the landings were made. The fee must be submitted electronically to NMFS by December 31 of the calendar year in which the landings were made.

B. Amendment 80 Cost Recovery Fee Program

1. Amendment 80 Cost Recovery Fee Program Applicable Entities

NMFS issues the CQ permit to an Amendment 80 cooperative based on an annual CQ permit application submitted by each Amendment 80 cooperative. The Amendment 80 CQ permit application specifies the cooperative's designated representative. The Amendment 80 cooperative's designated representative would be responsible for submitting the cost recovery fee for the cooperative under this proposed action. Amendment 80 quota shareholders who do not choose to join an Amendment 80 cooperative may participate in the Amendment 80 limited access fishery. The Amendment 80 limited access fishery does not meet the definition of a limited access privilege program, and participants in that fishery would not be subject to a cost recovery fee. Since 2011, all 27 catcher/processors participating in the Amendment 80 Program are members of one of two cooperatives—the Alaska Seafood Cooperative or the Alaska Groundfish

Cooperative. No Amendment 80 quota shareholders have elected to participate in the limited access fishery.

NMFS proposes adding regulations at § 679.91(b)(4)(vii) that would require that Amendment 80 cooperative agreements list the obligations of Amendment 80 cooperative members to ensure full payment of cost recovery fees among their members. This proposed regulation does not proscribe the specific provisions that Amendment 80 cooperatives may choose to ensure full payment of cost recovery fees among their members, but it does require that those provisions are listed in the cooperative agreement. This requirement is intended to encourage and facilitate coordination among Amendment 80 cooperative members for the timely and complete payment of fees. As noted earlier in this preamble, NMFS implemented a similar requirement in the Rockfish Program, and is proposing similar provisions for the AFA and Amendment 80 cooperatives.

Table 7 summarizes the information used to determine standard prices, any additional reporting requirement, calculation of the standard ex-vessel value, the person responsible for submitting the fee payment, and submittal requirements and deadlines for each Amendment 80 cooperative.

TABLE 7—SUMMARY OF THE AMENDMENT 80 COST RECOVERY FEE PROGRAM ELEMENTS

What species are subject to a cost recovery fee?	Amendment 80 species: (BSAI Atka Mackerel, BSAI flathead sole, BSAI Pacific cod, Aleutian Islands Pacific ocean perch, BSAI rock sole, and BSAI yellowfin sole).
How is the standard price determined?	NMFS would calculate a standard price for BSAI Pacific cod based on data from the Pacific Cod Volume and Value Report. The standard price would be applied to all landings during a calendar year. NMFS would calculate a standard price for all other species other than BSAI Pacific cod from the First Wholesale Volume and Value Report. The standard price would be applied to all landings during a calendar year, except for BSAI rock sole. NMFS would calculate one standard price for landings made from January 1 through March 31, and a separate standard price for landings made from April 1 through December 31 of each year.
Are there additional reporting requirements to determine the standard price?	Yes. Each Amendment 80 vessel owner that lands Amendment 80 species during a calendar year is required to submit a First Wholesale Volume and Value Report.
How will NMFS determine the Standard Ex-vessel Value?	NMFS will add total reported landings of Amendment 80 species from January 1 through November 30, estimate total landings from December 1 through December 31, if any, for each cooperative and multiply that amount by the standard price determined by the applicable volume and value report.
Who is responsible for fee payment and (how many cooperatives are estimated to receive a fee liability notice)?	The Amendment 80 Cooperative's designated representative listed on the Cooperative Quota (CQ) application (2).
When are the standard prices published in the <b>Federal Register</b> , and when are fee liability notices sent?	The standard prices are published in the <b>Federal Register</b> by December 1 of each calendar year, and the fee liability notices will be sent to each designated representative by December 1 of each calendar year.
When are fee liability payments due and how are they submitted?	Fee liability notices are due by December 31 of each year, and must be submitted online. Submittal forms are available online at: <a href="http://www.alaskafisheries.noaa.gov">http://www.alaskafisheries.noaa.gov</a> .

2. Cost, Values, and Fee Percentage

Table 8 provides an estimate of the management costs subject to the cost recovery program, gross ex-vessel revenue from fishery species allocated

to the Amendment 80 Program, and estimates of the cost recovery fee percentages from 2010 through 2013. Total management costs subject to a cost recovery fee were estimated to be

approximately \$1.36 million per year. Recoverable fees are estimated based on management costs incurred by several divisions within the Alaska Region of NMFS, NMFS OLE, AFSC, and the

Observer Program. Section 1.8.4 of the RIR/IRFA provides additional detail about the estimated management costs associated with the Amendment 80 Program.

TABLE 8—SUMMARY OF AMENDMENT 80 PROGRAM ESTIMATED COSTS, GROSS EX-VESSEL REVENUE, AND FEE PERCENTAGE

Entity incurring costs		Cost incurred			
<b>Costs (estimated for all years)</b>					
NMFS Alaska Region .....		\$486,364			
NMFS OLE .....		492,920			
Alaska Fisheries Science Center .....		49,627			
Observer Program .....		333,548			
Total (\$ Millions) .....		1.36			
Entity	Year				
	2010	2011	2012	2013	
<b>Ex-Vessel Value per year (\$ Millions)</b>					
Amendment 80 Cooperatives .....		\$89	\$112	\$98	\$84
Entity	Year				
	2010	2011	2012	2013	
<b>Estimated Fee Percentage (Percent of Ex-Vessel Value)</b>					
Amendment 80 Cooperatives .....		1.54%	1.22%	1.49%	1.62%

Based on the estimated gross ex-vessel revenue from the fishery species subject to a cost recovery fee under the Amendment 80 Program, vessels in the Amendment 80 Program generated between \$84 million and \$112 million of ex-vessel value per year during the period analyzed. Relative to the estimated recoverable costs, these ex-vessel values result in a cost recovery fee ranging from 1.22 percent to 1.62 percent, depending on the year, to generate \$1.36 million to cover reimbursable management costs. In each year considered in Table 8, the cost recovery fee was estimated to be less than 1.7 percent of the estimated ex-vessel value landed by the Amendment 80 cooperatives. Based on these percentages, the cost of managing the Amendment 80 Program would need to double, or revenue would need to decrease by half before the maximum fee of three percent of ex-vessel value would be reached. Therefore, the fee percentage that would be implemented for this program is expected to be small.

3. Calculation of Standard Price Information

To generate timely standard prices NMFS would collect first wholesale data on round (unprocessed) pounds and value from the First Wholesale Volume and Value Report. Annual standard prices will be used for all Amendment 80 species except rock sole.

As noted earlier in this preamble, two standard prices will be estimated for rock sole, one for the first quarter (from January 1 through March 31), and one for the remainder of the year (April 1 through December 31). Standard prices and the cost recovery fee percentage will be reported in a **Federal Register** notice by December 1 and the fee liability payment will be due on December 31st. This billing cycle enables NMFS to base the cost recovery fee liability on that year's ex-vessel revenue to the extent possible (January 1 through October 31), while allowing NMFS to collect the cost recovery fees prior to issuing a CQ permit to Amendment 80 cooperatives for the upcoming fishing year that begins in January.

C. CDQ Cost Recovery Fee Program

1. CDQ Cost Recovery Fee Program Applicable Entities

This proposed rule defines each CDQ group as the person subject to cost recovery fees for CDQ groundfish and halibut fisheries. The designated representative of a CDQ group is the individual responsible for remitting payment for their CDQ group (see Table 9 of this preamble).

NMFS annually allocates a portion of groundfish and halibut TACs to the CDQ groups as described above in the "CDQ Program" section of this

preamble. NMFS annually publishes the allocations of groundfish and halibut TACs to each CDQ group on the Alaska Region Web site at [http://www.alaskafisheries.noaa.gov/cdq/current\\_historical.htm](http://www.alaskafisheries.noaa.gov/cdq/current_historical.htm). The information in this publication would represent the permit that provides an exclusive harvest privilege to the CDQ group to harvest its allocation of groundfish and halibut TACs. Each CDQ group would be responsible for submitting to NMFS the cost recovery fee associated with landings made from its allocation of groundfish and halibut TACs. This method is consistent with the method NMFS uses to collect fees for crab CDQ in the Crab Rationalization cost recovery fee program (see § 680.44).

In developing this proposed action, NMFS considered defining the Administrative Panel authorized in section 305(i)(1)(G) as the person subject to cost recovery fees for CDQ groundfish and halibut fisheries. Under this option, NMFS would submit a single cost recovery fee liability notice for all CDQ Program cost recovery fees to WACDA, the entity currently serving as the Administrative Panel for the CDQ Program. NMFS did not select this approach because it would not be consistent with the current management structure of the CDQ groundfish and halibut fisheries. As described earlier in the "CDQ Program" section of this preamble and in section 1.5.2.1 of the

RIR/IRFA, existing CDQ groundfish and halibut catch monitoring and reporting requirements are structured to ensure that each CDQ group actively monitors the harvest of its allocations, and that each group takes action to constrain its fishing activities should its harvest approach or reach a particular allocation. Furthermore, CDQ group representatives did not support combining cost recovery fees for all CDQ groups into one fee liability notice

for the CDQ Program. These representatives noted that combining responsibility for all CDQ Program cost recovery fee liabilities could disadvantage some CDQ groups if one or more groups do not submit their fee by the deadline and NMFS withheld groundfish or halibut allocations to the CDQ Program in the next year. Making each CDQ group responsible for its own fees eliminates the potential for a CDQ group to be held accountable and

potentially have its CDQ withheld if another CDQ group fails to submit a timely and complete fee payment.

Table 9 summarizes the information used to determine standard prices, any additional reporting requirement, calculation of the standard ex-vessel value, the person responsible for submitting the fee payment, and submittal requirements and deadlines for each CDQ group.

TABLE 9—SUMMARY OF THE CDQ COST RECOVERY FEE PROGRAM ELEMENT

What species are subject to a cost recovery fee?	Groundfish species allocated to the CDQ Program: (BSAI Atka Mackerel, BSAI flathead sole, Bering Sea Greenland turbot, BSAI Pacific cod, Aleutian Islands Pacific ocean perch, BSAI Pollock, BSAI rock sole, BSAI sablefish, and BSAI yellowfin sole), and BSAI halibut.
How is the standard price determined?	NMFS would calculate a standard price for BSAI Pacific cod based on data from the Pacific Cod Volume and Value Report. The standard price would be applied to all landings during a calendar year. NMFS would calculate a standard price for all other species other than BSAI pollock, BSAI Pacific cod, BSAI sablefish, and BSAI Halibut from the First Wholesale Volume and Value Report. The standard price would be applied to all landings during a calendar year, except for BSAI rock sole. NMFS would calculate one standard price for landings made from January 1 through March 31, and a separate standard price for landings made from April 1 through December 31 of each year. NMFS would calculate a standard price for BSAI pollock based on data from the COAR from the previous calendar year. The standard price would be applied to all landings during a calendar year. NMFS would calculate a standard price for BSAI sablefish and BSAI halibut from the IFQ Buyer Report. The standard price would be applied to all landings during a calendar year.
Are there additional reporting requirements from CDQ groups to determine the standard price?	No.
How will NMFS determine the Standard Ex-vessel Value?	NMFS will add total reported landings of the above mentioned species from January 1 through November 30, estimate total landings from December 1 through December 31, if any, for each cooperative and multiply that amount by the standard price determined by the Volume and Value reports.
Who is responsible for fee payment and (how many cooperatives are estimated to receive a fee liability notice)?	The CDQ group's designated representative (6).
When are the standard prices published in the <b>Federal Register</b> and when are the fee liability notices sent?	The standard prices are published in the <b>Federal Register</b> by December 1 of each calendar year, and the fee liability notices will be sent to each designated representative by December 1 of each calendar year.
When are fee liability payments due and how are they submitted?	Fee liability notices are due by December 31 of each year, and must be submitted online. Submittal forms are available online at: <a href="http://www.alaskafisheries.noaa.gov">http://www.alaskafisheries.noaa.gov</a> .

2. Cost, Values, and Fee Percentage

NMFS, NMFS OLE, the Observer Program, and ADF&G all contribute to the management of the CDQ Program. Table 10 provides a summary of the management costs subject to the cost recovery fee program, gross ex-vessel

revenue from species allocated to the CDQ Program, and estimates of the cost recovery fee percentages from 2010 through 2013. Fees were estimated to be about \$0.63 million per year, at current levels. These fees included the costs of developing reports on halibut landings, providing support for information

systems (e.g., e-Landings catch and production reporting system), and stationing observers on vessels. Section 1.8.4 of the RIR/IRFA provides additional detail about the estimated management costs associated with the Amendment 80 Program.

TABLE 10—SUMMARY OF CDQ GROUND FISH AND HALIBUT ESTIMATED COSTS, GROSS EX-VESSEL REVENUE, AND FEE PERCENTAGE

Entity incurring costs	Cost incurred
<b>Costs (estimated for all years)</b>	
NMFS Alaska Region .....	\$234,796
NMFS OLE .....	246,460
ADF&G .....	65,612
Observer Program .....	84,799
Total (\$ Millions) .....	0.63

Entity	Year			
	2010	2011	2012	2013
<b>Ex-vessel Value per year (\$ Millions)</b>				
CDQ Groups .....	\$47	\$74	\$87	\$76
Entity	Year			
	2010	2011	2012	2013
<b>Estimated Fee Percentage (Percent of Ex-vessel Value)</b>				
CDQ Groups .....	1.33%	0.86%	0.73%	0.83%

The CDQ Program fee percentage was estimated to range from 0.73 percent to 1.33 percent per year from 2010 through 2013. The estimated fee percentage for 2013 was less than 1.0 percent of the gross ex-vessel value of species directly allocated to the CDQ Program. In each year, considered in Table 10, the fee percentage was less than 1.4 percent. Based on these percentages, the cost of managing the CDQ Program would need to double, or revenue would need to decrease by half before the maximum fee of three percent of ex-vessel value would be reached. Therefore, the fee percentage that would be implemented for this program is expected to be small.

**3. Calculation of Standard Price Information**

NMFS would calculate cost recovery fees for CDQ halibut and fixed gear sablefish based on the standard prices calculated and reported by NMFS for the Halibut and Sablefish IFQ Program cost recovery fee. NMFS would use the IFQ Buyer Report to determine standard prices for CDQ halibut and sablefish. NMFS determined that IFQ standard prices would be appropriate for CDQ halibut and sablefish because buyers of CDQ halibut and sablefish are required by § 679.5(l)(7)(i) to submit the IFQ Buyer Report. Therefore, price data for CDQ halibut and sablefish are already reported. The standard prices for pollock allocations harvested by CDQ groups would be derived from the COAR data. The standard prices for Pacific cod allocations harvested by CDQ groups would be derived from the Pacific Cod Ex-vessel Volume and Value Report. The standard prices for the remaining CDQ groundfish species, other than Pacific cod, pollock, halibut, and fixed gear sablefish, would be derived from the First Wholesale Volume and Value Report.

**V. Classification**

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined

this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

*A. Initial Regulatory Flexibility Analysis*

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. Copies of the RIR/IRFA prepared for this proposed rule are available from NMFS (see ADDRESSES).

The IRFA for this proposed action describes the action, why this action is being proposed, the objectives and legal basis for the proposed rule, the type and number of small entities to which the proposed rule would apply, and the projected reporting, recordkeeping, and other compliance requirements of the proposed rule. It also identifies any overlapping, duplicative, or conflicting Federal rules and describes any significant alternatives to the proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize any significant adverse economic impact of the proposed rule on small entities. The description of the proposed action, its purpose, and its legal basis are described in the preamble and are not repeated here.

This proposed rule would directly regulate six CDQ groups that support and manage the activities of the CDQ communities. The groups include the Aleutian Pribilof Island Community Development Association, the Bristol Bay Economic Development Corporation, the Central Bering Sea Fishermen’s Association, the Coastal Villages Region Fund, the Norton Sound Economic Development Corporation, and the Yukon Delta Fisheries Development Association. These groups represent 65 villages and maintain a non-profit status. Each of the CDQ

groups is organized as an independently owned and operated not-for-profit entity and none is dominant in its field; consequently, each is a “small entity” under the Small Business Administration’s definition for “small organization”. Section 2.6 of the IRFA prepared for this proposed rule provides more information on these entities.

In addition, this action would regulate Amendment 80 and AFA cooperatives, and the vessels that are harvesting exclusive harvest privileges under the Amendment 80 and AFA programs; The Aleut Corporation; and processors and motherhips that receive CDQ Pacific cod deliveries and trawl-caught Pacific cod. The Small Business Administration defines a small commercial finfish fishing entity as one that has annual gross receipts, from all activities of all affiliates, of less than \$20.5 million (79 FR 33647, July 14, 2014). None of these entities are considered to be small entities based on the SBA’s size standard.

*B. Description of Significant Alternatives Considered*

The Magnuson-Stevens Act requires that those participating in limited access privilege programs and the CDQ Program pay up to three percent of the ex-vessel value of the fish they are allocated to cover specific costs that are incurred by the management agencies as a direct result of implementing the programs. Given the specific requirements of the Magnuson-Stevens Act to implement a cost recovery fee, no other alternatives would accomplish the stated objective.

NMFS considered and analyzed a range of specific options to determine standard prices for calculating standard ex-vessel value data, due dates for volume and value reports, and fee submission, as described in the IRFA. NMFS selected those options that would minimize reporting burden and costs on small entities consistent with the stated objective when possible.

For the options to determine standard prices for calculating standard ex-vessel value data, NMFS considered options to use COAR data to determine standard prices and standard ex-vessel values for all species subject to cost recovery, but did not select that option for species other than BSAI pollock because COAR data is not an accurate data source for species where the price changes on a year-by-year basis. NMFS did select options that minimized reporting requirements on small entities by using existing data sources (e.g., COAR for BSAI pollock, and the IFQ buyer report for BSAI sablefish and BSAI halibut).

For the provision setting the deadline date for two new reports that would be required under this proposed rule: The Pacific Cod Ex-Vessel Volume and Value Report and the First Wholesale Volume and Value Report, NMFS considered December 1 for the due date for volume and value reports, as well as whether or not the volume and value reports should aggregate all prices for the year. NMFS selected November 1 for the submission of reports, because it provided the most current data available while still allowing fee liabilities to be calculated on a timely basis so they could be sent out by December 1. For the fee submission deadline, NMFS considered selecting an earlier (November 30) and later fee submission due date (January 15), but ultimately selected December 31 to ensure all fees for all landings are included for each year. These dates would also minimize the potential impact on small entities relative to other dates considered.

#### C. Additional Provisions Considered

NMFS also considered implementing a cost recovery fee for the Freezer Longline Coalition Cooperative (FLCC). NMFS considered this alternative because initial analysis indicated that the FLCC exclusively harvested the allocation assigned to the hook-and-line catcher/processor sector (79 FR 12108, March 4, 2014). However, vessels that are not part of the FLCC harvest a portion of the allocation assigned to hook-and-line catcher/processor sector. A limited number of vessels harvest Pacific cod as hook-and-line catcher/processors within State waters and are not required to use an FFP or License Limitation Program license. These State water harvests are deducted from the proportion of the BSAI Pacific cod TAC assigned to the hook-and-line catcher/processor sector. The harvest by these vessels is deducted from the Federal TAC and is not subject to limitation by NMFS. Therefore, the FLCC does not have an exclusive harvest privilege for a proportion of the TAC assigned to

hook-and-line catcher/processor sector, and the FLCC is not considered a limited access privilege program for purposes of this proposed action. NMFS will continue to review the status of the FLCC, and would implement a cost recovery fee program for the FLCC in the future, if applicable.

#### D. Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). NMFS has submitted these requirements to OMB for approval. The requirements are listed below by OMB collection number.

OMB Control No. 0648–0318

With this action, the observer fee submittal (15 minutes) is removed from this collection and added to the new fee collection.

OMB Control No. 0648–0398

With this action, this IFQ Cost Recovery collection is removed and superseded by the new cost recovery collection.

OMB Control No. 0648–0401

Public reporting burden per response is estimated to average four hours for Cooperative Contract.

OMB Contract No. 0648–0545

With this action, the Rockfish volume and value form (two hours) is removed from this collection.

OMB Control No. 0648–0565

Public reporting burden per response is estimated to average two hours for Application for Amendment 80 Cooperative Quota.

OMB Control No. 0648–0570

With this action, the Crab Rationalization Program Cost Recovery collection is removed and superseded by the new cost recovery collection.

OMB Control No. 0648–New

Public reporting burden per response is estimated to average one minute for cost recovery fee or observer fee submission; five minutes for value and volume report; four hours for appeals.

Estimates for public reporting burden include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether these proposed collections of information are necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above and email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

#### List of Subjects in 50 CFR Part 679

Alaska, Cost recovery, Fisheries, Reporting and recordkeeping requirements.

Dated: December 29, 2014.

**Eileen Sobeck,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.2, add definitions for “AFA equivalent pounds”; “AFA fee liability”; “AFA fee percentage”; “AFA standard ex-vessel value”; “AFA standard price”; “Aleutian Islands pollock equivalent pounds”; “Aleutian Islands pollock fee liability”; “Aleutian Islands pollock fee percentage”; “Aleutian Islands pollock standard ex-vessel value”; “Aleutian Islands pollock standard price”; “Amendment 80 equivalent pounds”; “Amendment 80 fee liability”; “Amendment 80 fee percentage”; “Amendment 80 standard ex-vessel value”; “Amendment 80 standard price”; “CDQ equivalent pounds”; “CDQ fee liability”; “CDQ fee percentage”; “CDQ standard ex-vessel

value”; and “CDQ standard price”; in alphabetical order to read as follows:

§ 679.2 Definitions.

\* \* \* \* \*

AFA equivalent pounds means the weight recorded in pounds, for landed AFA pollock and calculated as round weight.

AFA fee liability means the amount of money for Bering Sea pollock cost recovery, in U.S. dollars, owed to NMFS by an AFA cooperative as determined by multiplying the appropriate AFA standard ex-vessel value of a cooperative’s landed Bering Sea pollock by the appropriate AFA fee percentage.

AFA fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the AFA fee liability for a cooperative.

\* \* \* \* \*

AFA standard ex-vessel value means the total U.S. dollar amount of landed Bering Sea pollock as calculated by multiplying the number of landed pounds of Bering Sea pollock by the appropriate AFA standard price determined by the Regional Administrator.

AFA standard price means the price for landed Bering Sea pollock as determined by the Regional Administrator and is expressed in U.S. dollars for an AFA pollock equivalent pound.

\* \* \* \* \*

Aleutian Islands pollock equivalent pounds means the weight recorded in pounds, for landed Aleutian Islands pollock and calculated as round weight.

Aleutian Islands pollock fee liability means the amount of money for Aleutian Islands directed pollock cost recovery, in U.S. dollars, owed to NMFS by the Aleut Corporation as determined by multiplying the appropriate standard ex-vessel value of its landed Aleutian Islands pollock by the appropriate Aleutian Islands pollock fee percentage.

Aleutian Islands pollock fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the Aleutian Islands pollock fee liability for the Aleut Corporation.

Aleutian Islands pollock standard ex-vessel value means the total U.S. dollar amount of landed Aleutian Islands pollock as calculated by multiplying the number of landed pounds of Aleutian Islands pollock by the appropriate Aleutian Islands pollock standard price determined by the Regional Administrator.

Aleutian Islands pollock standard price means the price for landed Aleutian Islands pollock as determined by the Regional Administrator and is expressed in U.S. dollars for an Aleutian Islands pollock equivalent pound.

\* \* \* \* \*

Amendment 80 equivalent pounds means the weight recorded in pounds, for landed Amendment 80 species CQ and calculated as round weight.

Amendment 80 fee liability means the amount of money for Amendment 80 cost recovery, in U.S. dollars, owed to NMFS by an Amendment 80 CQ permit holder as determined by multiplying the appropriate standard ex-vessel value of landed Amendment 80 species CQ by the appropriate Amendment 80 fee percentage.

Amendment 80 fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the Amendment 80 CQ fee liability for an Amendment 80 CQ permit holder.

\* \* \* \* \*

Amendment 80 standard ex-vessel value means the total U.S. dollar amount of landed Amendment 80 species CQ as calculated by multiplying the number of landed Amendment 80 species CQ equivalent pounds by the appropriate Amendment 80 standard price determined by the Regional Administrator.

Amendment 80 standard price means the price for landed Amendment 80 species as determined by the Regional Administrator and is expressed in U.S. dollars for an Amendment 80 equivalent pound.

\* \* \* \* \*

CDQ equivalent pounds means the weight recorded in pounds, for landed CDQ groundfish and halibut, and calculated as round weight.

CDQ fee liability means the amount of money for CDQ groundfish and halibut cost recovery, in U.S. dollars, owed to NMFS by a CDQ group as determined by multiplying the appropriate standard ex-vessel value of landed CDQ groundfish and halibut by the appropriate CDQ fee percentage.

CDQ fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the CDQ groundfish and halibut fee liability for a CDQ group.

\* \* \* \* \*

CDQ standard ex-vessel value means the total U.S. dollar amount of landed CDQ groundfish and halibut as calculated by multiplying the number of

landed CDQ groundfish and halibut equivalent pounds by the appropriate CDQ standard price determined by the Regional Administrator.

CDQ standard price means the price for landed CDQ groundfish and halibut as determined by the Regional Administrator and is expressed in U.S. dollars for a CDQ equivalent pound.

\* \* \* \* \*

■ 3. In § 679.5, add paragraph (u) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

\* \* \* \* \*

(u) BSAI Cost Recovery Volume and Value Reports—(1) Pacific Cod Ex-vessel Volume and Value Report—(i) Applicability. A shoreside processor designated on an FPP, or a mothership, designated on an FPP, that processes landings of either CDQ Pacific cod or BSAI Pacific cod harvested by a vessel using trawl gear must submit annually to NMFS a complete Pacific Cod Ex-vessel Volume and Value Report, as described in this paragraph (u)(1), for each reporting period for which the shorebased processor or mothership receives this Pacific cod.

(ii) Reporting period. The reporting period of the Pacific Cod Ex-vessel Volume and Value Report shall extend from January 1 to October 31 of the year in which the landings were made.

(iii) Due date. A complete Pacific Cod Ex-vessel Volume and Value Report must be received by NMFS no later than November 10 of the year in which the processor or mothership received the Pacific cod.

(iv) Information required. (A) The submitter must log in using his or her password and NMFS person ID to submit a Pacific Cod Ex-vessel Volume and Value Report. The User must review any auto-filled cells to ensure that they are accurate. A completed report must have all applicable fields accurately filled-in.

(B) Certification. By using the NMFS person ID and password and submitting the report, the submitter certifies that all information is true, correct, and complete to the best of his or her knowledge and belief.

(v) Submittal. The submitter must complete and submit online to NMFS the Pacific Cod Ex-vessel Volume and Value Report available at <https://alaskafisheries.noaa.gov>.

(2) First Wholesale Volume and Value Report—(i) Applicability. An Amendment 80 vessel owner that harvests Amendment 80 species, other than Pacific cod, must submit annually to NMFS a complete First Wholesale Volume and Value Report, as described

in this paragraph (u)(2), for each reporting period for which the Amendment 80 vessel harvests Amendment 80 species, other than Pacific cod.

(ii) *Reporting period.* (A) The reporting period of the First Wholesale Volume and Value Report for all species except rock sole shall extend from January 1 to October 31 of the year in which the landings were made.

(B) The first reporting period of the First Wholesale Volume and Value Report for rock sole shall extend from January 1 to March 31, and the second reporting period shall extend from April 1 to October 31.

(iii) *Due date.* A complete First Wholesale Volume and Value Report must be received by NMFS no later than November 10 of the year in which the Amendment 80 vessel received the Amendment 80 species, other than Pacific cod.

(iv) *Information required.* (A) The Amendment 80 vessel owner must log in using his or her password and NMFS person ID to submit a First Wholesale Volume and Value Report. The vessel owner must review any auto-filled cells to ensure that they are accurate. A completed application must contain the information specified on the First Wholesale Volume and Value Report with all applicable fields accurately filled in.

(B) *Certification.* By using the NMFS person ID and password and submitting the report, the Amendment 80 vessel owner certifies that all information is true, correct, and complete to the best of his or her knowledge and belief.

(v) *Submittal.* The Amendment 80 vessel owner must complete and submit online to NMFS the First Wholesale Volume and Value Report available at <https://alaskafisheries.noaa.gov>.

■ 4. In § 679.7, add paragraphs (c)(6), (d)(8), (k)(9), (l)(6), (o)(4)(vii), and (o)(9) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(c) \* \* \*

(6) For a shoreside processor designated on an FPP, or a mothership designated on an FPP, that processes landings of either CDQ Pacific cod or BSAI Pacific cod harvested by a vessel using trawl gear to fail to submit a timely and complete Pacific Cod Ex-vessel Volume and Value Report as required under § 679.5(u)(1).

(d) \* \* \*

(8) Fail to submit a timely and complete CDQ cost recovery fee submission form and fee as required under § 679.33.

\* \* \* \* \*

(k) \* \* \*

(9) Fail to submit a timely and complete AFA cost recovery fee submission form and fee as required under § 679.66.

(l) \* \* \*

(6) Fail to submit a timely and complete Aleutian Islands pollock cost recovery fee submission form and fee as required under § 679.67.

\* \* \* \* \*

(o) \* \* \*

(4) \* \* \*

(vii) Fail to submit a timely and complete Amendment 80 cost recovery fee submission form and fee as required under § 679.95.

\* \* \* \* \*

(9) *First Wholesale Volume and Value Report.* For an Amendment 80 vessel owner to fail to submit a timely and complete First Wholesale Volume and Value Report as required under § 679.5(u)(2).

\* \* \* \* \*

■ 5. Add § 679.33 to Subpart E to read as follows:

**§ 679.33 Cost recovery.**

(a) *Cost Recovery Fee Program for CDQ groundfish and halibut—(1) Who is Responsible?* The person documented with NMFS as the CDQ group representative at the time of a CDQ landing.

(i) Subsequent transfer, under § 679.31(c), of a CDQ allocation by a CDQ group does not affect the CDQ group representative's liability for noncompliance with this section.

(ii) Changes in amount of a CDQ allocation to a CDQ group do not affect the CDQ group representative's liability for noncompliance with this section.

(2) *Fee collection.* Each CDQ group that receives a CDQ allocation of groundfish and halibut is responsible for submitting the cost recovery payment for all CDQ landings debited against that CDQ group's allocations.

(3) *Payment—(i) Payment due date.* A CDQ group representative must submit all CDQ fee liability payment(s) to NMFS at the address provided in paragraph (a)(3)(iii) of this section no later than December 31 of the calendar year in which the CDQ groundfish and halibut landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be made available on both the payment

Web site and a fee liability summary letter mailed to the CDQ group representative.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *CDQ standard ex-vessel value determination and use—(1) General.* A CDQ group representative must use the CDQ standard prices determined by NMFS under paragraph (b)(2) of this section.

(2) *CDQ standard prices—(i) General.* Each year the Regional Administrator will publish CDQ standard prices for groundfish and halibut in the **Federal Register** by December 1 of the year in which the CDQ groundfish and halibut landings were made. The CDQ standard prices will be described in U.S. dollars per equivalent pound for CDQ groundfish and halibut landings made during the current calendar year.

(ii) *Effective duration.* The CDQ standard prices published by NMFS shall apply to all CDQ groundfish and halibut landings made during the current calendar year.

(iii) *Determination.* A CDQ group representative must use the CDQ standard prices when determining the CDQ group's fee liability based on CDQ standard ex-vessel value. A CDQ group representative must base all fee liability calculations on the CDQ standard price that correlates to landed CDQ groundfish and halibut by gear type that is recorded in CDQ equivalent pounds.

(A) *CDQ halibut and CDQ fixed gear sablefish.* NMFS will calculate the CDQ standard prices for CDQ halibut and CDQ fixed gear sablefish to reflect, as closely as possible by port or port-group, the variations in the actual ex-vessel values of CDQ halibut and fixed-gear sablefish based on information provided in the IFQ Registered Buyer Ex-vessel Volume and Value Report described at § 679.5(l)(7). The Regional Administrator will base CDQ standard prices on the following types of information:

(1) Landed pounds of IFQ halibut and sablefish and CDQ halibut in the Bering Sea port-group;

(2) Total ex-vessel value of IFQ halibut and sablefish and CDQ halibut in the Bering Sea port-group; and

(3) Price adjustments, including retroactive payments.

(B) *CDQ Pacific cod.* NMFS will use the standard prices calculated for Pacific cod based on information provided in the Pacific Cod Ex-vessel Volume and Value Report described at § 679.5(u)(1) for CDQ Pacific cod.

(C) *CDQ pollock*. NMFS will use the standard prices calculated for AFA pollock described at § 679.66(b) for CDQ pollock.

(D) *Other CDQ groundfish including sablefish caught with trawl gear*. (1) The Regional Administrator will base all CDQ standard prices for all other CDQ groundfish species on the First Wholesale Volume and Value reports specified in § 679.5(u)(2).

(2) The Regional Administrator will establish CDQ standard prices for all other CDQ groundfish species on an annual basis; except the Regional Administrator will establish a CDQ standard price for rock sole for all landings from January 1 through March 31, and a second CDQ standard price for rock sole for all landings from April 1 through December 31.

(3) The average first wholesale product prices reported will be multiplied by 0.4 to obtain a proxy for the ex-vessel prices of those CDQ groundfish species.

(c) *CDQ fee percentage*—(1) *Established percentage*. The CDQ fee percentage for CDQ groundfish and halibut is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. This amount must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value*. Each year NMFS shall calculate and publish the CDQ fee percentage according to the following factors and methodology:

(i) *Factors*. NMFS will use the following factors to determine the fee percentage:

(A) The catch to which the CDQ groundfish and halibut cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the CDQ Program for groundfish and halibut.

(ii) *Methodology*. NMFS will use the following equations to determine the fee percentage:  $100 \times DPC/V$ , where:

DPC = the direct program costs for the CDQ Program for groundfish and halibut for the most recent Federal fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

V = total of the CDQ standard ex-vessel value of the catch subject to the CDQ fee liability for the current year.

(3) *Publication*—(i) General. NMFS will calculate and announce the CDQ

fee percentage in a **Federal Register** notice by December 1 of the year in which the CDQ groundfish and halibut landings were made. NMFS shall calculate the CDQ fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period*. The calculated CDQ fee percentage is applied to CDQ groundfish and halibut landings made between January 1 and December 31 of the same year.

(4) *Applicable percentage*. The CDQ group representative must use the CDQ fee percentage applicable at the time a CDQ groundfish and halibut landing is debited from a CDQ group's allocation to calculate the CDQ fee liability for any retroactive payments for that CDQ species.

(5) *Fee liability determination for a CDQ group*. (i) Each CDQ group will be subject to a CDQ fee liability for any CDQ groundfish and halibut debited from that CDQ group's allocation during a calendar year.

(ii) The CDQ fee liability assessed to a CDQ group will be based on the proportion of the standard ex-vessel value of CDQ groundfish and halibut debited from a CDQ group's allocation relative to all CDQ groups during a calendar year as determined by NMFS.

(iii) NMFS will provide a CDQ fee liability summary letter to each CDQ group representative by December 1 of each year. The summary will explain the CDQ fee liability determination including the current fee percentage, and details of CDQ pounds debited from the CDQ group allocations by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) No CDQ group will receive its allocations of CDQ groundfish or halibut until the CDQ group representative submits full payment of that CDQ group's complete CDQ fee liability.

(2) If a CDQ group representative fails to submit full payment for its CDQ fee liability by the date described in paragraph (a)(3) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the CDQ group representative stating that the CDQ group's estimated fee liability, as indicated by his or her own submitted information, is the CDQ fee liability due from the CDQ group.

(ii) Disapprove any application to transfer CDQ to or from the CDQ group in accordance with § 679.31(c).

(3) If a CDQ group fails to submit full payment by December 31, no allocations of CDQ groundfish and halibut will be issued to that CDQ group for the following calendar year.

(4) Upon final agency action determining that a CDQ group

representative has not paid the CDQ fee liability due for that CDQ group, the Regional Administrator may continue to prohibit issuance of allocations of CDQ groundfish and halibut for that CDQ group for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Overpayment*. Upon issuance of final agency action, payment submitted to NMFS in excess of the CDQ fee liability determined to be due by the final agency action will be returned to the CDQ group representative unless the CDQ group representative requests the agency to credit the excess amount against the CDQ group's future CDQ fee liability. Payment processing fees may be deducted from any fees returned to the CDQ group representative.

(f) *Appeals*. A CDQ group representative who receives an IAD for incomplete payment of a CDQ fee liability may appeal under the appeals procedures set out at 15 CFR part 906.

(g) *Administrative Fees*. Administrative fees may be assessed if the account drawn on to pay the CDQ fee liability has insufficient funds to cover the transaction, or if the account becomes delinquent. Additionally, interest will begin to accrue on any portion of the fee that has not been paid due to insufficient funds.

(h) *Annual report*. NMFS will publish annually a report describing the status of the CDQ Cost Recovery Fee Program for groundfish and halibut.

■ 6. In § 679.61,

■ a. Revise paragraph (c)(1); and

■ b. Add paragraph (e)(1)(vi) to read as follows:

**§ 679.61 Formation and operation of fishery cooperatives.**

\* \* \* \* \*

(c) \* \* \*

(1) *What is a designated representative?* Any cooperative formed under this section must appoint a designated representative to fulfill regulatory requirements on behalf of the cooperative including, but not limited to, filing of cooperative contracts, filing of annual reports, submitting all cost recovery fees, and in the case of inshore sector catcher vessel cooperatives, signing cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports. The designated representative is the primary contact person for NMFS on issues relating to the operation of the cooperative.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(vi) List the obligations of members of a cooperative, governed by § 679.61, to ensure the full payment of all AFA fee liabilities that may be due.

\* \* \* \* \*

■ 7. Add § 679.66 to Subpart F to read as follows:

**§ 679.66 AFA cost recovery.**

(a) *Cost recovery fee program for AFA*—(1) *Who is responsible?* (i) The person designated on the AFA inshore cooperative permit as the cooperative representative at the time of a Bering Sea pollock landing.

(ii) The person designated as the representative of the listed AFA catcher/processors and high seas catcher vessels that deliver to them at the time of a Bering Sea pollock landing.

(iii) The person designated as the representative of the AFA mothership cooperative at the time of a Bering Sea pollock landing.

(2) *Responsibility.* (i) Subsequent transfer of AFA permits held by cooperative members does not affect the cooperative representative's liability for noncompliance with this section.

(ii) Changes in the membership in a cooperative, such as members joining or departing during the relevant year, or changes in the holdings of AFA permits of those members do not affect the cooperative representative's liability for noncompliance with this section.

(3) *Fee collection.* All cooperative representatives (as identified under paragraph (a)(1) of this section) are responsible for submitting the cost recovery payment for all Bering Sea pollock landings made under the authority of their cooperative.

(4) *Payment*—(i) *Payment due date.* The cooperative representative (as identified under paragraph (a)(1) of this section) must submit all AFA fee liability payment(s) to NMFS at the address provided in paragraph (a)(3)(iii) of this section no later than December 31 of the calendar year in which the Bering Sea pollock landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the AFA cooperative member.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by

automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *AFA standard ex-vessel value determination and use*—(1) *General.* A cooperative representative must use the AFA standard price determined by NMFS under paragraph (b)(2) of this section.

(2) *AFA standard price*—(i) *General.* Each year the Regional Administrator will publish the AFA standard price in the **Federal Register** by December 1 of the year in which the landings were made. The AFA standard price will be described in U.S. dollars per equivalent pound for Bering Sea pollock landings made by AFA cooperative members during the current calendar year.

(ii) *Effective duration.* The AFA standard price published by NMFS shall apply to all Bering Sea pollock landings made by an AFA cooperative member during the current calendar year.

(iii) *Determination.* NMFS will calculate the AFA standard price to reflect, as closely as possible, the standard price of Bering Sea pollock landings based on information provided in the COAR for the previous year, as described in § 679.5(p). The Regional Administrator will base the AFA standard price on the following types of information:

(A) Landed pounds of Bering Sea pollock;

(B) Total ex-vessel value of Bering Sea pollock; and

(C) Price adjustments, including retroactive payments.

(c) *AFA fee percentages*—(1) *Established percentages.* The AFA fee percentages are the amounts as determined by the factors and methodology described in paragraph (c)(2) of this section. These amounts will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. These amounts must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and publish AFA fee percentages for AFA inshore cooperatives, the cooperative representing the listed AFA catcher/processors and high seas catcher vessels that deliver to them, and the AFA mothership cooperative according to the following factors and methodology:

(i) *Factors.* NMFS will use the following factors to determine the fee percentages:

(A) The catch to which the AFA pollock cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and

enforcement of the directed AFA pollock fisheries.

(ii) *Methodology.* NMFS will use the following equations to determine the AFA fee percentage:  $100 \times \text{DPC}/V$ , where:

DPC = the direct program costs for the directed AFA pollock fisheries for the most recent fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

V = total of the standard ex-vessel value of the catch subject to the AFA fee liability for the current year.

(iii) *Direct program costs* will be calculated separately for:

(A) AFA inshore cooperatives;

(B) The cooperative representing the listed AFA catcher/processors and high seas catcher vessels that deliver to them; and

(C) The AFA mothership cooperative.

(3) *Publication*—(i) *General.* NMFS will calculate and announce the AFA fee percentages in a **Federal Register** notice by December 1 of the year in which the Bering Sea pollock landings were made. AFA fee percentages will be calculated separately for the AFA inshore cooperatives, the cooperative for listed AFA catcher/processors and high seas catcher vessels that deliver to them, and the AFA mothership cooperative. NMFS shall calculate the AFA fee percentages based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* The calculated AFA fee percentages are applied to all Bering Sea directed pollock landings made between January 1 and December 31 of the current year.

(4) *Applicable percentage.* An AFA cooperative representative must use the AFA fee percentage applicable to that cooperative at the time a Bering Sea directed pollock landing is debited from an AFA pollock fishery allocation to calculate the AFA fee liability for any retroactive payments for that landing.

(5) *Fee liability determination.* (i) Each AFA cooperative will be subject to an AFA fee liability for any Bering Sea pollock debited from its AFA pollock fishery allocation during a calendar year.

(ii) The AFA fee liability assessed to an AFA inshore cooperative will be based on the proportion of the AFA fee liability of Bering Sea pollock debited from that AFA Inshore cooperative's AFA pollock fishery allocation relative to all AFA inshore cooperatives during a calendar year as determined by NMFS.

(iii) The AFA fee liability assessed to the cooperative of listed AFA catcher/processors and high seas catcher vessels that deliver to them will be based on the

standard ex-vessel value of Bering Sea pollock debited from this cooperative's AFA pollock fishery allocation during a calendar year as determined by NMFS.

(iv) The AFA fee liability assessed to the AFA mothership cooperative will be based on the proportion of the standard ex-vessel value of Bering Sea pollock debited from this cooperative's AFA pollock fishery allocation during a calendar year as determined by NMFS.

(v) NMFS will provide a fee liability summary letter to all AFA cooperative representatives by December 1 of each year. The summary will explain the AFA fee liability determination including the current fee percentage and details of Bering Sea pollock pounds debited from the AFA pollock fishery allocation by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) No AFA inshore cooperative will receive its AFA allocation until the cooperative's representative submits full payment of the cooperative's AFA fee liability.

(2) The AFA mothership cooperative will not receive any Bering Sea pollock allocation until the cooperative representative submits full payment of that cooperative's AFA fee liability.

(3) AFA catcher/processor joint cooperative underpayment (i) The cooperative for listed AFA catcher/processors and high seas catcher vessels that deliver to them will not receive any Bering Sea pollock allocation until the cooperative representative submits full payment of that cooperative's AFA fee liability at the time of a Bering Sea pollock landing, except as provided in paragraph (d)(3)(ii) of this section.

(ii) If the cooperative representing the listed AFA catcher/processors and high seas catcher vessels that deliver to them pays only a portion of its AFA fee liability, the Regional Administrator may release a portion of the cooperative's Bering Sea pollock allocation equal to the portion of the fee liability paid.

(4) If an AFA cooperative representative fails to submit full payment for the AFA fee liability by the date described in paragraph (a)(4) of this section, the Regional Administrator may at any time thereafter send an IAD to the AFA cooperative representative stating that the cooperative's estimated fee liability, as indicated by his or her own submitted information, is the AFA fee liability due from the AFA cooperative representative.

(5) If an AFA cooperative representative fails to submit full payment for AFA fee liability by the date described in paragraph (a)(4) of this section, no Bering sea pollock allocation

will be provided to that AFA cooperative for the following calendar year, except as provided in paragraph (d)(3) of this section.

(6) Upon final agency action determining that an AFA cooperative representative has not paid that cooperative's AFA fee liability, the Regional Administrator may continue to prohibit issuance of a directed Bering Sea pollock allocation for that cooperative for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Overpayment*. Upon issuance of final agency action, payment submitted to NMFS in excess of the AFA fee liability determined to be due by the final agency action will be returned to the AFA cooperative unless the cooperative representative requests the agency to credit the excess amount against the cooperative's future AFA fee liability. Payment processing fees may be deducted from any fees returned to the cooperative.

(f) *Appeals*. An AFA cooperative representative who receives an IAD for incomplete payment of an AFA fee liability may appeal under the appeals procedures set out at 15 CFR part 906.

(g) *Administrative Fees*. Administrative fees may be assessed if the account drawn on to pay the CDQ fee liability has insufficient funds to cover the transaction, or if the account becomes delinquent. Additionally, interest will begin to accrue on any portion of the fee that has not been paid due to insufficient funds.

(h) *Annual report*. NMFS will publish annually a report describing the status of the AFA Cost Recovery Fee Program. ■ 8. A new § 679.67 is added to Subpart F to read as follows:

**§ 679.67 Aleutian Islands pollock cost recovery.**

(a) *Cost recovery fee program for Aleutian Islands pollock*—(1) *Representative*. The person identified as the representative, designated by the Aleut Corporation, at the time of an Aleutian Islands pollock landing is responsible for submitting all cost recovery fees.

(2) *Fee collection*. The designated representative (as identified under paragraph (a)(1) of this section) is responsible for submitting the cost recovery payment for all Aleutian Islands pollock landings made under the authority of Aleut Corporation.

(3) *Payment*. (i) *Payment due date*. The designated representative (as identified under paragraph (a)(1) of this

section) must submit all cost recovery fee liability payment(s) to NMFS at the address provided in paragraph (a)(3)(iii) of this section no later than December 31 of the calendar year in which the Aleutian Islands pollock landings were made.

(ii) *Payment recipient*. Make electronic payment payable to NMFS.

(iii) *Payment address*. Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the designated representative of the Aleut Corporation.

(iv) *Payment method*. Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *Aleutian Islands pollock standard ex-vessel value determination and use*—

(1) *General*. The designated representative of the Aleut Corporation must use the Aleutian Islands pollock standard price determined by NMFS under paragraph (b)(2) of this section.

(2) *Aleutian Islands pollock standard price*—(i) *General*. Each year the Regional Administrator will publish the Aleutian Islands pollock standard price in the **Federal Register** by December 1 of the year in which the landings were made. The Aleutian Islands pollock standard price will be described in U.S. dollars per equivalent pound for Aleutian Islands pollock landings during the current calendar year.

(ii) *Effective duration*. The Aleutian Islands pollock standard price published by NMFS shall apply to all Aleutian Islands pollock landings during the current calendar year.

(iii) *Determination*. NMFS will calculate the Aleutian Islands pollock standard price to reflect, as closely as possible, the standard price of Aleutian Islands pollock landings based on information provided in the COAR for the previous year, as described in § 679.5(p). The Regional Administrator will base Aleutian Islands pollock standard price on the following types of information:

(A) Landed pounds of Aleutian Islands pollock;

(B) Total ex-vessel value of Aleutian Islands pollock; and

(C) Price adjustments, including retroactive payments.

(c) *Aleutian Islands pollock fee percentage*—(1) *Established percentage*. The Aleutian Islands pollock fee percentage is the amount as determined

by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. This amount must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors.* NMFS will use the following factors to determine the fee percentage:

(A) The catch to which the Aleutian Islands pollock cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the Aleutian Islands directed pollock fishery.

(ii) *Methodology.* NMFS will use the following equations to determine the fee percentage:  $100 \times \text{DPC}/V$ , where:

DPC = the direct program costs for the Aleutian Islands directed pollock fishery for the most recent fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

V = total of the standard ex-vessel value of the catch subject to the Aleutian Islands pollock fee liability for the current year.

(3) *Publication*—(i) *General.* NMFS will calculate and announce the fee percentage in a **Federal Register** notice by December 1 of the year in which the Aleutian Islands pollock landings were made. NMFS shall calculate the Aleutian Islands pollock fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* The calculated Aleutian Islands pollock fee percentage is applied to all Aleutian Islands pollock landings made between January 1 and December 31 of the current year.

(4) *Applicable percentage.* The designated representative must use the Aleutian Islands pollock fee percentage applicable at the time an Aleutian Islands pollock landing is debited from the Aleutian Islands directed pollock fishery allocation to calculate the Aleutian Islands pollock fee liability for

any retroactive payments for that pollock.

(5) *Fee liability determination.* (i) The Aleut Corporation will be subject to a fee liability for any Aleutian Islands pollock debited from the Aleutian Islands directed pollock fishery allocation during a calendar year.

(ii) NMFS will provide a fee liability summary letter to the Aleut Corporation by December 1 of each year. The summary will explain the fee liability determination including the current fee percentage, and details of Aleutian Islands pollock pounds debited from the Aleutian Islands directed pollock fishery allocation by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) The Aleut Corporation will not receive its Aleutian Islands directed pollock fishery allocation until the Aleut Corporation's designated representative submits full payment of the Aleut Corporation's cost recovery fee liability.

(2) If the Aleut Corporation's designated representative fails to submit full payment for Aleutian Islands pollock fee liability by the date described in paragraph (a)(3) of this section, the Regional Administrator may at any time thereafter send an IAD to the Aleut Corporation's designated representative stating that the estimated fee liability, as indicated by his or her own submitted information, is the Aleutian Islands pollock fee liability due from the Aleut Corporation.

(3) If the Aleut Corporation's designated representative fails to submit full payment by the Aleutian Islands pollock fee liability payment deadline described at paragraph (a)(3) of this section, no Aleutian Islands directed pollock fishery allocation will be issued to the Aleut Corporation for that calendar year.

(4) Upon final agency action determining that the Aleut Corporation has not paid its Aleutian Islands pollock fee liability, the Regional Administrator may continue to prohibit issuance of the Aleutian Islands directed pollock fishery allocation for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Overpayment.* Upon issuance of final agency action, payment submitted to NMFS in excess of the Aleutian Islands pollock fee liability determined to be due by the final agency action will be returned to the Aleut Corporation unless its designated representative requests the agency to credit the excess amount against the cooperative's future Aleutian Islands pollock fee liability. Payment processing fees may be deducted from any fees returned to the Aleut Corporation.

(f) *Appeals.* A representative of the Aleut Corporation who receives an IAD for incomplete payment of an Aleutian Islands pollock fee may appeal under the appeals procedures set out at 15 CFR part 906.

(g) *Administrative Fees.* Administrative fees may be assessed if the account drawn on to pay the CDQ fee liability has insufficient funds to cover the transaction, or if the account becomes delinquent. Additionally, interest will begin to accrue on any portion of the fee that has not been paid due to insufficient funds.

(h) *Annual report.* NMFS will publish annually a report describing the status of the Aleutian Islands Pollock Cost Recovery Fee Program.

■ 9. In § 679.91,

■ a. Revise paragraphs (b)(4)(vii) and (h)(3)(xiv); and

■ b. Add paragraph (h)(3)(xx) to read as follows:

**§ 679.91 Amendment 80 Program annual harvester privileges.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(vii) *Copy of membership agreement or contract.* Attach a copy of the membership agreement or contract that includes terms that list:

(A) How the Amendment 80 cooperative intends to catch its CQ; and

(B) The obligations of Amendment 80 QS holders who are members of an Amendment 80 cooperative to ensure the full payment of Amendment 80 fee liabilities that may be due.

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

- (xiv) Does an Amendment 80 cooperative need a membership agreement or contract? Yes, an Amendment 80 cooperative must have a membership agreement or contract. A copy of this agreement or contract must be submitted to NMFS with the application for CQ. The membership agreement or contract must specify:  
 (A) How the Amendment 80 cooperative intends to catch its CQ; and  
 (B) The obligations of Amendment 80 QS holders, who are members of an Amendment 80 cooperative, to ensure the full payment of Amendment 80 fee liabilities that may be due.
- (xx) Is there a requirement that an Amendment 80 cooperative pay Amendment 80 cost recovery fees? Yes, see § 679.95 for the provisions that apply.

\* \* \* \* \*

■ 10. A new § 679.95 is added to subpart H to read as follows:

**§ 679.95 Cost recovery.**

(a) *Cost recovery fee program for Amendment 80*—(1) *Who is responsible?* The person designated as the Amendment 80 cooperative representative at the time of an Amendment 80 CQ landing must comply with the requirements of this section, notwithstanding:

- (i) Subsequent transfer of Amendment 80 CQ or Amendment 80 QS held by Amendment 80 cooperative members;
- (ii) Non-renewal of an Amendment 80 CQ permit; or
- (iii) Changes in the membership in an Amendment 80 cooperative, such as members joining or departing during the relevant year, or changes in the amount of Amendment 80 QS holdings of those members.

(2) *Fee collection.* Amendment 80 cooperative representatives are responsible for submitting the cost recovery payment for Amendment 80 CQ landings made under the authority of their Amendment 80 CQ permit.

(3) *Payment*—(i) *Payment due date.* An Amendment 80 cooperative representative must submit all Amendment 80 fee liability payment(s) to NMFS at the address provided in paragraph (a)(3)(iii) of this section no later than December 31 of the calendar year in which the Amendment 80 CQ landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be made available on both the payment Web site and a fee liability summary letter mailed to the Amendment 80 CQ permit holder.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *Amendment 80 standard ex-vessel value determination and use*—(1) *General.* An Amendment 80 cooperative representative must use the Amendment 80 standard prices determined by NMFS under paragraph (b)(2) of this section.

(2) *Amendment 80 standard prices*—(i) *General.* Each year the Regional Administrator will publish Amendment 80 standard prices in the **Federal Register** by December 1 of the year in which the Amendment 80 species landings were made. The standard prices will be described in U.S. dollars per equivalent pound for Amendment 80 species landings made by Amendment 80 CQ permit holders during the current calendar year.

(ii) *Effective duration.* The Amendment 80 standard prices published by NMFS shall apply to all Amendment 80 species landings made by an Amendment 80 CQ permit holder during that calendar year.

(iii) *Determination.* An Amendment 80 cooperative representative must use the Amendment 80 standard prices when determining the Amendment 80 fee liability based on Amendment 80 standard ex-vessel value. An Amendment 80 cooperative representative must base all fee liability calculations on the Amendment 80 standard price that correlates to landed Amendment 80 species by gear type that is recorded in Amendment 80 equivalent pounds.

(A) *Pacific cod.* NMFS will use the standard prices calculated for Pacific cod based on information provided in the Pacific Cod Ex-vessel Volume and Value Report described at § 679.5(u)(1).

(B) *Amendment 80 species other than Pacific cod.* (1) The Regional Administrator will base Amendment 80 standard prices for all Amendment 80 species other than Pacific cod on the First Wholesale Volume and Value reports specified in § 679.5(u)(2).

(2) The Regional Administrator will establish Amendment 80 standard prices for all Amendment 80 species other than Pacific cod on an annual basis; except the Regional Administrator will establish an Amendment 80 standard price for rock sole for all

landings from January 1 through March 31, and a second Amendment 80 standard price for rock sole for all landings from April 1 through December 31.

(3) The average first wholesale product prices reported on the First Wholesale Volume and Value reports, specified in § 679.5(u)(2), will be multiplied by 0.4 to obtain a proxy for the ex-vessel prices of Amendment 80 species other than Pacific cod.

(c) *Amendment 80 fee percentage*—(1) *Established percentage.* The Amendment 80 fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. This amount must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors.* NMFS will use the following factors to determine the fee percentage:

(A) The catch to which the Amendment 80 cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the Amendment 80 Program.

(ii) *Methodology.* NMFS will use the following equations to determine the fee percentage:  $100 \times DPC/V$ , where:

DPC = direct program costs for the Amendment 80 Program for the most recent fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

V = total of the standard ex-vessel value of the landings subject to the Amendment 80 fee liability for the current year.

(3) *Publication*—(i) *General.* NMFS will calculate and announce the Amendment 80 fee percentage in a

**Federal Register** notice by December 1 of the year in which the Amendment 80 landings were made. NMFS shall calculate the Amendment 80 fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* The calculated Amendment 80 fee percentage is applied to Amendment 80 CQ landings made between January 1 and December 31 of the same year.

(4) *Applicable percentage.* The Amendment 80 CQ permit holder must use the Amendment 80 fee percentage applicable at the time an Amendment 80 species landing is debited from an Amendment 80 CQ allocation to calculate the Amendment 80 fee liability for any retroactive payments for that Amendment 80 species.

(5) *Fee liability determination for an Amendment 80 CQ permit holder.* (i) All Amendment 80 CQ permit holders will be subject to a fee liability for any Amendment 80 species CQ debited from an Amendment 80 CQ allocation between January 1 and December 31 of the current year.

(ii) The Amendment 80 fee liability assessed to an Amendment 80 CQ permit holder will be based on the proportion of the standard ex-vessel value of Amendment 80 species debited from an Amendment 80 CQ permit holder relative to all Amendment 80 CQ permit holders during a calendar year as determined by NMFS.

(iii) NMFS will provide a fee liability summary letter to all Amendment 80 CQ permit holders by December 1 of each year. The summary will explain the fee liability determination including the current fee percentage, and details of Amendment 80 species CQ pounds

debited from Amendment 80 CQ allocations by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) No Amendment 80 cooperative will receive its Amendment 80 CQ until the Amendment 80 CQ permit holder submits full payment of an applicant's complete Amendment 80 fee liability.

(2) If an Amendment 80 CQ permit holder fails to submit full payment for its Amendment 80 fee liability by the date described in paragraph (a)(3) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the Amendment 80 cooperative's representative stating that the Amendment 80 CQ permit holder's estimated fee liability, as indicated by his or her own submitted information, is the Amendment 80 fee liability due from the Amendment 80 CQ permit holder.

(ii) Disapprove any application to transfer Amendment 80 CQ to or from the Amendment 80 CQ permit holder in accordance with § 679.91(g).

(3) If an Amendment 80 cooperative representative fails to submit full payment by the Amendment 80 fee liability payment deadline described at paragraph (a)(3) of this section:

(i) No Amendment 80 CQ permit will be issued to that Amendment 80 cooperative for the following calendar year; and

(ii) No Amendment 80 CQ will be issued based on the Amendment 80 QS held by the members of that Amendment 80 cooperative to any other CQ permit for that calendar year.

(4) Upon final agency action determining that an Amendment 80 CQ permit holder has not paid his or her

Amendment 80 fee liability, the Regional Administrator may continue to prohibit issuance of an Amendment 80 CQ permit for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Overpayment.* Upon issuance of final agency action, payment submitted to NMFS in excess of the Amendment 80 fee liability determined to be due by the final agency action will be returned to the Amendment 80 cooperative unless the Amendment 80 cooperative's representative requests the agency to credit the excess amount against the Amendment 80 CQ permit holder's future Amendment 80 fee liability. Payment processing fees may be deducted from any fees returned to the Amendment 80 cooperative.

(f) *Appeals.* An Amendment 80 cooperative representative who receives an IAD for incomplete payment of an Amendment 80 fee liability may appeal under the appeals procedures set out a 15 CFR part 906.

(g) *Administrative Fees.* Administrative fees may be assessed if the account drawn on to pay the CDQ fee liability has insufficient funds to cover the transaction, or if the account becomes delinquent. Additionally, interest will begin to accrue on any portion of the fee that has not been paid due to insufficient funds.

(h) *Annual report.* NMFS will publish annually a report describing the status of the Amendment 80 Cost Recovery Fee Program.

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Part IV

Department of the Treasury

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31 CFR Part 148

Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority; Proposed Rule

**DEPARTMENT OF THE TREASURY****31 CFR Part 148**

RIN 1505-AC36

**Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority**

**AGENCY:** The Secretary of the Department of the Treasury, as Chairperson of the Financial Stability Oversight Council.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary of the Treasury (the “Secretary”), as Chairperson of the Financial Stability Oversight Council, is proposing rules (the “Proposed Rules”) to implement the qualified financial contract (“QFC”) recordkeeping requirements of the Dodd–Frank Wall Street Reform and Consumer Protection Act (“Act” or the “Dodd–Frank Act”). The Act provides that if the federal primary financial regulatory agencies do not prescribe joint final or interim final regulations requiring financial companies to maintain records with respect to QFCs to assist the Federal Deposit Insurance Corporation (“FDIC”) as receiver for a covered financial company to exercise its rights and fulfill its obligations under the Act within 24 months of the enactment of the Act, the Chairperson of the Financial Stability Oversight Council (the “Council”) shall prescribe, in consultation with the FDIC, such regulations. The Secretary, as Chairperson of the Council, is proposing the Proposed Rules in consultation with the FDIC because the federal primary financial regulatory agencies did not so prescribe joint final or interim final regulations. The Proposed Rules would require recordkeeping with respect to positions, counterparties, legal documentation and collateral. This information is necessary to assist the FDIC as receiver to: Fulfill its obligations under the Dodd–Frank Act in deciding whether to transfer QFCs; assess the consequences of decisions to transfer, disaffirm or repudiate, or allow the termination of, QFCs with one or more counterparties; determine if any financial systemic risks are posed by the transfer, disaffirmance or repudiation, or termination of such QFCs; and otherwise exercise its rights under the Act. The Secretary is requesting comment on all aspects of the Proposed Rules.

**DATES:** Written comments must be received by April 7, 2015.

**ADDRESSES:** Submit comments electronically through the Federal eRulemaking Portal: [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), or by mail (if hard copy, preferably an original and two copies) to: The Treasury Department, Attn: Qualified Financial Contracts Recordkeeping Comments, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. Please include your name, affiliation, address, email address, and telephone number in your comment. Comments will be available for public inspection on [www.regulations.gov](http://www.regulations.gov). In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Monique Rollins, Acting Deputy Assistant Secretary for Capital Markets; Patricia Kao, Director, Office of Financial Institutions Policy: (202) 622–4948.

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**I. Introduction****A. Executive Summary**

The Dodd–Frank Act was enacted on July 21, 2010.<sup>1</sup> As part of a new and comprehensive regulatory framework, Title II of the Dodd–Frank Act (“Title II”) generally establishes a mechanism for the orderly resolution of a financial company whose failure and resolution under otherwise applicable federal or state law would have serious adverse effects on financial stability in the United States. A “financial company” under Title II is a company that is incorporated or organized under any provision of federal law or the laws of any State (as defined in 12 U.S.C. 5301(16)) that is:

- A bank holding company;
- A nonbank financial company supervised by the Board of Governors of the Federal Reserve System (“Board”);
- Any company that is predominantly engaged in activities that the Board has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (“BHC Act”);<sup>2</sup> or
- Any subsidiary of such financial company that is itself predominantly engaged in activities that the Board has determined are financial in nature or incidental thereto for purposes of section 4(k) of the BHC Act, other than an insured depository institution or an insurance company.<sup>3</sup>

The Title II orderly liquidation mechanism is modeled in part on

<sup>1</sup> Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

<sup>2</sup> The FDIC has published a final rule that identifies the activities listed in section 4(k) of the BHC Act and the Board’s Regulation Y (12 CFR part 225) that would be considered financial in nature or incidental thereto for purposes of Title II. See 78 FR 34712 (June 10, 2013).

<sup>3</sup> Dodd–Frank Section 201(a)(11), 12 U.S.C. 5381(a)(11). The definition excludes Farm Credit System institutions chartered under and subject to the provisions of the Farm Credit Act; governmental entities; and regulated entities, as defined under section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

provisions of the Federal Deposit Insurance Act (“FDIA”)<sup>4</sup> regarding insolvencies of insured depository institutions. Under Title II, the FDIC has been given similar responsibilities as under the FDIA, including receivership authority over financial companies in default or in danger of default for which a determination has been made by the Secretary (in consultation with the President) to seek the appointment of the FDIC as receiver pursuant to section 203(b) of the Dodd-Frank Act.

Title II includes provisions, set forth at section 210(c)(8), concerning the QFCs held by covered financial companies. A “QFC” is a securities contract, commodities contract, forward contract, repurchase agreement, swap agreement, or any similar agreement that the FDIC determines by regulation, resolution, or order to be a qualified financial contract;<sup>5</sup> and a “covered financial company” is a financial company, other than an insured depository institution, for which the Secretary has made a determination to seek the appointment of the FDIC as receiver under the Dodd-Frank Act.<sup>6</sup>

The treatment afforded to QFCs under Title II parallels the treatment afforded to them under section 11(e) of the FDIA.<sup>7</sup> Under Title II and the FDIA, from the time the FDIC is appointed as receiver until 5 p.m. (eastern time) on the business day following the date of the appointment, a QFC counterparty is prohibited from exercising any contractual rights (including termination) triggered by the appointment of the receiver.<sup>8</sup>

After its appointment as receiver and prior to 5 p.m. on the following business day, the FDIC has three options for a QFC to which a covered financial company is a party:

- (1) Transfer the QFC to another financial institution;
- (2) Retain the QFC within the receivership and allow the counterparty to terminate; or
- (3) Retain the QFC within the receivership and disaffirm or repudiate the QFC and pay compensatory damages.<sup>9</sup>

In order to assess the options that would be available following its appointment as receiver, the FDIC needs detailed information about the covered financial company’s QFCs. Section 210(c)(8)(H) therefore requires that the Federal primary financial regulatory

agencies, as defined in the Act<sup>10</sup> (the “PFRAs”), to jointly prescribe, by July 21, 2012, final or interim final regulations that require financial companies to maintain such records with respect to QFCs that the PFRAs determine to be necessary or appropriate to assist the FDIC as receiver for a covered financial company. Section 210(c)(8)(H) further provides that if the PFRAs do not so prescribe such joint regulations by July 21, 2012, the Secretary, as Chairperson of the Council, shall prescribe such regulations in consultation with the FDIC.

As the PFRAs did not prescribe such regulations by the statutory deadline, the Secretary, as Chairperson of the Council, in consultation with the FDIC, is publishing the Proposed Rules. As described in greater detail below, the Proposed Rules would apply to a “records entity,” which is defined in the Proposed Rules to include certain types of financial companies that are parties to an open QFC or guarantee, support, or are linked to an open QFC and that meet certain size or other thresholds (such as risk, complexity, and interconnectedness), or other conditions or are certain affiliates in the same corporate group as a financial company that meets these thresholds or conditions (referred throughout this release as “affiliated financial companies”) and that are party to an open QFC or that guarantee, support, or are linked to an open QFC of an affiliate.<sup>11</sup>

The Proposed Rules would require these records entities to maintain detailed information about their QFC positions and be capable of providing this information to their PFRAs within 24 hours of request by their PFRAs. This would assist the FDIC in resolving financial companies that may be subject to an orderly liquidation under Title II of the Dodd-Frank Act based on consideration of such financial companies’ size, risk, complexity, leverage, frequency and dollar amount of QFCs and interconnectedness to the financial system, and any other factors deemed appropriate.<sup>12</sup> To that end, it is

necessary that financial companies that qualify as records entities maintain the capacity to generate, on an ongoing basis, QFC information in a common data format. To facilitate the resolution of QFC portfolios, the FDIC needs to analyze such data upon being appointed as receiver under Title II. The information must be sufficient to allow the FDIC to estimate the financial and operational impact on the covered financial company or its affiliated companies of the FDIC’s decision to transfer, disaffirm or repudiate, or retain the QFCs. It must also allow the FDIC to assess the potential impact that such decisions may have on the financial markets as a whole. The standardized data format would reduce the time and effort needed by the FDIC to perform the analysis and would facilitate comparison of QFC data across financial companies with large complex QFC portfolios.

The Proposed Rules also would allow the Secretary to issue conditional or unconditional general and specific exemptions from one or more requirements in the rule as the Secretary determines to be necessary or appropriate, including whether application of one or more requirements of the rule would not be necessary to achieve the purpose of the rule. The issuance of a conditional or unconditional exemption would be consistent with section 210(c)(8)(H)(iv) of the Act which provides that the regulations required by section 210(c)(8)(H)(i) differentiate among financial companies, as appropriate, by taking into consideration a number of factors. Specifically, the Secretary would consider whether to grant an exemption after receiving a recommendation from the FDIC, prepared in consultation with the applicable PFRAs, that takes into consideration the financial company’s or financial companies’ size, risk, complexity, leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system and any other factors deemed necessary or appropriate.

The proposed recordkeeping requirements of the Proposed Rules are based, in part, on 12 CFR part 371, Recordkeeping Requirements for Qualified Financial Contracts,<sup>13</sup> which

<sup>13</sup> 73 FR 78170 (Dec. 22, 2008). Part 371 requires an insured depository institution in troubled condition, upon written notification by the FDIC, to produce immediately at the close of processing of the institution’s business day, for a period provided in the notification, the electronic files for certain position level and counterparty level data; electronic or written lists of QFC counterparty and

Continued

<sup>10</sup> 12 U.S.C. 5301(12). See the term “primary financial regulatory agency.”

<sup>11</sup> The term “affiliated financial companies” used in this release is the combination of two defined terms in the Proposed Rules: “affiliate” is defined in § 148.2(a) and “financial company” is defined in § 148.2(f) of the Proposed Rules. An affiliated financial company of a records entity would itself be a records entity if it is not an exempt entity and is a party to an open QFC or guarantees, supports, or is linked to an open QFC of an affiliate. An “open” QFC is a QFC which has not been fully performed.

<sup>12</sup> See 12 U.S.C. 5390(c)(8)(H)(iv).

<sup>4</sup> 12 U.S.C. 1811 *et seq.*

<sup>5</sup> 12 U.S.C. 5390(c)(8)(D)(i).

<sup>6</sup> 12 U.S.C. 5381(a)(8).

<sup>7</sup> 12 U.S.C. 1821(e).

<sup>8</sup> See *e.g.*, 12 U.S.C. 5390(c)(9) and (10).

<sup>9</sup> 12 U.S.C. 5390(c)(1), (10) and (11).

implements section 11(e)(8)(H) of the FDIA.<sup>14</sup> The Proposed Rules also have been informed by the FDIC's experience with both large and small portfolios of QFCs of failed insured depository institutions.

The recent financial crisis demonstrated that management of QFC positions, including steps undertaken to close out such positions, can be an important element of a resolution strategy which, if not handled properly, may magnify market instability. The recordkeeping requirements of the Proposed Rules are designed to ensure that the FDIC, as receiver of a covered financial company, will have comprehensive information about the QFC portfolio maintained by such financial company subject to orderly resolution, and to enable the FDIC to plan the rapid and orderly resolution of a financial company's QFC portfolio in the event of insolvency. The Proposed Rules are also designed to provide the FDIC with information necessary for the FDIC as receiver to comply with the statutory requirements for the transfer, disaffirmance, or repudiation of the QFCs of a financial company, within any applicable time periods mandated under Title II of the Dodd-Frank Act.

#### *B. Publication of the Notice of Proposed Rulemaking*

The Secretary is publishing this notice of proposed rulemaking in light of his responsibilities under section 210(c)(8)(H) of the Dodd-Frank Act. The Secretary is seeking comment on all aspects of the Proposed Rules.

The Proposed Rules provide that the compliance date for most of the provisions will be the day that is 270 days after a records entity becomes subject to the final rule. Thus, for entities that would be subject to the final rule on its effective date, the compliance date would be the day that is 270 days after the effective date of the final rule (which is 330 days after the date of publication). However, one aspect of the Proposed Rules will require compliance in 60 days. Specifically, on the effective date of the final rule, a records entity must provide up-to-date contact information to the FDIC and each of its PFRA's. A financial company that becomes a records entity after the effective date of the final rule would be required to provide such

portfolio location identifiers, certain affiliates of the institution and the institution's counterparties to QFC transactions, contact information and organizational charts for key personnel involved in QFC activities, and contact information for vendors for such activities; and copies of key agreements and related documents for each QFC.

<sup>14</sup> 12 U.S.C. 1821(e)(8)(H).

contact information within 60 days of becoming a records entity.

## **II. Background—QFCs and Receivership**

A QFC is a type of financial contract and is defined in section 210(c)(8) of the Act. As further described below, QFCs are treated differently than other types of contracts in the event of the failure of a financial company.<sup>15</sup> The treatment afforded to QFCs under Title II parallels the treatment afforded to QFCs under section 11(e) of the FDIA.<sup>16</sup>

Under section 210(c)(8), QFCs include five specific types of financial contracts: securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements.<sup>17</sup> The FDIC is empowered to define other similar agreements as QFCs by rule, regulation or order.<sup>18</sup> In addition, a master agreement that governs any contracts in these five categories is treated as a QFC.<sup>19</sup> Security agreements, guarantees, credit enhancements or reimbursement obligations that relate to QFCs are also defined to be QFCs.<sup>20</sup> All swaps and security-based swaps defined in Title VII of the Act qualify as QFCs under section 210(c)(8).

The filing of a bankruptcy petition or the appointment of the FDIC as receiver triggers an automatic stay that precludes a party to most types of contracts with an insolvent company from taking actions under that contract.<sup>21</sup> Therefore, most types of contracts with a financial company cannot be terminated based solely upon the appointment of the FDIC as receiver.<sup>22</sup> Under Title II, the FDIA, and other U.S. insolvency statutes, however, a party to a QFC with an insolvent entity can exercise any of its contractual rights to terminate such QFC, offset or net any amounts due, and apply any pledged collateral for payment of such amounts subject to certain conditions.<sup>23</sup> Further, under Title 11 of the United States Bankruptcy Code ("Bankruptcy Code"), this right to terminate is immediate upon initiation of bankruptcy proceedings.<sup>24</sup> However, Title II and the FDIA do not permit counterparties to exercise a contractual right of termination based solely upon

<sup>15</sup> 12 U.S.C. 5390(c)(8), (9), and (10).

<sup>16</sup> 12 U.S.C. 1821(e).

<sup>17</sup> 12 U.S.C. 5390(c)(8)(D)(i). The term "securities contract" includes contracts "for the purchase, sale or loan of a security[.]" 12 U.S.C. 5390(c)(8)(D)(ii).

<sup>18</sup> 12 U.S.C. 5390(c)(8)(D)(i).

<sup>19</sup> 12 U.S.C. 5390(c)(8)(D)(viii).

<sup>20</sup> 12 U.S.C. 5390(c)(8)(D)(ii)-(vi).

<sup>21</sup> See 11 U.S.C. 361; 12 U.S.C. 1821(e)(13); 12 U.S.C. 5390(c)(13).

<sup>22</sup> 12 U.S.C. 5390(c)(13) and 12 U.S.C.

1821(e)(13)(A).

<sup>23</sup> See e.g., 12 U.S.C. 5390(c)(8)(A).

<sup>24</sup> 11 U.S.C. 362(b)(6), (7) and (17).

insolvency or the appointment of a receiver until after 5 p.m. (eastern time) on the first business day following the appointment of the FDIC as receiver,<sup>25</sup> nor do they permit counterparties to terminate a QFC because of its transfer to a bridge entity or another financial institution.<sup>26</sup>

After its appointment as receiver and prior to the close of the 5 p.m. window, the FDIC has three options in managing a covered financial company's QFC portfolio. With respect to all of the covered financial company's QFCs with a particular counterparty, and its affiliates, the FDIC may:

- (1) Transfer the QFCs to another institution, including a bridge financial company established by the FDIC;<sup>27</sup>
- (2) Retain the QFCs within the receivership and allow the counterparty to terminate; or
- (3) Retain the QFCs within the receivership, disaffirm or repudiate the QFCs, and pay compensatory damages.<sup>28</sup>

Within certain constraints,<sup>29</sup> the FDIC can take different approaches to QFCs with different counterparties. However, the receiver's power to transfer or repudiate a QFC is limited. If the FDIC as receiver desires to transfer any QFC with a particular counterparty, it must transfer all QFCs between the covered financial company and such counterparty and any affiliate of such counterparty to a single financial institution. Similarly, if the FDIC desires to repudiate any QFC with a particular counterparty, it must repudiate all QFCs between the covered financial company and such counterparty and any affiliate of such counterparty as a group.<sup>30</sup>

*Transfer:* The FDIC may transfer a QFC to any other financial institution not subject to a bankruptcy or insolvency proceeding. Such financial

<sup>25</sup> 12 U.S.C. 1821(e)(10)(B)(i) and 12 U.S.C. 5390(c)(10)(B)(i). This time frame in which QFC counterparties are stayed from acting is in contrast to parties to other contracts with a failed financial company, who are stayed from terminating such other contracts for 90 days.

<sup>26</sup> Id. There is an exception to this general rule in section 210(c)(8)(G) with respect to cleared QFCs, which provides in relevant part that a clearing organization would not be stayed from exercising its rights to liquidate all positions and collateral of the covered financial company under the company's QFCs in certain circumstances. See 12 U.S.C. 5390(c)(8)(G).

<sup>27</sup> 12 U.S.C. 5390(c)(9). The FDIC as receiver of an insolvent financial company may establish a bridge financial company and transfer to such company assets and certain liabilities as the FDIC generally deems appropriate. 12 U.S.C. 5390(h).

<sup>28</sup> 12 U.S.C. 5390(c)(11).

<sup>29</sup> 12 U.S.C. 5390(c)(11)(A).

<sup>30</sup> For transfer, see 12 U.S.C. 5390(c)(9)(A); for repudiation, see 12 U.S.C. 5390(c)(11).

institutions include, but are not limited to, banks, foreign banks,<sup>31</sup> and bridge financial companies operated by the FDIC. If the FDIC as receiver transfers a QFC to a financial institution within the specified period of time, the counterparty cannot exercise its contractual right to terminate the QFC solely by reason of or incidental to the appointment of the FDIC as receiver, or the insolvency or financial condition of the covered financial company.<sup>32</sup> If the FDIC as receiver decides to transfer any QFCs, it must take steps reasonably calculated to provide notice of the transfer of the QFCs of the failed financial company to the relevant counterparties.<sup>33</sup> The counterparties must accept the transferee as a counterparty and cannot terminate the QFC solely by reason of such transfer.<sup>34</sup>

**Disaffirmance or Repudiation:** The FDIC as receiver may disaffirm or repudiate a QFC within a reasonable period of time if the receiver determines that the contract is burdensome.<sup>35</sup> If the receiver does not elect to transfer all QFCs with a given counterparty (and with its affiliates), under the law the receiver has a “reasonable time” in which to repudiate such QFCs. However, as a practical matter, the receiver must promptly decide whether to repudiate all QFCs involving such counterparty (and its affiliates), in order to minimize the potential for an adverse change in the market value of such QFCs. For example, although counterparties to QFCs that are not transferred are not required to terminate the contracts immediately after the expiration of a one-business day stay,<sup>36</sup> they may decide to exercise any contractual right they have to terminate in order to protect against the potential adverse change in the market value of the QFCs (especially if the counterparties have sufficient collateral

to cover the termination value of the QFCs).

If the receiver repudiates the QFCs, it must pay actual direct compensatory damages,<sup>37</sup> which may include the normal and reasonable costs of cover or other reasonable measure of damages used in the industry for such claims (after giving effect to any contractual netting rights of the counterparty). Such damages are calculated as of the date of repudiation.<sup>38</sup>

**Retention:** The FDIC’s retention of a QFC in the receivership would allow a counterparty to terminate the contract after 5 p.m. (eastern time) on the first business day after the appointment of the FDIC as receiver.<sup>39</sup> If the counterparty then terminates QFCs with the financial company, the counterparty may exercise any contractual right it may have to net any payment the counterparty owes to the receivership against any payment owed by the receivership to the counterparty with respect to QFCs as set forth in any netting agreement.

In order to assess by 5 p.m. on the business day following the date of its appointment as receiver of a financial company its options to retain and allow the counterparty to terminate, retain and disaffirm or repudiate, or transfer QFCs, the FDIC needs detailed information about the company’s QFCs. To make a well-informed decision on these three options, the FDIC needs access to the information required to be maintained under the Proposed Rules. The information must be sufficient to allow the FDIC to estimate the financial and operational impact on the covered financial company or its affiliated financial companies of the receiver’s decision to transfer, repudiate or retain the QFCs. It must also allow the FDIC to assess the potential impact that such decisions may have on the financial markets as a whole.

Under the Act, the FDIC as receiver has additional powers with respect to contracts of subsidiaries or affiliates of a covered financial company that are guaranteed or otherwise supported by or linked<sup>40</sup> to such covered financial

company.<sup>41</sup> Such contracts can be enforced by the FDIC as receiver notwithstanding the insolvency, financial condition, or receivership of the financial company. Contracts which are guaranteed or otherwise supported by the covered financial company remain enforceable by the FDIC if the FDIC transfers any such guaranty or other support and all related assets and liabilities to a bridge financial company or third-party financial institution not subject to a bankruptcy or insolvency proceeding within the period of time provided under section 210(c)(10), or if the FDIC provides adequate protection<sup>42</sup> with respect to the support of such contracts.<sup>43</sup> The FDIC as receiver may also need to make sure that affiliates<sup>44</sup> of the covered financial company continue to perform their QFC obligations in order to preserve the critical operations of the covered financial company and its affiliates. In such cases, the FDIC may need to provide additional liquidity, support, or collateral to the affiliates to enable them to meet collateral obligations and generally perform their QFC obligations.<sup>45</sup> The Proposed Rules therefore would impose recordkeeping requirements on affiliated financial companies in a corporate group because the Secretary, as informed by the FDIC,

implementing section 210(c)(16) of the Orderly Liquidation Authority provisions of the Dodd-Frank Act. The FDIC published a final rule addressing all aspects of section 210(c)(16) on October 16, 2012. 77 FR 63205 (“FDIC Final Rule”).

<sup>41</sup> 12 U.S.C. 5390(c)(16). This section provides for the enforcement of contracts guaranteed by a financial company subject to orderly liquidation under Title II.

<sup>42</sup> Under the FDIC final rule, contracts “supported by” a covered financial company may also be enforced by providing “adequate protection” either in the alternative to transferring any related support or in combination with a partial transfer of such support. Adequate protection, with respect to the covered financial company’s support of the obligations under such contracts, means: (1) making a cash payment or periodic cash payments to counterparties to the extent that the failure to cause the assignment and assumption of the covered financial company’s support and related assets and liabilities causes a loss to the counterparties; (2) provision by the FDIC as receiver of a guarantee of the subsidiary or affiliate’s obligations; or, (3) provision of relief that will result in realization by the counterparty of the “indubitable equivalent of the covered financial company’s support of such obligations or liabilities.” The definition of the term “adequate protection” is consistent with the definition under section 361 of the United States Bankruptcy Code. 77 FR 63205.

<sup>43</sup> 12 U.S.C. 5390(c)(16)(A)(ii). See also 77 FR 63205.

<sup>44</sup> The term “affiliate” is defined in § 148.2(a) of the Proposed Rules as any entity that controls, is controlled by, or is under common control with a financial company or counterparty.

<sup>45</sup> See 12 U.S.C. 5384(d). Section 204(d) of the Act authorizes the FDIC, for example, to make loans to and guarantee the obligations of the covered financial company and its covered subsidiaries.

<sup>31</sup> The FDIC as receiver of a covered financial company may not transfer QFCs to a foreign bank unless, under applicable law, the contractual rights of the parties to such QFCs and any netting contracts, security agreements or arrangements or other credit enhancements related to any such QFCs are enforceable substantially to the same extent as under 12 U.S.C. 5390. 12 U.S.C. 5390(c)(9)(B).

<sup>32</sup> 12 U.S.C. 5390(c)(10)(B) and 12 U.S.C. 5390(c)(16).

<sup>33</sup> See 12 U.S.C. 5390(c)(10)(B).

<sup>34</sup> 12 U.S.C. 5390(c)(10)(B).

<sup>35</sup> 12 U.S.C. 5390(c)(1).

<sup>36</sup> See 12 U.S.C. 5390(c)(8)(F)(ii), which provides that any payment or delivery obligations otherwise due from a party pursuant to the QFC shall be suspended from the time at which the FDIC is appointed as receiver under the earlier of (I) the time at which such party receives notice that such contract has been transferred pursuant to section 210(c)(10)(A), or (II) 5 p.m. (eastern time) on the business day following the date of the appointment of the FDIC as receiver.

<sup>37</sup> The receiver’s payment obligation is subject to the claims process of 12 U.S.C. 5390(a)(2).

Therefore, if the counterparty does not have a perfected security interest in collateral sufficient to satisfy its claim, the counterparty might not receive cash payment in full.

<sup>38</sup> 12 U.S.C. 5390(c)(3).

<sup>39</sup> 12 U.S.C. 5390(c)(10)(B)(i).

<sup>40</sup> 12 U.S.C. 5390(c)(16). Section 210(c)(16) does not define the terms “linked” to, or “guaranteed or supported” by, the covered financial company. As explained later in this preamble, the Proposed Rules include definitions of “guaranteed or supported” and “linked” that are consistent with the definitions of such terms in the FDIC final rule

believes that the information would be necessary or appropriate in assisting the FDIC in exercising its rights as receiver for a financial company with affiliates. In addition, the imposition of recordkeeping requirements on affiliated financial companies could also assist the FDIC as receiver of one or more of such affiliated financial companies of the Act in fulfilling its obligations under section 210(c)(8), (9), or (10).<sup>46</sup>

Under Title II, the FDIC may become receiver for financial companies of a substantial size or complexity. These large and complex companies and certain of their affiliates that enter into QFCs may hold large and complex portfolios of QFCs. Such financial companies and their affiliates often have counterparties that are themselves members of large, complex, and interconnected corporate financial groups. Therefore QFCs tend to increase the interconnectedness of the financial system and systemic risk. They are also an important and integral component of a Title II resolution, presenting multiple challenges to an orderly liquidation process. Given the limited post-receivership time frame allowed by Title II for the FDIC to make decisions regarding QFCs, it is important that the FDIC has adequate time to obtain QFC data, conduct necessary analysis, and make informed decisions on a QFC portfolio.

Therefore, the Secretary in consultation with the FDIC is proposing the Proposed Rules described below. The Proposed Rules are similar to the FDIC's Part 371 but the information requirements of the Proposed Rules are more extensive. Unlike the FDIC's Part 371 (which requires that only banks in "troubled condition" maintain records of QFCs) the Proposed Rules do not contain such a "troubled financial condition" trigger. The recordkeeping requirements of the Proposed Rules have been informed by the FDIC's experience in dealing with multiple QFC portfolios of insured depository institutions. The data requirements were also informed by efforts to standardize regulatory data.

Given the short time frame for the FDIC to make decisions regarding a QFC portfolio of significant size or complexity, the Proposed Rules would also require the use of an updated and standardized format to allow the FDIC to obtain and process the large amount of QFC information quickly. In the absence of updated and standardized

information, it is possible that QFCs could be left in the receivership, when transfer to a solvent financial institution or a bridge financial company would be a preferred course of action. The absence of QFC data may reduce the FDIC's flexibility in managing the QFC portfolio, and may increase systemic risk.

However, to reduce the burdens on financial companies, the Proposed Rules provide that upon receipt of a written recommendation from the FDIC, prepared in consultation with the primary financial regulatory agencies for the applicable records entities, the Secretary may grant conditional or unconditional exemptions as the Secretary determines to be necessary or appropriate. Such exemptions could include a conditional exemption to allow for a different recordkeeping format than that set forth in the Proposed Rules. For example, financial companies are required to report some QFC data to swap data repositories ("SDRs"),<sup>47</sup> and some data may be available through derivatives clearing organizations registered with the CFTC or clearing agencies registered with the SEC (collectively referred to in this release as "clearing organizations").<sup>48</sup> The Secretary notes that the FDIC would need to be able to manipulate and analyze such data to determine the effect of FDIC decisions under Title II with respect to a covered financial company's QFC portfolio.

### III. The Proposed Rules

The following section describes the requirements in the Proposed Rules and the rationale underlying the requirements. The Proposed Rules set forth the general requirements for financial companies, while the detailed lists of the records that would be required to be maintained are provided in the Appendix in the Proposed Rules.

The Proposed Rules are organized into four parts:

- Section 148.1 Scope, purpose, effective date, and compliance dates
- Section 148.2 Definitions
- Section 148.3 Form, availability and maintenance of records
- Section 148.4 Content of records

The Appendix in the Proposed Rules list the records that would be required to be maintained and provide the file structure for the QFC recordkeeping requirements. The Appendix is organized as follows:

- Table A-1—Position-Level Data
- Table A-2—Counterparty Collateral Data
- Table A-3—Legal Agreements
- Table A-4—Collateral Detail Data

The discussion in this section of the release is based on the organization of the Proposed Rules and the Appendix is discussed in a separate subsection below. The Secretary asks questions and solicits comment in each subsection with respect to the related parts of the Proposed Rules or the Appendix.

#### A. Scope, Purpose, Effective Date and Compliance Dates

Section 148.1(a) of the Proposed Rules defines the scope of the rules and provides that the rules apply to each financial company that is a "records entity." Section 148.1(b) explains the purpose of the rules. Section 148.1(c) sets forth the rule's effective and compliance dates. The Proposed Rules are discussed below, followed by the Secretary's questions regarding their subject matter.

#### 1. Scope

##### a. Key Definitions

The scope of the Proposed Rules is established by certain key definitions which determine the entities that would be subject to the rules. Specifically section 148.1(a) of the Proposed Rules provides that the rules would apply to any "financial company" that is a "records entity" as those terms are defined in the Proposed Rules. The definitions of "financial company," "records entity," and other related definitions are explained below, followed by an illustrative discussion of the records entities within a U.S. bank holding company structure, a summary of the application of the Proposed Rules to clearing organizations, and a discussion of the records entities that may come within the scope section of the Proposed Rules.

*Financial Company:* The Proposed Rules incorporate the definition of a "financial company" set forth in section 201(a)(11) of the Dodd-Frank Act. Entities that are not included in the section 201(a)(11) definition of "financial company" would not be included in the definition of "records entity" and, therefore, would not be subject to the rules. Entities that are included in the section 201(a)(11) definition of "financial company" would be subject to the rules if they also meet the other criteria in the definition of records entity. In addition, the definition of "covered financial company" in section 201(a)(8)(B) of the Dodd-Frank Act excludes insured

<sup>46</sup> For example, the FDIC could be appointed as receiver of an affiliated financial company under section 210(a)(1)(E) of the Act.

<sup>47</sup> Not all QFC data would be reported under Title VII of the Dodd-Frank Act. Some QFCs may not have central reporting repositories.

<sup>48</sup> Clearing organizations would include central counterparties and security-based swap clearing organizations.

depository institutions,<sup>49</sup> which as a result are ineligible for orderly liquidation under Title II. Thus, based on the section 201(a)(11) definition of “financial company” and the section 201(a)(8)(B) definition of “covered financial company,” the following entities would not be required to maintain records under the Proposed Rules:

- Financial companies that are not incorporated or organized under U.S. federal or state law;
- Farm Credit System institutions;
- Governmental entities, and regulated entities under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (“FHA”);<sup>50</sup> and
- Insured depository institutions.

The following financial companies would be subject to the rules if they are incorporated or organized under any provision of federal law or the laws of any State and meet the definition of “records entity” in the rules:

- A bank holding company;
- A nonbank financial company supervised by the Board;
- Any company that is predominantly engaged in activities that the Board has determined are financial in nature or incidental thereto for purposes of section 4(k) of the BHC Act; and
- Any subsidiary (other than an insured depository institution or insurance company) of such financial company where such subsidiary is predominantly engaged in activities that the Board has determined are financial in nature or incidental thereto for purposes of section 4(k) of the BHC Act.<sup>51</sup>

**Records Entity:** Each records entity would be required to maintain records with respect to all of its QFCs unless such records entity receives an exemption under the rules.<sup>52</sup> In developing the definition of a records entity, the Secretary took into consideration factors such as financial company size, risk, complexity,

leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system in addition to other factors described herein.<sup>53</sup> The records entity definition would include a financial company that is a party to an open QFC or guarantees, supports, or is linked to an open QFC of an affiliate and is a member of a corporate group in which at least one financial company meets one of three other criteria for being a records entity. Because affiliated financial companies that are part of the same corporate group may play an important role in determining risks that are present, the information about the affiliates’ QFCs could assist the FDIC as receiver. Furthermore, the FDIC has authority to enforce the QFCs of affiliates of covered financial companies, the obligations of which are guaranteed or otherwise supported by or linked to the covered financial company.<sup>54</sup>

A “records entity” is defined in section 148.2(l) of the Proposed Rules as a financial company that: is not an exempt entity; is a party to an open QFC, or guarantees, supports or is linked to an open QFC; and meets one of the following requirements: (a) Is determined pursuant to 12 U.S.C. 5323 (Title I of the Dodd-Frank Act) to be an entity that could pose a threat to the financial stability of the United States; (b) Is designated pursuant to 12 U.S.C. 5463 (Title VIII of the Dodd-Frank Act) as a financial market utility<sup>55</sup> that is, or is likely to become, systemically important; or (c) Has total assets equal to or greater than \$50 billion,<sup>56</sup> or (d) Is a party to an open QFC or guarantees, supports, or is linked to an open QFC of an affiliate and is a member of a corporate group within which at least one affiliate meets one of the requirements in (a), (b), or (c).

The Secretary has adequately considered the factors referenced in

section 210(c)(8)(H)(iv) in developing the scope of the definition of records entity. The Secretary has decided to include in the scope of the definition of records entity those financial companies that: (1) the Council determines could pose a threat to U.S. financial stability; (2) the Council designates as systemically important financial market utilities; and (3) financial companies that have at least \$50 billion in assets, for several reasons. First, the factors the Council must consider in designating a nonbank financial company as posing a threat to financial stability under section 113 of the Act, or a financial market utility as systemically important under section 804, are similar to the factors listed in section 210(c)(8)(H)(iv). The Council may make a determination under section 113 if it finds that material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to the financial stability of the United States.<sup>57</sup> Similarly, in making a determination that a financial market utility is or is likely to become systemically important, the Council is required to consider the effect that the failure of or a disruption to the financial market utility would have on critical markets, financial institutions, or the broader financial system.<sup>58</sup> The Secretary believes that it would be unnecessary to create a different scheme for determining the scope of financial companies subject to recordkeeping for the purposes of this rulemaking.<sup>59</sup>

<sup>57</sup> Section 113 authorizes the Council to make determinations for U.S. nonbank financial companies and foreign nonbank financial companies pursuant to two separate paragraphs, but the considerations related to the financial stability of the United States are nearly identical. See 12 U.S.C. 5323(a) and (b). A determination under section 113 would mean that the nonbank financial company would be subject to supervision by the Board of Governors of the Federal Reserve System and to enhanced prudential standards established in accordance with Title I. See 12 U.S.C. 5365.

<sup>58</sup> 12 U.S.C. 5463(a)(2)(D).

<sup>59</sup> The first proposed prong under § 148.2(l)(3) of the Proposed Rules includes those entities that the Council designates as posing a threat to U.S. financial stability. The Council takes into consideration each of the factors expressly referenced in section 210(c)(8)(H)(iv) as follows: leverage of a company is expressly considered under rule 1310.11(a)(1) and (b)(1); complexity is addressed in a variety of ways, including under rules 1310.11(a)(2) and (b)(2) regarding the extent and nature of off-balance-sheet exposures; interconnectedness to the financial system is addressed in several of the rules including rules 1310.11(a)(3)–(5) and (b)(3)–(5); size is expressly addressed in rules 1310.11(a)(7) and (b)(7); frequency and dollar amount of QFCs, to the extent relevant, is addressed through rules 1310.11(a)(9) and (10) and (b)(9)(10); and risk is addressed

Continued

<sup>49</sup> See 12 U.S.C. 5390(c)(8)(H)(iv).

<sup>50</sup> 12 U.S.C. 5390(c)(16).

<sup>51</sup> See Title VIII, “Payment, Clearing, and Settlement Supervision Act of 2010.” 12 U.S.C. 5461, *et seq.* A financial market utility is defined in section 802(6) of Title VIII as any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and such person. 12 U.S.C. 5461(6)(A).

<sup>52</sup> Total assets would be determined based on the most recent year-end consolidated statements of financial condition filed with a primary financial regulatory agency. For financial companies that are not required to file such statements, total assets would be determined based on the consolidated balance sheet for the most recent fiscal year-end. An entity, such as an investment adviser, that acts as agent on behalf of a client and is not a party to that client’s QFC or does not support, guarantee or is not otherwise linked to that client’s QFC would not be subject to the rule.

<sup>49</sup> 12 U.S.C. 5381(a)(8)(B).

<sup>50</sup> 12 U.S.C. 4502(20). This provision, therefore, excludes from the orderly liquidation authority of Title II the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and any Federal Home Loan Bank.

<sup>51</sup> See 12 U.S.C. 1843(k)(4)(C).

<sup>52</sup> Exemptions would be available as outlined in § 148.3(c) of the Proposed Rules. For example, the Secretary may consent to the use of electronic records maintained in an SDR or internally at the records entity which are not in the format set forth in the Appendices to the Proposed Rules if such alternative format is sufficient to enable the FDIC as receiver to exercise its rights and fulfill its obligations under 12 U.S.C. 5390(c)(8), (9), or (10). See discussion below in subsection III.3.C of this Supplementary Information.

The Secretary also believes that the \$50 billion threshold is a useful means for identifying entities that are of a sufficient size that they could potentially be considered for orderly liquidation under Title II, and therefore should be incorporated in the definition of a records entity. A \$50 billion asset threshold has been separately established for similar purposes under the Dodd-Frank Act.<sup>60</sup> In particular, the Council applies a \$50 billion threshold as an initial evaluation tool for determining whether a nonbank financial company could pose a threat to the financial stability of the United States and should be subject to heightened supervision under Title I of the Dodd-Frank Act, citing the potential for these types of firms to pose a threat to U.S. financial stability.<sup>61</sup>

Finally, a nonbank financial company supervised by the Board, a designated financial market utility, or a financial company (including a bank holding company) with total assets of \$50 billion or more are the types of financial companies that potentially would be the most likely to be considered for orderly liquidation under Title II. Therefore, the Secretary proposes including this set of financial companies in the definition of records entity for purposes of the Proposed Rules. The definition of records entity is thus designed to reduce

directly and indirectly through various rules, including for instance rules 1310.11(a)(1), (a)(2), (a)(10) and (11), (b)(1), (b)(2) and (b)(10) and (11). See 12 CFR part 1310. See also 77 FR 21637. The second proposed prong under § 148.2(l)(3) of the Proposed Rules includes those entities that the Council designates as systemically important financial market utilities under 12 CFR part 1320. The Council's rulemaking regarding financial market utilities takes into consideration various factors, which are directly or effectively the factors referenced in section 210(c)(8)(H)(iv). See 12 CFR 1320.10. See also 76 FR 44763. In the third proposed prong of § 148.2(l)(3) of the Proposed Rules, the stand-alone test of assets equal to or greater than \$50 billion is used because that size threshold, by itself, together with other aspects of the definition of records entity is sufficient to differentiate financial companies or their corporate groups that might be subject to orderly liquidation under Title II. The test in the fourth proposed prong of § 148.2(l)(3) of the Proposed Rules includes a requirement that the entity be a member of a corporate group in which at least one financial company meets one of the first three prongs, thus taking the various factors into account. To the extent a general or specific exemption from the rules may be necessary or appropriate, it is expected that the Secretary would consider these factors in determining whether to grant an exemption.

<sup>60</sup> 12 U.S.C. 5365(a).

<sup>61</sup> See Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies. 12 CFR part 1310. In adopting this threshold, the Council noted that it is consistent with the Dodd-Frank Act threshold of \$50 billion in assets for subjecting bank holding companies to enhanced prudential standards. 77 FR 21637, 21661.

recordkeeping burdens by only capturing those financial companies with QFC positions for which the FDIC is most likely to be appointed as receiver. It does not, however, capture an entity, such as an investment adviser, that acts as agent on behalf of a client and is not a party to or does not support, guarantee or is not otherwise linked to that client's QFC. These criteria would serve to exclude from the scope of the rule small financial company corporate groups that are unlikely to be subject to the orderly liquidation authority of Title II.

*Exempt Entity:* An exempt entity that would be excluded from the definition of "records entity" and, therefore, the scope of the rules is defined in section 148.2(e) of the Proposed Rules as:

(1) An insured depository institution as defined in 12 U.S.C. 1813(c)(2);

(2) A subsidiary of an insured depository institution that is not a functionally regulated subsidiary as defined in 12 U.S.C. 1844(c)(5), a security-based swap dealer as defined in 15 U.S.C. 78c(a)(71), or a major security-based swap participant as defined in 15 U.S.C. 78c(a)(67); or

(3) A financial company that is not a party to a QFC and controls only exempt entities as defined in clause (1) of this definition.

Insured depository institutions are proposed to be exempt because they are excluded from the definition of covered financial company and thus from the scope of Title II regardless of whether they are also a major swap or security-based swap participant or a swap or security-based swap dealer.<sup>62</sup> In addition, subsidiaries of an insured depository institution which are supervised on a consolidated basis with the insured depository institution are also proposed to be exempt for purposes of consistency with the insured depository institution exemption. However, functionally regulated subsidiaries, security-based swap dealers, and major security-based swap participants are not supervised on a consolidated basis with the parent insured depository institution and are not already required to maintain records under Part 371, as discussed above. These subsidiaries meet the definition of financial company in Title II, and would be required to comply with the recordkeeping requirements of the rules if they are "records entities." Finally, a financial company that controls only insured depository institutions and is not itself a party to a QFC is also proposed to be exempt for purposes of consistency with the insured depository institution exemption.

<sup>62</sup> 12 U.S.C. 5381(a)(8)(B).

*Guaranteed, Supported, or Linked:* Under section 210(c)(16), the FDIC as receiver for the covered financial company may enforce contracts of subsidiaries or affiliates that are "guaranteed," "supported" by, or "linked" to the covered financial company. However, section 210(c)(16) does not define these terms. The Proposed Rules thus include a definition of "guaranteed or supported" and a definition of "linked," each of which is consistent with the definition of similar terms in the FDIC's final rule implementing section 210(c)(16) of the Orderly Liquidation Authority provisions of the Dodd-Frank Act.<sup>63</sup> Under the FDIC final rule, a contract is "linked" to a covered financial company if it contains a "specified financial condition clause," which is any provision that permits a contract counterparty to terminate, accelerate, liquidate, or exercise any other remedy under any contract to which the subsidiary or affiliate is a party or to obtain possession of or exercise control over any property of the subsidiary or affiliate or affect any contractual rights of the subsidiary or affiliate based on enumerated conditions related to the insolvency or financial condition of the covered financial company. The FDIC final rule also defines the term "support" as undertaking any of the following for the purpose of supporting the contractual obligations of a subsidiary or affiliate of a covered financial company: guaranteeing, indemnifying, or undertaking to make any loan or advance to or on behalf of the subsidiary or affiliate; undertaking to make capital contributions to the subsidiary or affiliate; or being contractually obligated to provide any other financial assistance to the subsidiary or affiliate. In some instances, "support" may itself constitute a QFC.<sup>64</sup>

The terms "linked" and "guarantees, supports" are also used to define the financial companies that are records entities under the Proposed Rules. A financial company that guarantees or supports open QFCs would be a records entity, provided that the other conditions of the definition are met, because its exposure is connected to the exposure of the financial company that is the counterparty to the QFC. A

<sup>63</sup> See 77 FR 63205 (October 16, 2012).

<sup>64</sup> See, e.g., section 210(c)(8)(D)(ii)(XII) (defining "securities contract" to include "any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause").

financial company that is linked to an open QFC would also be a records entity, provided that the other conditions of the definition are met, because its financial condition or other circumstances are connected to such counterparty. Moreover, the financial company providing support or a guarantee is exposed, along with, depending on the circumstances, its corporate group, to the risk of termination of QFCs. Therefore, the Proposed Rules would require each records entity that guarantees or supports QFCs to keep records with respect to all such guaranteed or supported QFCs. The records entity that links its QFCs to another entity would be responsible for keeping records related to the specified financial condition clause. In each case, a records entity would be responsible for obtaining from its affiliates all information necessary to enable it to maintain these records.

Including affiliated financial companies as records entities under the Proposed Rules is necessary: (1) To assist the FDIC in exercising its right to enforce contracts of subsidiaries and affiliates under section 210(c)(16), and fulfilling its obligations under section 210(c)(9) and section 210(c)(10) with respect to the timing and notification of the transfer of any guarantee or other support and related assets and liabilities in connection with any agreement or transaction referred to in any such QFC; and (2) to assist the FDIC in fulfilling its obligations under section 210(c)(9) and section 210(c)(10) in the event the FDIC

is appointed as receiver of an affiliated financial company. In connection with the transfers and notifications under section 210(c)(9) and section 210(c)(10), the FDIC will need the same information with respect to such QFCs (including guaranteed or supported QFCs) of an affiliate as it does with respect to QFCs to which the financial company was a party.

*Affiliate, Subsidiary, and Control:* The definitions of the terms “subsidiary” and “affiliate” in the Proposed Rules are consistent with the definitions given to such terms in the Dodd-Frank Act. Section 2(18) of the Act provides that these terms will have the same meanings as in section 3 of the FDIA (12 U.S.C. 1813). Under the FDIA, the term “subsidiary” is broadly defined as “any company which is owned or controlled directly or indirectly by another company.” Similarly, the term “affiliate” is defined by reference to the BHC Act, 12 U.S.C. 1841(k) as “any company that controls, is controlled by, or is under common control with another company.”

The definition of “control” is provided in the FDIA, which in turn, refers to the definition provided in the BHC Act, 12 U.S.C. 1841(a). The Proposed Rules would define “control” to include a company that directly or indirectly or acting through one or more persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company, controls in any manner the election of a majority of the directors or trustees of the company, or must consolidate another entity for financial

or regulatory reporting purposes. The first two prongs of this definition are consistent with the BHC Act definition. The third prong reflects the fact that, in certain situations, a controlling interest may be achieved through arrangements that do not involve voting interests,<sup>65</sup> and, unlike the BHC Act definition, provides an objective test that does not require a determination by the Board.

*Non-U.S. Entities.* Because the Proposed Rules would incorporate the Title II definition of “financial company,” the Proposed Rules apply only to entities incorporated or organized in the United States that are considered records entities under the Proposed Rules. For example, a U.K.-incorporated London affiliate of a U.S. broker-dealer would not be a records entity because it is a separate legal entity that is not incorporated or organized within the United States.

#### b. Records Entities Within a U.S. Holding Company

Figure 1 below illustrates how the definition of financial company affects whether various affiliates in a U.S. holding company corporate group would qualify under the Proposed Rules as records entities based on the application of the definition of financial company in the Dodd-Frank Act and the Proposed Rules. The holding company and some affiliates would qualify as records entities as shown below, while the other affiliates would not.

<sup>65</sup> See, e.g., Financial Accounting Standards Board, Statement of Financial Accounting Standards No. 167 (2009).

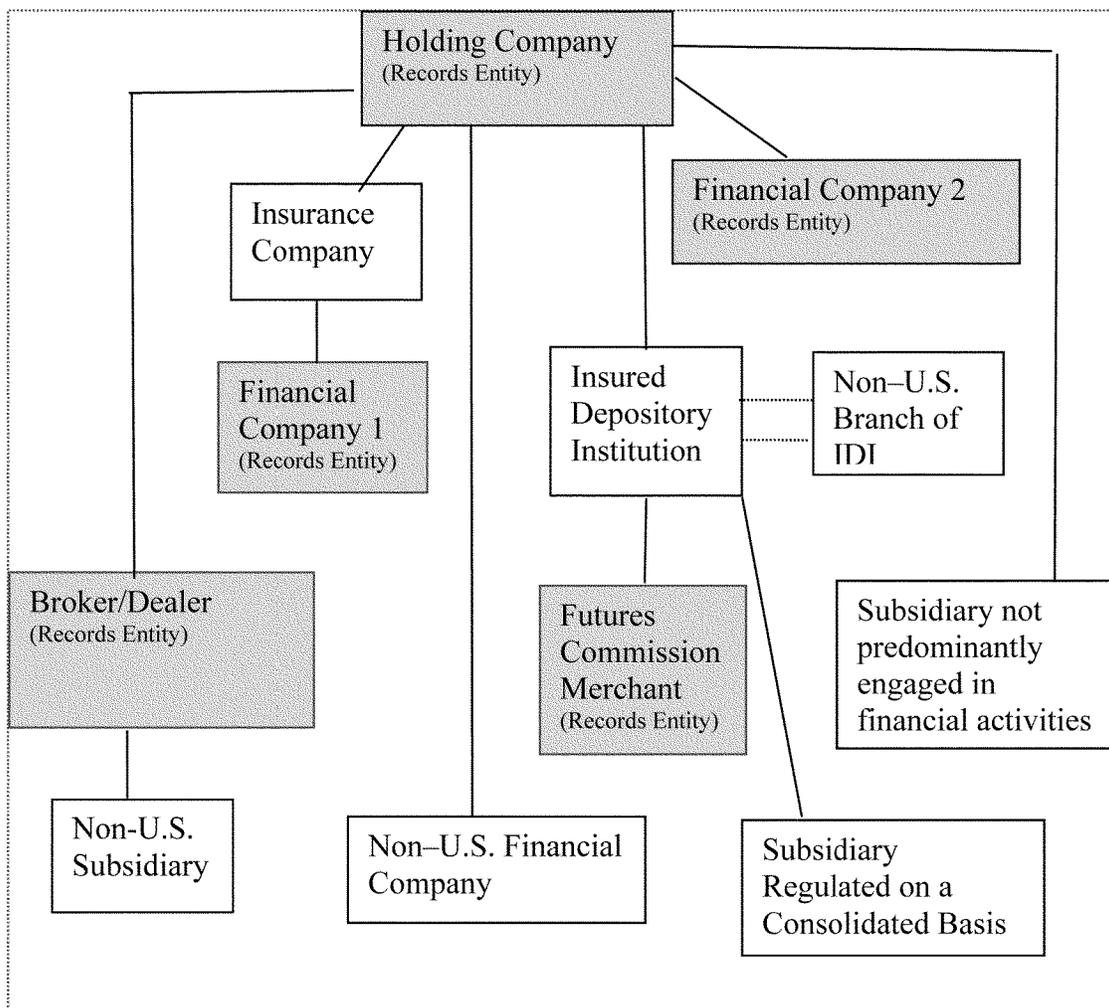


Figure 1. Scope of the Rules (for illustration purposes only)

c. Clearing Organizations

The Proposed Rules would not exclude from their scope any records entity that is a clearing organization with respect to derivatives cleared for its members. As part of fulfilling its responsibilities, a clearing organization must keep, on a near real-time basis, thorough and well-organized records of the contracts with each of its members. The FDIC, as receiver for a clearing organization under Title II, would have access to this information to analyze clearing organization positions. Taking into consideration a clearing organization's functions and that its role is to interpose itself between counterparties to transactions, some of the data elements that would be required by the Proposed Rules may not be relevant for clearing organizations. The Appendix to the Proposed Rules provides that a records entity may leave an entry blank or insert N/A in a data

field that does not apply to a given QFC transaction or agreement.

Accordingly, the Secretary seeks comment on the following: (i) Whether the Proposed Rules should provide a different set of data requirements for clearing organizations and/or for centrally cleared transactions; (ii) whether such different data elements should contain fields in addition to those included in Tables A-1 through A-4 of the Appendix in the Proposed Rules, should exclude some of the fields listed in Tables A-1 through A-4, or some combination of the two; and (iii) whether any required data set should be maintained in a form or fashion different from the format contained in the Proposed Rules. The Secretary seeks comment on whether, and if so, how best to modify those data elements and general recordkeeping requirements set forth in the Proposed Rules with respect to clearing organizations and/or centrally cleared transactions. For

example, should the Secretary establish a different set of data elements, data format, or other general recordkeeping requirements for clearing organizations and/or centrally cleared transactions? If yes, how should the format and the content of data fields listed in Tables 1-4 of the Appendix in the Proposed Rules be modified for clearing organizations? Which fields should be deleted, modified, or replaced with other data fields? Are there any data fields that should be added for clearing organizations and/or centrally cleared transactions?

Upon the written recommendation of the FDIC, prepared in consultation with the primary financial regulatory agencies for the applicable records entities, the Secretary may also issue exemptions of general applicability to address the issues that are relevant to clearing organizations. In addition, the Secretary notes that for data elements and recordkeeping requirements that

may adversely affect a specific clearing organization, rather than all clearing organizations, the specific exemption process set forth in the Proposed Rules would be available. The decision to grant such an exemption could be conditioned upon the ability of the clearing organization to demonstrate and ensure that appropriate records are kept.

#### d. Scope of Proposed Rules

The “scope” subsection of the Proposed Rules provides that the rules apply to each entity that qualifies as a records entity. Section 210(c)(8)(H) of the Dodd-Frank Act gives the Secretary broad flexibility in determining the scope of the recordkeeping requirements based on factors that are deemed necessary or appropriate in order to assist the FDIC as a receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under section 210(c)(8), (9) or (10) of the Dodd-Frank Act. Section 210(c)(8)(H) also requires the regulations to differentiate among financial companies, as appropriate, by taking into consideration their size, risk, complexity, leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system and any other factors deemed appropriate. As discussed earlier, the Secretary has complied with these requirements.

The Secretary anticipates that records entities would include the following types of financial companies (i) broker-dealers, investment advisers, investment companies,<sup>66</sup> security-based swap dealers, security-based swap participants, and clearing agencies;<sup>67</sup>

<sup>66</sup> Each individual series of a registered investment company offering multiple series would be deemed to be a separate financial company for purposes of these rules. See Investment Company Act Release No. 7276 (Aug. 8, 1972) published at 37 FR 17384 (Aug. 26, 1972) (“The individual series of such a [registered open-end investment] company are, for all practical purposes, separate investment companies. Each series of stock represents a different group of stockholders with an interest in a segregated portfolio of securities.”).

<sup>67</sup> Not all of these entities would qualify as records entities subject to the Proposed Rules because of conditions in the definition of records entity related to asset size, systemic importance and QFC activity. “Financial company” includes any company that is incorporated or organized under any provision of federal law or the laws of any state and is predominantly engaged in activities that the Board of Governors has determined are financial in nature for purposes of section 4(k) of the Bank Holding Company Act of 1956. 12 U.S.C. 5381(a)(11). Activities that are “financial in nature” include “providing financial, investment, or economic advisory services, including advising an investment company” and “issuing or selling instruments representing interests in pools of assets . . .” and “underwriting, dealing in, or making a market in securities.” 12 U.S.C. 1843(k)(4).

(ii) a bank holding company or bank holding company subsidiary (that is not an insured depository institution or other type of exempt entity); a savings and loan holding company or a savings and loan holding company subsidiary (that is not an insured depository institution or other type of exempt entity); a U.S. affiliate of a foreign bank; a noninsured state member bank; an agency or commercial lending company other than a federal agency; any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act; (iii) any entity that the Council has determined to be either (A) a nonbank financial company that could pose a threat to the financial stability of the United States pursuant to 12 U.S.C. 5323 or (B) a financial market utility that is, or is likely to become, systemically important pursuant to 12 U.S.C. 5463; (iv) subsidiaries of State non-member insured banks that are not supervised on a consolidated basis with the State non-member insured bank, or financial companies that are not supervised by a PFRA.

#### 2. Purpose

Section 148.1(b) of the Proposed Rules provides that the purpose of the rules is to establish QFC recordkeeping requirements for a records entity in order to assist the FDIC as receiver for a covered financial company.

#### 3. Effective Date and Compliance Dates

Section 148.1(c) of the Proposed Rules provides that the rule would become effective 60 days after publication of the final rule in the **Federal Register**. Section 148.1(d) of the Proposed Rules provides that each entity that constitutes a records entity on the date the final rule becomes effective would be required to comply with the rule not later than the 270th day after the date on which the final rule becomes effective. For a records entity that becomes subject to the rule after it becomes effective, compliance would be required 270 days after such entity becomes subject to the rule. In addition, section 148.1(d) of the Proposed Rules cross-references section 148.3(a)(3) of the Proposed Rules and would require a financial company that is a records entity on the effective date of the final rule to provide to each of its PFRA and the FDIC a point of contact responsible for recordkeeping under the rule on the effective date of the rule. A financial company that becomes a records entity after the effective date would be required to provide a point of contact to each of its PFRA and the FDIC within

60 days of becoming a records entity. A financial company that no longer qualifies as a records entity would be permitted to cease maintaining records one year after it ceases to qualify as a records entity. This determination would be made on a rolling 12-month basis.<sup>68</sup> The Secretary considered periods ranging from six months to eighteen months, but after consultation with the FDIC, chose to maintain a parallel with the FDIC’s Part 371 Recordkeeping rules.

If during the one-year period such financial company becomes subject to the rules again, even for a short period of time, the one-year period would be re-calculated from that later time. A financial company that becomes subject to the rules again after it had ceased recordkeeping would be required to comply with the requirements of the rule within 90 days. The Proposed Rules specify that the 90-day period commences on the date a financial company becomes subject to these rules as a records entity.

#### Questions:

1. Is the scope of the Proposed Rules adequate? Should additional entities be subject to the rule? Please provide specific details supporting these views.
2. Is the initial compliance date of 270 days adequate? If it is too long, please explain how records entities would be able to meet a shorter initial compliance date? If it is too short, please explain why a longer period would be necessary to comply with the rule.
3. Is the rolling 12-month baseline for a financial company to cease being a records entity adequate? Please provide specific details if it is inadequate. Is the subsequent compliance date of 90 days adequate? Please provide specific details if it is inadequate.
4. Should each affiliate of a corporate group that meets the records entity definition under section 148.2(l)(3)(iv) of the Proposed Rules be required to maintain records, or should the parent company aggregate records for all open QFCs that any such affiliate in the consolidated corporate group is a party to or guarantees, supports, or is linked? Should there be one recordkeeping requirement for an entire corporate group by the top tier holding company? Are there any barriers to the parent company obtaining the necessary information from such subsidiaries and affiliates? Should the parent company be required to maintain records for the QFCs at its foreign subsidiaries and

<sup>68</sup> For the rolling 12-month period, a financial company’s total consolidated assets are calculated based on the most recent financial statements from the prior fiscal year-end.

affiliates? Would such a definition, in which only the parent company in a corporate group is a records entity, make compliance more or less burdensome? Are the recordkeeping requirements in the Proposed Rules an effective means of assisting the FDIC as receiver of a covered financial company to exercise its rights and fulfill its obligations under section 210(c)(8), (9), or (10) of the Dodd-Frank Act? If not, how could the Proposed Rules be more effective to assist the FDIC?

5. Should a records entity also be required to maintain records with respect to QFCs of affiliates that are linked to such entity? Should such records entity be responsible for obtaining from its affiliates or subsidiaries all information necessary to enable such records entity to maintain records with respect to QFCs of affiliates that are linked to it? Is there a different way the FDIC could obtain information about linked QFCs? Would the information provided in Table A-3 to the Appendix be sufficient to identify such linkages? How would such recordkeeping be handled if the affiliate is not a financial company or is an exempt entity?

6. Would the current definitions provide for adequate recordkeeping for QFCs at foreign affiliates of U.S. records entities (recognizing that such foreign affiliates would not be records entities)? If not, should the record maintenance requirements be altered?

7. Is the scope of the definition of "exempt entity" adequate? What changes, if any, should be made to the definition of "exempt entity"? Are there other entities that should be included in the definition of "exempt entity"? Are there entities that should be excluded from the definition of "exempt entity"? Should the rules exempt other entities based on the number of QFC counterparties, QFC notional amounts, QFC mark-to-market values as of a particular date, or some other criteria? If so, at what levels should such exemptions be set? Please provide any data or other analyses that support this view. Should there be any other form of *de minimis* exemption?

8. Should the rules provide additional categorization or tiering of financial companies based on other criteria? What should such other criteria be? Would financial company or QFC portfolio leverage be relevant? Should the dollar amount of the QFC portfolio or the frequency of trading be used to differentiate among financial companies? Please provide specific explanations of how such criteria would be applied together with an explanation of whether such criteria would help, be

neutral to, or interfere with, the FDIC's ability to resolve a QFC portfolio. Please provide specific details on the relevance of such criteria toward the orderly liquidation authority goal of reducing systemic risk.

9. Should the Secretary further differentiate among financial companies or their corporate groups by their size, risk, complexity, leverage, frequency and dollar amount of QFCs, or interconnectedness to the financial system? Should any other factors be considered? Should the Secretary adopt different criteria? Please provide specific details on any factors to be considered or criteria proposed, including an explanation on why such factors would help, be neutral to, or interfere with, the FDIC's ability to resolve a QFC portfolio.

10. Should the Secretary have considered the factors referenced in section 210(c)(8)(H)(iv) in a different way than discussed above? Should the Secretary not rely on the Council's designations? If so, how should the Secretary consider those factors? Should any other factors be considered?

11. Is the scope of the Proposed Rules sufficiently clear with respect to subsidiaries of insured depository institutions? If not, how should the scope of the Proposed Rules be clarified? Should all subsidiaries of insured depository institutions be included in the scope of the Proposed Rules?

12. Is it appropriate to include affiliates and other entities that might not be designated as systemically important, or that might not have total assets equal to or greater than \$50 billion, within the scope of the Proposed Rules? If not, how should the scope of the Proposed Rules be narrowed? For example, should affiliates be included only if they themselves are designated as systemically important or have total assets equal to or greater than \$50 billion? How would this affect the FDIC's ability to exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10), as receiver? Conversely, should the scope of the Proposed Rules regarding affiliates be broadened? Are there any affiliates that would not fall within the scope of the Proposed Rules that should? If so, why?

13. Does the definition of "control" adequately capture those entities that should be defined as affiliates for purposes of the rules? Should the definition of "control" be modified and, if so, how? For example, should the definition be the same as the definition of "control" under the BHC Act?

14. Should financial companies that guarantee or support QFC positions be required to maintain records on such QFCs if such QFCs qualify for treatment under section 210(c)(16)? If not, how would the recordkeeping of such QFCs be handled?

15. Should there be any additional data to avoid duplication of records of guaranteed, supported or linked QFCs if the related affiliate also is a records entity and maintains records with respect to such QFCs?

16. Is the criterion in the definition of records entity in section 148.2(l)(3)(iii) of the Proposed Rules appropriate? Should the calculation of \$50 billion in total assets exclude non-proprietary assets that are included on a balance sheet under accounting rules, such as certain types of client assets under management required to be included on an investment adviser's balance sheet? Is it appropriate for some financial companies or corporate groups with less than \$50 billion in total assets to not be required to maintain records?

17. On what basis should investment advisers that are to be included as records entities be identified? Should the advisers be required to file fiscal year-end balance sheets and should their status as records entities be based on information contained in these balance sheets?

18. Are there any other entities for which the rules need not apply? If so, which entities, and why?

19. Should swap dealers and major swap participants be required to maintain records under the rules irrespective of the size and other requirements of the definition of records entity?

20. Is the inclusion in the Proposed Rules of clearing organizations or other financial market utilities that are designated as systemically important appropriate? What issues should the Secretary consider when addressing recordkeeping requirements with respect to clearing organizations or other financial market utilities? What records do clearing organizations currently maintain for QFCs? Are they different from the records required in the Appendix to the Proposed Rules? Are they different from those maintained by counterparties in bilateral QFC transactions? If so, should a different framework for QFC records be considered for clearing organizations than for other records entities? Should a different set of data requirements be considered for clearing organizations? Should such different data set contain fields in addition to those included in Tables A-1 through A-4 of the Appendix, exclude some of the fields

listed in Tables A–1 through A–4 of the Appendix, or some combination of the two? Should any required data be provided in a form or fashion different from the format contained in the Proposed Rules?

21. Should the recordkeeping requirements for centrally-cleared transactions differ from those for non-centrally-cleared transactions? If so, should such requirements include data fields in addition to those included in Tables A–1 through A–4 of the Appendix, exclude some of the fields listed in Tables A–1 through A–4 of the Appendix, or some combination of the two?

22. Are there special considerations regarding a clearing organization resolution that should be reflected in the rule? In particular, what records of a clearing organization would be useful to the FDIC as receiver? Is this different from the records that are needed for the resolution of other types of financial companies under Title II? If so, how should recordkeeping requirements be modified to address appropriately a clearing organization or other financial market utility resolution?

23. Is it appropriate, if a registered investment company has multiple series, to deem each series of the company to be a separate financial company for purposes of the rules? If not, why not?

24. Should the rules apply to an investment adviser acting as agent for its client with respect to a QFC if the adviser otherwise is not a party to, does not support, does not guarantee, or is not linked to the client's QFC?

### B. General Definitions

In addition to the definitions described in detail above in reference to the scope of the Proposed Rules, certain additional terms are defined in the Proposed Rules to describe a records entity's recordkeeping obligations. The term "counterparty" would be defined as any natural person or entity (or separate non-U.S. branch of any entity)<sup>69</sup> that is a party to a QFC with a records entity. An affiliate or a non-U.S. branch of such records entity that is not itself a records entity would be considered a counterparty of a records entity if it is a party to a QFC with such affiliated records entity. The term "counterparty" would also include any natural person or entity that is a party to a QFC that is guaranteed or supported by a records entity. To the extent a

corporate group includes more than one records entity, for each inter-affiliate QFC to which two or more affiliated records entities are a party (or are otherwise linked), each affiliate would be required to treat the other as a counterparty for purposes of the rules. Recordkeeping with respect to inter-affiliate QFCs is necessary to enable the FDIC to decide as quickly as possible which affiliated financial companies in a corporate group should be subject to orderly liquidation under Title II, to understand all QFC linkages in a corporate group, and to evaluate the potential systemic effects of FDIC decisions.

The term "primary financial regulatory agency" would consist of the Federal banking agencies, the CFTC, FHFA and the SEC and would be defined by reference to the definition of "primary financial regulatory agency" in the Dodd–Frank Act.<sup>70</sup>

#### Questions:

25. Should the proposed definition of counterparty be modified to exclude some affiliated entities? If so, which affiliated entities should be excluded and why?

26. Would the proposed definitions result in duplication of data or positions? If so, how could such duplication be removed?

27. Is there an alternative means of introducing transparency for inter-affiliate transactions other than including affiliates in the definition of counterparty? How would the recordkeeping requirements need to be modified to accomplish this goal?

28. Should other terms used in the Proposed Rules be defined? If so which ones? Please include support for any suggested definition or clarification to definitions supplied.

29. Are the Proposed Rules' definitions appropriate? Would there be any additional definitions, modifications or considerations that would be helpful?

### C. Form, Availability, and Maintenance of Records

#### 1. Form and Availability

Section 148.3(a)(1) of the Proposed Rules would require that a records entity maintain all records in electronic form in the format set forth in the Appendix to the Proposed Rules. All records entities in a corporate group would be required to be able to generate data in the same data format and use the same counterparty identifiers to enable the aggregation of all records entities in the corporate group. In addition, the use

of such counterparty identifiers would enable the data to be aggregated by counterparty, thus permitting the FDIC to understand the exposure of the entire corporate group to a given counterparty. The FDIC will use the aggregation of counterparty positions to determine the effects of termination or transfer of QFCs. Although the Proposed Rules specify a recordkeeping format, the Secretary recognizes the need to build-in flexibility for an alternate recordkeeping format. Therefore, Section 148.3(c) of the Proposed Rules provides that the Secretary may grant conditional or unconditional exemptions from compliance with one or more of the requirements of the rule. An exemption with regard to the recordkeeping format requirements could be conditioned upon the records entity keeping the records in an alternate format that enables the FDIC to exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10) of the Act.

Section 148.3(a)(1) of the Proposed Rules would require that all records be capable of being transmitted electronically to a records entity's PFRA and the FDIC. This requirement would impose a recordkeeping burden but not a reporting burden on records entities. In order to comply with the rule, a records entity would need to ensure that it is able to comply with the recordkeeping requirements of the rules for all cross-border transactions.

These proposed requirements are necessary and appropriate in order to assist the FDIC as receiver. Transparency with respect to all QFC positions is necessary to enable the FDIC as receiver to rapidly dispose of the QFC portfolio or perform on the QFCs and minimize the potential for disorderly liquidation of the covered financial company and increased systemic risk. Accordingly, the FDIC should have detailed and complete information available to it with respect to all QFCs of a records entity and its affiliated financial companies, without delay, on the date of appointment. As discussed above, given the short time frame for FDIC decisions, it may be difficult to obtain and analyze a large amount of information unless it is readily available to the FDIC in an updated and standardized format that enables the FDIC to carry out the required financial and legal analysis in an expeditious and efficient manner. Furthermore, absent electronic access to the complete records of a records entity and the ability to view such information in the context of the records entity's booking practices, governing law, and organizational structure, the FDIC may

<sup>69</sup>The term non-U.S. branch is used to designate a U.S. entity that operates in a non-U.S. jurisdiction under special license in such jurisdictions instead of operating through a subsidiary incorporated or organized in such non-U.S. jurisdiction.

<sup>70</sup> 12 U.S.C. 5301(12).

not be able to analyze QFC positions and make decisions with respect to such QFCs by the end of the first business day following the appointment of the receiver. In addition, the FDIC could use the data to help subsidiaries of a financial company in receivership perform their obligations under the QFCs, thereby preserving the value of the receivership estate. This should help to prevent the disorderly termination of trades, including cross-border and affiliate trades, which could have far-reaching negative effects on the records entity and its corporate group, as well as the broader financial markets.

Section 148.3(a)(2) of the Proposed Rules would require that each records entity maintain records for all QFCs to which it is a party, including inter-affiliate QFCs to which it is a party. Each records entity also would be required to maintain records for all QFCs that are guaranteed or supported by such records entity.<sup>71</sup> These records would help to enable the FDIC as receiver to determine the effect of termination or transfer of counterparty transactions on the QFC portfolio held by affiliates as well as any potential effects on broader financial markets, such as by inadvertently un-hedging one or more affiliated counterparties. However, a records entity that is only linked to an open QFC would not be required to maintain records under the Proposed Rules with respect to such linked QFCs.

Section 148.3(a)(3) of the Proposed Rules would require that each records entity provide a point of contact to enable its PFRA and the FDIC to contact the records entity with respect to the rule, and to update this information within 30 days of any change. Because the FDIC, after being appointed as receiver, will have very little time to update QFC information and make decisions with respect to QFCs, the FDIC must work cooperatively with personnel in charge of QFCs at each records entity who can provide greater context for the data, including the records entity's booking practices, governing law, and organizational structure.

Section 148.3(a)(4) of the Proposed Rules would require that each records entity that is regulated by a PFRA be capable of providing all QFC records specified in the rules to its PFRA within 24 hours of request. This requirement would impose a recordkeeping burden but not a reporting burden on records

entities. A PFRA could exercise its own authority by imposing a 24 hour reporting requirement on a records entity for the QFC records maintained under the rule, and by sharing such records with the FDIC. The Secretary recognizes that many financial companies may not currently have the capability to provide all QFC records in the required format within a 24-hour time period. Nevertheless, because of timing constraints set forth in Title II, the FDIC must become familiar with the types and formats of QFC data maintained by records entities to be able to comply with the statutory deadlines upon receivership and to be able to exercise its rights under the Act. In addition, the records entity must be able to generate the records in the formats specified in the rules quickly, generally overnight, to refresh the information provided to regulators. These formats or records may also be used by the FDIC both to refine receivership processes with respect to the evaluation of QFCs of financial companies and their corporate groups, and to familiarize itself with the QFCs of the records entities in a given corporate group.

#### Questions:

30. Are the proposed requirements that records entities in a corporate group be able to maintain the records in the same data format and use the same counterparty identifiers to enable the aggregation of the data across all records entities in the corporate group or by counterparty reasonable?

31. Are there any other procedures that should be addressed by the rules which may help streamline data production? For example, some records entities may have a very large volume of QFC records. Could this raise practical considerations in the electronic transmission of such records?

32. Are there particular methods that would best address record maintenance and data requirements for inter-affiliate transactions and cross-border transactions? Should there be specific requirements for such transactions? Should records entities be exempted from any part of the recordkeeping requirements in the Proposed Rules for such transactions?

33. Should the Proposed Rules set forth a standard data specification that would require common data structures and content for data submitted for each corporate group?

34. What types of consents, if any, would a records entity need to obtain from counterparties outside of the United States in order to comply with the recordkeeping requirements in the Proposed Rules? Would records entities be able to comply with the rules if they

are unable to get such consents? Are there any alternatives to the Proposed Rules that would allow the records entity to maintain the records and have the capability to provide the data to its PFRA?

35. Should the chief compliance officer for registered investment advisers and the officers of registered investment companies be deemed to be the point of contact under the rules? If not, who should the point of contact be for each of these entities?

36. The Proposed Rules currently contemplate requiring a records entity that is regulated by a PFRA to be capable of providing to such PFRA, within 24 hours of request, the required records. The records entity must also be capable of transmitting electronically the required records to such PFRA and the FDIC. Should the rule provide for the PFRAs to make actual requests? If so, should anyone other than the PFRA (e.g., the FDIC) also have the ability to request records? Should the records entity be required to provide their records directly to the FDIC rather than only to the PFRA? Is 24 hours sufficient time to produce the records?

## 2. Maintenance and Updating

Section 148.3(b) of the Proposed Rules would require that each records entity maintain the capacity to produce QFC records on a daily basis based on previous end-of-day records and values. This provision would not require that the records entity update all values daily in the ordinary course of business. Rather, it would require that the records entity have the capacity to do so upon request. Some data elements set forth in Tables A-1 through A-4 of the Appendix may not generally be updated daily. However, since all data items must be updated to enable the FDIC as receiver to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) within the limited time frame afforded by the Act, each records entity would need to maintain the capacity to update the data elements to current values within a 24-hour period. To the extent the electronic recordkeeping system produces data that is more current than previous end-of-day records and values (e.g., real-time data), such data would also comply with the Proposed Rules. If a records entity is not able to update the records or values quickly, the FDIC may not be able to comply with the requirements of Title II with respect to QFCs. As mentioned above, this inability of a records entity could increase the potential for a disorderly liquidation of a financial company.

<sup>71</sup> An entity, such as an investment adviser, that acts as agent on behalf of a client would not be required to maintain records for any QFC to which the adviser is not a party or that the adviser does not support or guarantee.

When a records entity uses an affiliate or a third party to maintain the records required under the Proposed Rules, it would be the responsibility of the records entity to ensure that records maintained by the affiliate or third party can be provided to the PFRA within 24 hours of a request.

Each records entity also would be required to be able to generate historical end-of-day records of open QFC positions, and any other QFC positions needed to generate data based on end-of-day records and values, for a period of at least the preceding five business days. Historical data are important as a measure of the day-to-day volatility of the given positions, and such data may help the FDIC calculate portfolio values on the business day after the appointment of the receiver.

With respect to record retention, the proposed requirement for a records entity to maintain records would generally apply to records and values with respect to open QFC positions and any other QFC positions needed to generate information based on end-of-day records and values for at least the five business days prior to the date of a request.

#### Questions:

37. Are the record maintenance requirements of the Proposed Rules sufficiently clear? If not, what additional requirements should be adopted?

38. Is the five-day retention period for required historical data sufficient? If a different period would be more appropriate, please provide support for your recommendation.

39. In the case of records entities that use affiliates or third-party service providers to maintain their records, is it appropriate for the records entity to be responsible for providing the records within 24 hours of a request, rather than the affiliate or third-party service provider?

40. Should the records be retained for a period shorter or longer than that set forth in the Proposed Rules based on the status of an open QFC? What are the potential benefits or costs of a shorter or longer period for record retention?

### 3. Exemptions

Section 148.3(c) of the Proposed Rules would permit the Secretary to grant two types of exemptions from the rules. Any exemptions granted pursuant to the rules may be subject to conditions. The Proposed Rules provide that, upon written request by a records entity, the FDIC, in consultation with the PFRAs for the records entity, may recommend that the Secretary grant a specific exemption from compliance with one or

more of the requirements of the rules. For example, if a records entity is a subsidiary of a national bank, but is also registered as a major swap participant and a major security-based swap participant, the FDIC, in consultation with the OCC, SEC and CFTC, could recommend that the Secretary issue an exemption because the OCC is the primary banking regulator while the SEC and the CFTC have oversight authority over the entity by virtue of it being a major swap participant and a major security-based swap participant. As another example, if a records entity is a financial company that does not collect certain types of QFC recordkeeping data in the ordinary course of its business, the FDIC, in consultation with the relevant PFRAs, could recommend that the Secretary issue a specific exemption from certain data requirements of the rules, if the FDIC believes such data omissions are warranted under the particular circumstances.

The Secretary would also be permitted to issue exemptions that have general applicability upon receipt of a recommendation from the FDIC, in consultation with the PFRAs for the applicable records entities. For example, the FDIC, in consultation with the PFRAs, could recommend that the Secretary issue an exemption informing all records entities that some data elements required by Tables A-1 through A-4 of the Appendix are not relevant for a particular type of QFC.

The Secretary considered authorizing the FDIC and the PFRAs to jointly grant specific and general exemptions, because the PFRAs are familiar with the operations of the records entities, and because the FDIC as the intended user of the QFC recordkeeping would be affected by the granting of any exemption. However, the Act does not appear to authorize the Secretary, as Chairperson of the Council, to sub-delegate decision making authority to other agencies. Instead, the Secretary is turning directly to the FDIC and indirectly to the PFRAs for recommendations on whether to grant specific or general exemptions. The Secretary will consider any FDIC recommendation that carefully considers the factors contained in section 210(c)(8)(H)(iv) of the Act.

Section 210(c)(8)(H) of the Dodd-Frank Act gives the Secretary broad flexibility in determining the scope of the records entities based on, as appropriate, the financial companies' size, risk, complexity, leverage, frequency, and dollar amount of QFCs and interconnectedness to the financial system. The Secretary also may consider

other factors deemed appropriate, which the Secretary believes should include whether the application of one or more requirements of the Proposed Rules is not necessary to achieve the purpose of the rule. As noted previously, in determining whether to grant any exemptions permitted under the rule, the Secretary expects to take into consideration with respect to financial companies their size, risk, complexity, leverage, frequency and dollar amount of QFCs, interconnectedness to the financial system, and any other factors deemed necessary or appropriate, including whether the application of one or more requirements of the rule is not necessary to achieve the purpose of the rule.<sup>72</sup>

Moreover, some records entities are subject to separate recordkeeping rules promulgated by the CFTC and SEC and may in the future be subject to additional recordkeeping requirements promulgated by other U.S. and non-U.S. agencies. The exemption provisions set forth in the Proposed Rules are designed to enable the rules to work in conjunction with the CFTC's, SEC's and other regulatory recordkeeping requirements as well as any global or local standard adopted after the publication of the final rule, as they would provide the ability for the Secretary to be flexible in taking such requirements and standards into account. Although section 148.3(a)(1) of the Proposed Rules specify a standard format for recordkeeping, the Secretary, upon receipt of a recommendation from the FDIC made in consultation with the appropriate PFRAs, could exempt records entities from this requirement on the condition that they maintain electronic records maintained in a swap data repository or internally in a different format. The format of proposed Tables A-1 through A-4 of the Appendix therefore, should not complicate appropriate recordkeeping, so long as the information set forth in the Appendix can be provided to the FDIC in a manner that allows the FDIC to properly analyze and aggregate the data. Records entities could build upon the mandatory data templates of the swap data repositories and augment and/or hyperlink the data to create the totality of the information requested. A records entity could also help the FDIC, upon appointment as receiver, analyze internal databases by providing the personnel necessary to manipulate internal databases. Because the PFRA for a records entity and the FDIC must work with and understand the data, a records entity would need an exemption

<sup>72</sup> See *supra* note 59.

from the Secretary (which could be conditioned on the use of an alternative recordkeeping format) before using a recordkeeping format that is different from the format referenced in section 148.3(a)(1) of the Proposed Rules.

The Proposed Rules also would empower the Secretary, in consultation with the FDIC, to grant extensions of time with respect to compliance with the recordkeeping requirements. It is anticipated that such extensions of time would apply when records entities first become subject to the rules and likely would not be used to lengthen the time periods specified in the maintenance and updating requirements of the rules. Extensions of time may also be appropriate on a limited basis with respect to being capable of providing full records because of unforeseen technical issues.

*Questions:*

41. Is the scope of the exemptions appropriate as written?

42. The Proposed Rules would allow the Secretary, upon receipt of a written recommendation from the FDIC, to issue general or specific exemptions based on factors the Secretary determines to be necessary or appropriate. Is the prerequisite of an FDIC recommendation appropriate? For example, in the case of a records entity request for a specific exemption, should the Secretary proceed in determining whether to grant or deny the request if the FDIC does not submit its recommendation within a reasonable period of time? If yes, should the FDIC and/or the PFRAs be consulted in some other manner? Is the FDIC's consultation with the relevant PFRAs in preparing the written recommendation appropriate? If not, should the relevant PFRAs be involved in some other manner? For example, should a recommendation be made jointly by the FDIC and the relevant PFRAs, or should they each submit separate recommendations to the Secretary? Are the factors the FDIC would be required to consider in making its recommendation appropriate?

43. Should the Secretary delegate decision making authority to the FDIC, the PFRAs, or both with regard to granting general or specific exemptions and extensions of time? If so, please explain the authority by which the Secretary could make such a delegation.

44. How should the PFRAs' separate rulemaking and exemptive authority be used in conjunction with exemptions under this rulemaking?

45. What is the volume and nature of exemption requests that commenters believe are likely to be requested?

46. Should the final rule exempt categories of financial companies? If so, which categories should be exempted and why? Alternatively, should the final rule exempt certain categories of financial companies only from certain provisions of the rules but require them to comply with others? Please specify the conditions and factors to be considered for each such exemption.

47. Should clearing organizations or other financial market utilities be exempted from recordkeeping under the rule? Please explain in detail why current recordkeeping requirements for clearing organizations and other financial market utilities are sufficient to enable the FDIC to conduct the orderly liquidation of clearing organizations or financial market utilities.

48. What conditions, if any, should be included in a clearing organization exemption? Should it suffice that a clearing organization coordinates with its members that are records entities to ensure that appropriate records are kept?

49. Is it feasible for data to be maintained in a standardized format? Should specific format exemptions be included in the final rule, in particular for formats used by common QFC reporting repositories (e.g., swap data repositories)? To the extent such other recordkeeping requirements do not meet the full requirements contemplated here (e.g., they do not include certain categories or fields necessary), how would records entities meet the contemplated recordkeeping requirement? In such a case, would a format exemption reduce regulatory burden?

50. Should the provisions addressing form and availability of data be further detailed?

51. Should the rule specify a process for requesting exemptions and extensions of time? If so, what should this process be?

*D. Content of Records*

1. General Information

Section 148.4(a) of the Proposed Rules would require each records entity to maintain all data required by Tables A-1 through A-4 of the Appendix, as well as additional information that is needed to be able to understand affiliated relationships among records entities and counterparties. Records entities may currently maintain such data; however, they might not be maintaining it in the manner or format in the Proposed Rules. By presenting the data elements in the form of an Appendix, the Secretary has sought to maintain a parallel with the

FDIC's Part 371 QFC Recordkeeping rules, and to provide an easy means of separating the data into their relevant categories. As stated below, the Appendix corresponds to position level data, counterparty exposure data, legal agreement data, and collateral data. Where appropriate, each table in the appendix also gives an example of each data element and describes the relevance of such data in the context of an FDIC receivership.

For the purpose of QFC recordkeeping, each records entity would be required to treat its affiliates, including affiliated clearing organizations or other financial market utilities, as third-party counterparties and maintain complete records of all inter-affiliate QFCs. The Proposed Rules would require a records entity to use a unique counterparty identifier to identify each of its counterparties. The records entity would be required to assign a separate unique counterparty identifier to each legal entity and each non-U.S. branch or office of a legal entity that transacts business as a separate branch or division to enable the FDIC to analyze cross-border QFC activity. The unique counterparty identifier also would facilitate the aggregation of positions by counterparty as well as the aggregation by corporate group. The ability of records entities to incorporate unique identifiers for each counterparty is likely to vary significantly depending on the number and types of counterparties, and if the counterparties are currently identified and tracked within the records entity's systems.

Authorities from around the world, including the FDIC, have established a global legal entity identifier ("LEI") system, with oversight effected by a Regulatory Oversight Committee ("ROC"), comprised of those same authorities, in order to coordinate and oversee a global system of legal entity identification. In June 2014, a Swiss non-profit foundation (the "Global LEI Foundation") was established with the intention for it to provide operational governance and management over Local Operating Units ("LOUs") that will issue LEIs.

Before the Global LEI Foundation was established, the ROC created an interim system by which those with pre-LEIs (LEIs compliant with various ROC principles) issued by ROC-endorsed LOUs would be sufficient to satisfy the regulatory requirements of ROC member authorities.

As a result, unique LEIs were already being issued prior to the operational governance and management of the system by the Global LEI Foundation

and such LEIs are being accepted by certain individual ROC members, including for purposes of meeting certain other recordkeeping and reporting requirements mandated by the Dodd-Frank Act. The Proposed Rules would require records entities to use LEIs issued by LOUs endorsed by the ROC, and by those LOUs endorsed or otherwise governed by the Global LEI Foundation.

To the extent that the LEI or pre-LEI does not allow branches to be separately identified, the records entity would be required to include additional identifiers to enable the FDIC to segment the QFC activity both across the corporate group and by jurisdiction, as treatment of a QFC varies based on the law governing the QFC and/or the location of the collateral.

To that end, financial companies would need to maintain the capacity to generate QFC information in a common data format, at a minimum, within each corporate group, and, ideally, among financial companies. To facilitate the resolution of QFC portfolios, the FDIC needs to analyze such data upon appointment as receiver under Title II by working collaboratively with the PFRAAs. The standardized data format would reduce the time and effort needed by the FDIC to perform the analysis and facilitate comparison of QFC data across financial companies with large complex QFC portfolios.

A records entity also would be required to maintain electronic copies of all agreements that govern the QFC transactions, as well as credit support documents related to such QFC transactions. As noted previously, electronic records are necessary or appropriate to assist the FDIC as receiver to quickly analyze QFC positions and make prompt decisions with respect to such QFCs, and to minimize the potential for disorderly liquidation of the covered financial company and increased systemic risk. These copies would need to be maintained in full-text searchable electronic form, and would be required to include master agreements and annexes, confirmations, master netting agreements, credit support annexes, guarantees, net worth maintenance agreements, security interest agreements, and other related agreements, if any. Similarly, the Proposed Rules would require records entities to keep full-text searchable copies of all assignment or novation documents to enable the FDIC to determine the appropriate counterparties for the various QFC positions.

The Proposed Rules would require that each records entity also maintain a list of vendors directly supporting the QFC-related activities and the contact information for such vendors. Section 148.4(a) of the Proposed Rules would also require that each records entity maintain certain additional information with respect to its current QFC portfolio, including information about the risk metrics used to monitor the QFC portfolios and contact information for each risk manager. The maintenance of such information would enable the FDIC to contact a risk manager or vendor quickly in the event that the FDIC requires additional information that is not currently included among the required data. Furthermore, maintaining risk manager contact information and a vendor list is unlikely to be overly burdensome because most financial companies are likely to already maintain similar information in the ordinary course of business.

#### Questions:

52. Are the proposed requirements related to unique counterparty identifiers sufficient to enable compliance with the rules?

53. Is it necessary or appropriate for a records entity to maintain full-text searchable electronic copies of all agreements governing QFC transactions? If not, are there any viable alternatives to this?

54. Is it necessary or appropriate for a records entity to maintain risk metrics used to monitor the QFC portfolio, risk manager contact information, and a list of vendors that directly support the QFC related activities of the records entity? If not, are there any viable alternatives to this?

55. Should the rule include additional guidance with respect to form, content and format of the records required? If so, how?

56. Should the rule specify a data standard (or language, or specification, e.g., XML or XBRL) and a standard set (e.g., a schema or taxonomy) of data item tags? Should the rule specify further the definitions which the records entity must use for its QFC records data? Please provide detailed specifications of the data standard or standard set as well as of the proposed definitions, if any.

57. Should data elements be interoperable among affiliated records entities and among financial company groups? If so, discuss which standard(s) should be considered, and why? If the rule should not include such a requirement to use a standard for the QFC data, will the complexity and quantity of data hinder the ability of the

FDIC to use the QFC data for the purposes described in the rule?

## 2. Appendix Information

As described previously, the Proposed Rules would organize the detailed QFC recordkeeping requirements into an appendix of four tables: (1) Position-level data set forth in Table A-1; (2) counterparty collateral data set forth in Table A-2; (3) legal agreements related data set forth in Table A-3; and (4) collateral detail data set forth Table A-4. The information that would be required by Tables A-1 through A-4 is largely self-explanatory and contains examples as well as narrative explanations of the applications. Some of the data fields, such as the unique counterparty identifiers for the records entity and the counterparty, are used in each table to help link the data among the tables.

The Appendix specifies that a records entity may leave an entry blank, or may insert "N/A" for any data fields that do not apply to a given QFC transaction or agreement. For example, if a QFC is not guaranteed, data fields that relate to a guarantee agreement would not need to be filled in, so long as those guarantee-related fields that required a Y/N ("Yes/No") answer are completed where appropriate. Similarly, if QFCs with a counterparty are not collateralized, there would be no need to maintain collateral information with respect to that counterparty.

### a. Table A-1

Table A-1 would set forth position-level data that enable the FDIC to evaluate a records entity's exposure to its counterparties. The FDIC would also use these data to evaluate the effects of the receiver's determination to transfer, disaffirm or repudiate, or retain QFCs. In addition, position-level information would assist the receiver or any transferee to comply with the terms of the QFCs and reduce the likelihood of inadvertent defaults. For example, a unique position identifier would allow for the tracking and separation of positions maintained by the records entity, and the identifier also would be consistent with the CFTC- and SEC-mandated data that need to be reported to SDRs.<sup>73</sup> The information would also be required to include CUSIP identifier numbers, unique trade confirmation numbers, as well as other internal identifying information relevant to the position.

The unique booking unit or desk identifier is intended to serve to further segment the data provided by the

<sup>73</sup> See 17 CFR 45.5.

records entity. It identifies which division or trading desk of a records entity has entered into the QFC position. This information is necessary to enable the FDIC to evaluate the business purposes of each QFC and locate back office contacts. The information that would be maintained in this field would help to determine the purpose of the QFC and assist the FDIC to determine whether the QFC was backed by another entity or an affiliate, if the QFC had a full or partial hedge, or if the QFC was used to hedge an asset. In addition to a unique booking unit or desk identifier, a description of that booking unit or desk would facilitate QFC classification. This description would assist in determining the specific nature and purpose of the QFCs and enable the FDIC to carry out an orderly liquidation.

Counterparties to records entities often trade QFCs under the terms of a single master agreement or similar governing document. Each master agreement may contain non-standard legal provisions that govern the relationship of the parties. In certain cases, counterparties may maintain multiple master agreements with the same records entity. For the FDIC to accurately assess the effect of transfer or termination of QFC positions on the financial stability of the derivatives and other financial markets, such QFC positions would need to be aggregated under the relevant corresponding agreements or governing documents at each level permitted by the documents. To the extent the master agreements are subject to further cross-product or multi-party netting, such “master-master agreements” also would need to be identified. All master agreements are included in the QFC definition under the Act and would be required to be treated as QFCs for all purposes under the Proposed Rules. The data that would be maintained must enable the FDIC to not only aggregate and disaggregate positions at the level of each counterparty, affiliate, and agreement, but also to determine the overall effect of the FDIC’s decisions for each of the counterparty’s and the records entity’s corporate groups.

Table A-1 would also require the records entity to maintain information with respect to any loan or other obligation that relates to a QFC. For example, the counterparty to a swap with a records entity may have entered into the swap to hedge the interest rate exposure on amounts borrowed from an affiliate of the records entity, where both the loan and the swap are secured by one mortgage on the property. This information is necessary to enable the

FDIC to evaluate both the loan and the swap. The information that would be maintained with respect to related obligations includes a reference number of the obligation and information about the borrower, lender and any other material terms of the related obligation.

#### b. Table A-2

Table A-2 would require a records entity to maintain counterparty aggregate exposures and collateral data for all QFCs entered into by a records entity with a counterparty. For such data, the records entity would need to demonstrate the ability to maintain itemized records of collateral by counterparty, which also would allow for the aggregation of collateral based on the netting rights of the counterparty and its affiliates. The data would need to take into account enforceability of netting in an insolvency close-out situation in specific jurisdictions, in addition to contractual payment netting outside an insolvency or receivership.

The information in Table A-2 would need to be maintained at each level of netting under a master agreement. For example, if a master agreement includes Annexes that require intermediate netting under each Annex, the net exposures under each Annex would need to be maintained separately. The data would need to identify whether multi-party or cross-product netting is contemplated among affiliates in a corporate group and provide exposure data taking into account such multi-party or cross-product netting. To the extent netting is not enforceable in an insolvency of the records entity or the counterparty, the positions that cannot be netted in an insolvency would not need to be netted for the purpose of Table A-2. This information would allow counterparty-level data to be segregated by records entity and counterparty. The use of the term “counterparty” would also include each affiliate in a records entity’s corporate group that is a counterparty to an inter-affiliate QFC.

The title and name of each master agreement, master netting agreement, and accompanying governing documentation relating to counterparty positions, would enable the FDIC as receiver to identify the related agreement and review the contractual provisions governing the counterparty relationship.

The primary objective of proposed Table A-2 is to identify exposure of the records entity to each counterparty and its affiliates, as well as the exposure that counterparties might have to the records entity. This information would enable the FDIC to determine the effects of

transfer or termination of QFCs with a given counterparty and the potential risk of contagion in the financial markets. Therefore, the data would need to be aggregated only to the extent permitted under the governing agreements and applicable law. Such information also would provide relative concentrations of risk with counterparties under each applicable agreement. A records entity could also transact QFCs for hedging or other purposes with the various affiliates within a group, which may include cross-border positions that cannot be netted. In order to assess the true exposure of an entity, the FDIC as receiver must have a full understanding of the aggregate QFC position by including all inter-affiliate transactions in its evaluations. This information also would be needed to assess cross-border risk and collateral availability as well as the likely systemic or practical implication of transferring QFC positions.

Table A-2 would require comprehensive collateral information, including market value of collateral, location of collateral, and any custodial and segregation arrangements. Collateral excess or deficiency positions as well as collateral thresholds and valuation discounts also would need to be provided. The creditworthiness of counterparties that might not be able to return rehypothecated collateral represents an additional risk to a QFC transaction. Conversely, if the records entity is able to rehypothecate collateral, the records entity may create additional risks for its counterparties. Table A-2 would require identification of the collateral status and a notation whether collateral posted to a counterparty is subject to re-hypothecation. This information would enable the FDIC as receiver to comply with the law and transfer QFC obligations together with the related collateral.<sup>74</sup> In addition, it would enable the receiver to identify excess collateral of counterparties for possible return should the contracts be terminated after the one business day stay. For cross-border transactions, this information would help the FDIC evaluate the availability of collateral in different jurisdictions and the related close-out risks if the receiver cannot arrange for the transfer of QFC positions under local law.

#### c. Table A-3

Table A-3 would require the maintenance of legal agreement data for each QFC agreement or master agreement between each records entity

<sup>74</sup> 12 U.S.C. 5390(c)(9)(A)(i)(IV).

and counterparty. For each QFC, the records entity would be required to maintain in readily accessible searchable format all of the following documents: Legal agreements (including master agreements, annexes, supplements or other modifications with respect to the agreements) between the records entity and its counterparties that govern QFC transactions; documents related to and affirming the position; active or "open" confirmations, if the position has been confirmed; credit support documents; and assignment documents, if applicable, including documents that confirm that all required consents, approvals, or other conditions precedent for such assignment(s) have been obtained or satisfied.

Counterparties to records entities often trade QFCs under the terms of a master agreement (for example, an ISDA master agreement) coupled with other governing documentation. Therefore, it is important that the legal agreement(s) between the records entity and counterparty be identified by name and any unique identifier information. Such agreement(s) outline the legal terms of the transaction, including relevant governing law, and will assist the receiver in determining a definitive course of action. The records entity would need to identify the relevant governing law. The records entity also would need to include a list and description of any events of default or termination events that are in addition to those specified in the form of agreement used, as well as a list and description of events of default or termination events that have been removed by mutual agreement. In addition, each records entity would need to specify all "specified financial condition clauses" that are part of a given agreement, as well as the entity to which such QFCs are linked.

To the extent a counterparty does not use a specific industry standard form, the records entity could either prepare this information by reference to the standard form or by providing a list and description of all relevant events of default or termination events. This information would assist the receiver in planning a course of action and in determining whether there are any events that trigger the counterparty's right to terminate the agreement.

Because the receiver has a limited period of time in which to evaluate QFC provisions, the availability of the legal agreements in fully searchable electronic form is of utmost importance. In particular, the identification of any support by or linkage to a parent entity or affiliate and the identification of any

transfer restrictions and non-standard covenants would enable the FDIC as receiver to evaluate the treatment of QFCs under such contracts in an orderly liquidation of the records entity or its affiliate under Title II of the Act

#### d. Table A-4

Table A-4 would expand on the information set forth in Table A-2. Each records entity would be required to maintain collateral detail data both with respect to collateral received and with respect to collateral posted. Such information would need to be maintained on a counterparty-by-counterparty basis. In addition, the data would need to include collateral information for each records entity. The collateral information would need to be capable of aggregation for the records entity's corporate group, as well as the counterparty's corporate group to the extent required or permitted by any applicable netting agreements. The data in this Table, together with the data in Table A-2, would allow the FDIC to better understand the QFC portfolio risk, and to model various QFC transfer or termination scenarios.

#### Questions:

58. Is it reasonable for the Proposed Rules to require collateral detail data both with respect to collateral received and collateral posted, on a counterparty-by-counterparty basis? Is it reasonable for the Proposed Rules to require data that include collateral information for each records entity? If not, what are the viable alternatives?

59. Are there any additional records that should be maintained by a records entity? If so, what additional categories or fields should be included? Please be specific in identifying data to be maintained.

60. Do the recordkeeping requirements sufficiently capture information regarding QFCs that are linked to the records entity? Do the recordkeeping requirements sufficiently capture information regarding QFCs that are guaranteed or otherwise supported by the records entity?

61. In the event that only some portion of the QFC records need to be capable of being produced immediately, should fewer data elements be required?

62. Please comment on the general nature and scope of records proposed to be maintained. Should some records be further explained? How does the nature and scope of records compare to other QFC recordkeeping requirements (e.g., swap data repositories)? Are there ways to further align the recordkeeping requirements with those of other reporting repositories to reduce regulatory burden? If so, how? Do the

proposed recordkeeping requirements generally reflect the size and complexity of entities that likely qualify as records entities? Are there any additional records or data that would assist the FDIC in its role as receiver with respect to a covered financial company?

63. Are there any impediments to maintaining the records proposed to be required? How should these impediments be resolved? Please specify why the unavailability of a record would or would not create impediments to the transfer or repudiation of the affected QFCs.

64. Should different records or data be required to be maintained by records entities based on entity types?

65. Are any of the proposed recordkeeping requirements not necessary or appropriate to assist the FDIC as receiver? If not, why not? Are some records not necessary or appropriate based on the entity type of the records entity? Would any of the contemplated records or data result in undue burden on records entities?

66. Do the proposed recordkeeping requirements overlap or conflict with any existing or proposed regulatory requirements applicable to various entities that would qualify as records entities? If so, how should any conflicting or overlapping requirements be addressed? Specifically, do the proposed recordkeeping requirements overlap with or conflict with the proposed recordkeeping rules applicable to broker-dealers and security-based swap dealers (SBSD)?<sup>75</sup> If so, be as specific as possible regarding how the Proposed Rules may conflict and provide specific recommendations for making this Proposed Rules and the proposed rules applicable to broker-dealers and SBSBs more consistent. Do any existing regulatory requirements require records to be maintained in a format that is similar to the format set forth in the Proposed Rules, or that would otherwise allow for the FDIC to easily evaluate the records in the event it is appointed as receiver? How could any existing reporting or recordkeeping requirements be used to assist the FDIC in its role as receiver? Could any existing regulatory requirements be modified to require maintenance of the records required under the Proposed Rules? If so, how? Would any such modifications promote efficiencies or reduce the burden or costs on records entities? Conversely, could they adversely affect the FDIC's ability to

<sup>75</sup> See e.g., Exchange Act Release No. 71958, 79 FR 25194 (May 2, 2014).

exercise its rights and obligations as receiver?

67. If there are QFCs between a records entity and a counterparty that are of the type that typically would be covered by two or more different types of master agreements, should a different schedule be required for each such different type of QFC?

68. What would be the most efficient method of obtaining information as to changes affecting individual positions, as well as changes to Master Agreements pursuant to annexes, changes to annexes, other amendments and protocols?

69. What would be the most efficient way to account for inter-affiliate positions while avoiding duplication of position reporting? Should the position-level data require a unique counterparty identifier and counterparty name for the counterparty to related inter-affiliate position(s) with non-records entities in the corporate group or with non-affiliates?

70. In order to enable the FDIC as receiver to meet pending margin calls for all companies in a corporate group, should a records entity be required to provide information as to collateral deficiencies, after giving effect to pending margin calls, of each subsidiary that is not a records entity? Should a records entity also be required to provide information as to the location of collateral provided in connection with such subsidiaries' positions or other additional information with respect to the positions of such subsidiaries?

71. Table A-1 of the Appendix requires position-level data that identifies whether the purpose of such positions is for hedging or trading, and if the purpose of a position is for hedging, Table A-1 requires a general description of the hedge (e.g., hedging mortgage servicing or hedging a mortgage pipeline). This information is necessary for the FDIC to determine the corporate group's business strategy for purposes of estimating the financial and operational impact of the FDIC's decision to transfer, disaffirm or repudiate, or retain the QFC in the receivership. For example, if the covered financial company entered into a QFC in the form of an interest rate swap to hedge the interest rate risk associated with its portfolio of mortgage-backed securities, knowing the purpose of the QFC position will help the FDIC decide whether to transfer both the mortgage-backed securities and the interest-rate swap to a bridge financial company. Without knowing the purpose of the position, the FDIC could potentially transfer the mortgage-backed securities to a bridge financial

company but leave the interest-rate swap in the receivership where it could potentially be terminated by the counterparty, which would expose the bridge financial company's assets to previously hedged risks. Should the position-level data require the purpose of the position? With respect to hedging positions, what are the appropriate general categories for the item(s) that are hedged? Are the hedging categories listed in Table A-1 (hedging mortgage servicing, hedging a mortgage pipeline) appropriate examples? Should Table A-1 require different information for QFCs where the position consists of hedging strategies? Should the position-level data require specific identifiers for portfolio hedging transactions? If so, how should split hedging be treated?

72. The recordkeeping requirement for the reference number of any related loan data, if applicable, in Table A-1 to the Appendix serves a similar purpose as the requirement to identify the particular purpose of a position. To the extent a QFC is related to a specific loan or loans held by the covered financial company in receivership or an affiliate, it may be beneficial to transfer or retain in the receivership the QFC and the related loan or loans in conjunction with each other where, in the case of a transfer, the bridge financial company does not end up holding a QFC without also holding directly or indirectly the related loan or loans. For example, the covered financial company may have issued a loan along with a related interest rate swap, and in the case of resolution, it might be beneficial to transfer to the bridge financial company, or terminate, together the interest rate swap and the underlying loan. To the extent a QFC position has a related loan or loans, would it be appropriate for a records entity to include the reference number for any related loan? Would it be appropriate for a records entity to include the legal name of the records entity that is lender of related loan as required in the position-level data?

73. As specified in Tables A-1 and A-2, records entities are also required to maintain the industry code for each counterparty by using either the Global Industry Classification (GIC) code or the Standard Industrial Classification (SIC) code. Each of these two codes uses four digits to identify the primary business of an entity, and is designed to facilitate uniformity and comparability in the collection, presentation, and analysis of data. By having access to a GIC or SIC code for each counterparty, the FDIC will be better positioned to estimate the financial and operational impact of its decisions to transfer, disaffirm or repudiate, or retain QFCs in the

receivership, and will be better able to assess the potential impact ("knock-on effects") that such decisions may have on the financial markets as a whole and particularly on individual sectors of the economy. Is the use of a GIC or SIC code appropriate? Are there alternative codes that would better assist the FDIC?

74. Table A-4 to the Appendix requires recordkeeping in the form of a "yes or no" on whether the collateral for a particular position is segregated and a brief description of such segregation. This information is necessary for the FDIC to decide whether to transfer QFCs. If the FDIC as receiver decides to transfer all QFCs between the covered financial company in receivership and a specific counterparty, the Act requires the FDIC to transfer all property or collateral securing such QFCs.<sup>76</sup> If the collateral underlying such QFCs is not segregated, then the FDIC may need to "disentangle" such collateral if it decides to transfer the QFCs and the collateral in accordance with the requirements of the Act or, if it does not disentangle the collateral, it may need to transfer certain QFCs and other assets that it would not otherwise have decided to transfer. Does this recordkeeping requirement sufficiently capture the information the FDIC needs? Are there any alternative approaches?

75. Is there a different format for maintaining the records that would improve the receiver's ability to evaluate QFC portfolios? How do the proposed formatting requirements affect a records entity's ability to generate the records in the time frames provided for in the Proposed Rules? Are there any other requirements relating to formatting or transmission of records that the Secretary should consider?

#### IV. Administrative Law Matters

##### A. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (the "RFA") (5 U.S.C. 601 *et seq.*) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. Congress enacted the RFA to address concerns related to the effects of agency rules on small entities, and the Secretary is sensitive to the impact the Proposed Rules may impose on small entities. In this case, the Secretary believes that the Proposed Rules likely would not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The Act mandates that the Secretary prescribe regulations requiring financial companies to

<sup>76</sup> 12 U.S.C. 5390(c)(9)(A)(i)(IV).

maintain records with respect to QFCs to assist the FDIC as receiver of a covered financial company in being able to exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10) of the Act. As a result, the economic impact on financial companies, including small entities, flows directly from the Act, and not the Proposed Rules. Comments are requested on whether the Proposed Rules would have a significant economic impact on a substantial number of small entities and whether the costs are the result of the Act itself, and not the Proposed Rules.

Instead of requiring all financial companies to maintain records with respect to QFCs, the Secretary is narrowing the scope of the Proposed Rules to a smaller subset of financial companies. As a threshold matter, the Secretary is proposing to exclude from the scope of the Proposed Rules financial companies that do not meet one of the following three criteria: (1) Are designated pursuant to section 113 of the Act (12 U.S.C. 5323) to be a nonbank financial company that could pose a threat to the financial stability of the United States; (2) are designated pursuant to Section 804 of the Act (12 U.S.C. 5463) as a financial market utility that is, or is likely to become, systemically important; or (3) have total assets equal to or greater than \$50 billion. Since the Act's enactment in 2010, eleven financial companies have been designated by the Council under categories (1) and (2), and the Secretary's understanding is that each of those designated companies has revenues in excess of the Small Business Administration's ("SBA") revised standards for small entities, which went into effect on July 22, 2013. Moreover, the Secretary, as Chairperson of the Council, does not expect that any small entities will be designated by the Council in the foreseeable future.<sup>77</sup> However, the Proposed Rules would also apply to these large financial companies' affiliated financial companies (regardless of their size) if an affiliated financial company otherwise qualifies as a "records entity" and is not an "exempt entity" under the Proposed Rules.

The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Secretary has reviewed the

Proposed Rules. While the Secretary believes that the Proposed Rules likely would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)), the Secretary does not have complete data at this time to make this determination, particularly with regard to affiliated financial companies. Therefore, an Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603.

The Secretary also requests that commenters quantify the number of small entities, if any, that would be subject to the Proposed Rules, describe the nature of any impact on small entities, and provide empirical and other data to illustrate and support the number of small entities subject to the Proposed Rules and the extent of any impact. After reviewing the comments received during the public comment period, the Secretary will consider whether to conduct a final regulatory flexibility analysis.

#### 1. Statement of the Need for, Objectives of, and Legal Basis for, the Proposed Rules

The Secretary is proposing a regulation to implement section 210(c)(8)(H) of the Act, as required by the Act. Section 210(c)(8)(H) provides that, if the federal primary financial regulatory agencies do not prescribe joint final or interim final regulations requiring financial companies to maintain records with respect to QFCs to assist the FDIC as receiver for a covered financial company to exercise its rights and fulfill its obligations under certain provisions of the Act within 24 months of the enactment of the Act, the Secretary, as Chairperson of the Council, shall prescribe, in consultation with the FDIC, such regulations.

The Proposed Rules would require records entities to maintain detailed information about their QFC positions and be capable of providing this information to their PFRAs within 24 hours of request. The Proposed Rules include, among other things, recordkeeping requirements with respect to position-level data, counterparty-level data, legal documentation data, and collateral-level data. These requirements would assist the FDIC in resolving financial companies that may be subject to orderly liquidation under Title II of the Act. Specifically, these data are necessary to enable the FDIC as receiver of a covered financial company in deciding whether to: (1) Transfer the covered financial company's QFCs under section 210(c)(9) and (10) of the Act within the narrow time window

afforded by the Act; (2) retain such QFCs within the receivership and allow a counterparty to terminate the QFCs; (3) retain the QFCs within the receivership and disaffirm or repudiate the QFCs; (4) exercise its rights to enforce certain QFCs of subsidiaries and affiliates under section 210(c)(16) within the narrow time window afforded under section 210(c)(10) of the Act;<sup>78</sup> and (5) assess the consequences of decisions to transfer, disaffirm or repudiate, or retain QFCs, including the potential impact that such decisions may have on the financial markets as a whole. Because of the narrow time window by which the FDIC may decide to transfer QFCs of the covered financial company and enforce the QFCs of the covered financial company's subsidiaries and affiliates under section 210(c)(9), (10) and (16) of the Act, it is necessary that financial companies that qualify as records entities maintain the capacity to generate, on an ongoing basis, QFC information in a common data format. Upon being appointed as receiver under Title II of the Act, the FDIC needs to analyze such data to facilitate the resolution of QFC portfolios. As noted earlier, the information must be sufficient to allow the FDIC to estimate the financial and operational impact on the covered financial company or its affiliated financial companies of the FDIC's decision to transfer, disaffirm or repudiate, or retain the QFCs. Additionally, it must allow the FDIC to assess the potential impact that such decisions may have on the financial markets as a whole.

#### 2. Small Entities Affected by the Proposed Rules

As discussed above, the Proposed Rules would only affect large financial companies and certain of their affiliates that meet the definition of a records entity. The Secretary proposes that the recordkeeping requirements in the Proposed Rules be applicable to all affiliated financial companies in a large corporate group that meet the definition of records entity, regardless of their size, because an exemption for small entities would significantly impair the FDIC's right to enforce certain QFCs of affiliates of covered financial companies under section 210(c)(16) of the Act. Such enforcement may be necessary for the FDIC to preserve the critical operations of these affiliated financial companies.

Based on current information and discussions with several of the PFRAs who are familiar with financial

<sup>77</sup> See 77 FR 21637, 21650 (April 11, 2012) and 76 FR 44763, 44772 (July 27, 2011).

<sup>78</sup> See 12 U.S.C. 5390(c)(16)(A); 12 CFR 380.12(a)(2).

company operations and have experience supervising financial companies with QFCs portfolios, the Secretary believes that the large corporate groups that would be subject to the Proposed Rules are likely to have an existing centralized system for recording and reporting QFC activities that they will continue to rely upon to perform most of the recordkeeping requirements set forth herein. The entity within the corporate group responsible for this centralized system will likely operate and maintain a technology shared services model with the majority of the technology applications, systems, and data shared by the affiliated financial companies within the large corporate group. Therefore, the entity responsible for this centralized system, and not the affiliated financial companies, may be most significantly impacted by the Proposed Rules. The affiliated financial companies may be able to utilize the technology and network infrastructure operated and maintained by their respective entities responsible for the centralized recordkeeping system. Additionally, the entities responsible for maintaining these centralized systems for each large corporate group will likely exceed the SBA's revised size standards for small entities.<sup>79</sup> Accordingly, the Secretary believes the Proposed Rules will not have a significant economic effect on a substantial number of small entities. The Secretary seeks information and comment on the role of entities responsible for the centralized recordkeeping systems and whether such entities are small entities to which the Proposed Rules would apply.

### 3. Projected Recordkeeping, and Other Compliance Requirements

As discussed in more detail above, the Proposed Rules impose certain recordkeeping requirements on records entities. A records entity is required to maintain all records described in section 148.4 of the Proposed Rules in electronic form and be able to generate data in the format set forth in the Appendix to the Proposed Rules. The Proposed Rules include, among other things, recordkeeping requirements with respect to position-level data, counterparty-level data, legal documentation data, and collateral-level data. Additionally, such records shall be capable of being transmitted electronically to the records entity's PFRA's.

Based on discussions with several of the PFRA's who are familiar with financial company operations and have

experience supervising financial companies with QFCs portfolios, the Secretary believes that records entities should already be maintaining most of these QFC records as part of their ordinary course of business. However, the Secretary recognizes that the Proposed Rules' form and availability requirements may impose additional costs and burdens on records entities. To help reduce these costs and burdens, section 148.3(c) of the Proposed Rules provides the Secretary with the ability to grant general and specific exemptions from compliance with one or more of the requirements of the Proposed Rules under certain circumstances. For example, the exemption provisions set forth in the Proposed Rules are designed to enable the rules to work in conjunction with the CFTC's, SEC's and other regulatory recordkeeping requirements, as they would provide the ability for the Secretary to be flexible in taking such requirements into account. Although section 148.3(a)(1) of the Proposed Rules specifies a standard format for recordkeeping, the Secretary, upon receipt of recommendation from the FDIC made in consultation with the appropriate PFRA's, could exempt records entities from this requirement on the condition that they maintain electronic records maintained in a swap data repository or internally in a different format. Therefore, the format of proposed Tables A-1 through A-4 of the Appendix should not complicate appropriate recordkeeping, so long as the information set forth in the Appendix can be provided to the FDIC in a manner that allows the FDIC to properly analyze and aggregate the data. The Proposed Rules further provide the Secretary with the authority to grant extensions of time for compliance purposes.

The Secretary seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from application of the Proposed Rules on small entities.

### 4. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Secretary does not believe that any Federal rules duplicate or conflict with the Proposed Rules. The Proposed Rules may overlap with certain CFTC and SEC recordkeeping requirements. However, the Secretary believes the Proposed Rules are necessary to assist the FDIC as receiver for a covered financial company in deciding whether to: (1) Transfer the covered financial company's QFCs under section 210(c)(9) and (10) of the Act within the narrow time window afforded by the Act; (2)

retain such QFCs within the receivership and allow a counterparty to terminate the QFCs; (3) retain the QFCs within the receivership and disaffirm or repudiate the QFCs; (4) exercise its rights to enforce certain QFCs of subsidiaries and affiliates under section 210(c)(16) within the narrow time window afforded under section 210(c)(10) of the Act; and (5) assess the consequences of decisions to transfer, disaffirm or repudiate, or retain QFCs, including the potential impact that such decisions may have on the financial markets as a whole. Additionally, the exemption provisions set forth in the Proposed Rules are designed to enable the rules to work in conjunction with the CFTC's and SEC's recordkeeping requirements, as they would provide the ability for the Secretary to be flexible in taking such requirements into account.

The Secretary seeks comment regarding any other statutes or regulations that would duplicate, overlap, or conflict with the Proposed Rules.

### 5. Significant Alternatives to the Proposed Rules

The Secretary is unaware of any appropriate alternatives to the Proposed Rules, other than those included and discussed in the Proposed Rules, that accomplish the stated objectives of the Proposed Rules and that minimize any significant economic impact of the Proposed Rules on small entities. The Secretary requests comment on whether there are ways to reduce the burdens associated with the recordkeeping requirements on small entities associated with the Proposed Rules.

#### B. Paperwork Reduction Act

The collection of information requirements in the Proposed Rules have been submitted by the Secretary to the Office of Management and Budget ("OMB") for review in accordance with the Paperwork Reduction Act of 1995 (the "PRA"), 44 U.S.C. 3507(d).

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Department of Treasury at the addresses previously specified herein. Comments on the information collection should be submitted no later than March 9, 2015. Comments are specifically requested concerning:

(1) Whether the proposed information collection is necessary for the proper performance of agency functions,

<sup>79</sup> See 13 CFR 121.201.

including whether the information will have practical utility;

(2) The accuracy of the estimated burden associated with the proposed collection of information, including the validity of the methodology and assumptions used (see below);

(3) How to enhance the quality, utility, and clarity of the information required to be maintained;

(4) How to minimize the burden of complying with the proposed information collection, including the application of automated collection techniques or other forms of information technology;

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information; and

(6) Estimates of (i) the number of financial companies subject to the Proposed Rules, (ii) the number of records entities that are parties to an open QFC or guarantee, support, or are linked to an open QFC, and (iii) the number of affiliated financial companies that are parties to an open QFC or guarantee, support, or are linked to an open QFC of an affiliate.

The collection of information in the Proposed Rules is in §§ 148.3 and 148.4 and in Tables A-1, A-2, A-3, and A-4 of the Appendix. The collection of information is required by section 210(c)(8)(H) of the Act, which mandates that the Secretary prescribe regulations requiring financial companies to maintain records with respect to QFCs to assist the FDIC as receiver for a covered financial company in being able to exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9) or (10) of the Act.

The Proposed Rules implement these requirements by requiring that a records entity maintain all records specified in the Proposed Rules in electronic form and be capable of generating and transmitting data electronically to such records entity's PFRA and the FDIC. The Proposed Rules require that a records entity be capable of providing QFC records to its PFRA within 24 hours of the request of such PFRA. The Proposed Rules set forth various recordkeeping requirements with respect to, among other things, position-level data, counterparty-level data, legal documentation data (including copies of agreements governing QFC transactions and open confirmations), collateral level data, a list of affiliates of counterparties and of the records entity, a list of vendors supporting QFC-related activities, risk metrics used to monitor the QFC portfolio, and risk manager contact information for each portfolio that includes QFCs.

The Proposed Rules also provide that a records entity may request in writing a specific exemption from the Proposed Rules, and may also request an extension of time with respect to compliance with the recordkeeping requirements.

#### Respondents

The Secretary estimates that approximately 140 large corporate groups, and each of their respective affiliated financial companies that is a party to an open QFC or guarantees, supports or is linked to an open QFC of an affiliate and is not an "exempt entity", will meet the definition of records entity in section 148.2(l). This list of large corporate groups likely includes bank holding companies, nonbank financial companies determined pursuant to section 113 of the Act to be an entity that could pose a threat to the financial stability of the United States, financial market utilities designated pursuant to Section 804 of the Act as a financial market utility that is, or is likely to become, systemically important; broker-dealers registered with the SEC under section 15 of the Securities and Exchange Act of 1934; investment advisers registered with the SEC under section 203 of the Investment Advisers Act of 1940 and unregistered investment advisers; investment companies registered with the SEC under section 8 of the Investment Company Act of 1940; insurers; real estate investment trusts; and finance companies. The Proposed Rules would also apply to these large corporate groups' affiliated financial companies (regardless of their size) if an affiliated financial company otherwise qualifies as a "records entity" and is not an "exempt entity" under the Proposed Rules.

The Secretary estimates that these large corporate groups collectively have 23,325 affiliated financial companies that may qualify as records entities based on discussions and consultations with the PFRA who are familiar with financial company operations and have experience supervising financial companies with QFC portfolios. Because there is no information available to determine how many of these affiliated financial companies are a party to an open QFC or guarantee, support, or are linked to an open QFC of an affiliate, and thus would qualify as records entities, the Secretary has assumed that all 23,325 affiliated financial companies would qualify as record entities. The Secretary recognizes that, based on a number of factors, the actual total number of respondents may differ significantly from these estimates and

requests comment on the total number of respondents.

The Secretary's initial recordkeeping, reporting, data retention, and records generation burden estimates are based on discussions with the PFRA regarding their prior experience with initial burden estimates for other recordkeeping systems. The Secretary also considered the burden estimates in rulemakings with similar recordkeeping and reporting requirements.<sup>80</sup>

In order to comply with the Proposed Rules, each of the large corporate group respondents will need to set up its network infrastructure to collect data in the required format. This will likely impose a one-time initial burden on the large corporate group respondents in connection with the necessary updates to their recordkeeping systems, such as systems development or modifications. The initial burden for each large corporate group respondent to set up its network infrastructure will depend largely on whether the financial companies already hold and maintain QFC data in an organized electronic format, and if so, whether the data currently resides on entirely different systems rather than on one centralized system. Large corporate group respondents may need to amend internal procedures, reprogram systems, reconfigure data tables, and implement compliance processes. Moreover, they may need to standardize the data and create records tables to match the format required by the Proposed Rules. However, this initial burden is mitigated to some extent because QFC data is likely already retained in some form by each respondent in the ordinary course of business.

As discussed above, the Proposed Rule also applies to certain affiliated financial companies of the large corporate group respondents. The Proposed Rules will likely impose a one-time initial burden on the affiliated financial companies in connection with necessary updates to their recordkeeping systems, such as systems development or modifications. These burdens will vary widely among affiliated financial companies. Their initial burden will depend largely on whether the affiliated financial companies already hold and maintain QFC data in an organized electronic format, and if so, whether the data currently resides on entirely different systems rather than on one centralized system.

<sup>80</sup> See 76 FR 46960 (August 3, 2011); 76 FR 43851 (July 22, 2011); 77 FR 2136 (January 13, 2012); 75 FR 78162 (December 22, 2008).

The Secretary believes that the large corporate groups subject to the Proposed Rules are likely to rely on centralized systems for their QFC activities that will perform most of the recordkeeping requirements set forth herein. The entity responsible for this centralized system will likely operate and maintain a technology shared services model with the majority of the technology applications, systems, and data shared by the multiple affiliated financial companies within the corporate group. Therefore, the Proposed Rules will impose the most significant burden on the entities responsible for these centralized systems within the large corporate group respondents, and not the affiliated financial companies. The affiliated financial companies will likely have a much lower burden because they can utilize the technology and network infrastructure operated and maintained by the entity responsible for the centralized system at their respective large corporate group. Similarly, the Secretary believes that the affiliated financial companies will rely on the entities responsible for the centralized systems to perform the reporting requirements under section 148.3(c)(2) and (3).

Similarly, the Secretary believes that affiliated financial companies will rely on large corporate group respondents to submit requests for extensions of time, specific exemptions, or both.

#### *Recordkeeping*

*Estimated Number of Respondents:*

*Estimated Number of large corporate groups:* 140.

*Estimated Number of affiliated financial companies:* 23,325.

*Total estimated initial recordkeeping burden:*

*Estimated average initial burden hours per respondent:* 360 hours for large corporate groups, 0.5 hours for affiliated financial companies.

*Estimated frequency:* Annually.

*Estimated total initial recordkeeping burden:* 50,400 hours for large corporate groups and 11,663 hours for affiliated financial companies.

*Total estimated annual recordkeeping burden:*

*Estimated average annual burden hours per respondent:* 120 hours for large corporate group, 0.5 hours for affiliated financial companies.

*Estimated frequency:* Annually.

*Estimated total annual recordkeeping burden:* 16,800 hours per year for large corporate group respondents and 11,663 hours per year for affiliated financial companies.

The initial and annual recordkeeping burden is imposed by the Act, which requires that the Secretary prescribe

regulations requiring financial companies to maintain records with respect to QFCs to assist the FDIC as receiver of a covered financial company in being able to exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10) of the Act.

#### *Reporting*

*Estimated Number of Respondents:* 140.

*Total estimated annual reporting burden:*

*Estimated average annual burden hours per respondent:* 25 hours.

*Estimated frequency:* Annually.

*Estimated total annual reporting burden:* 3,500 hours per year.

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 OMB.

#### *C. Executive Orders 12866 and 13563*

It has been determined that the Proposed Rules are a significant regulation as defined in section 3(f)(1) of Executive Order 12866, as amended. Accordingly, the Proposed Rules have been reviewed by OMB. The Regulatory Assessment prepared by the Secretary for the Proposed Rules is provided below.

#### *1. Description of the Need for the Regulatory Action*

The rulemaking is required by the Dodd-Frank Act to implement the QFC recordkeeping requirements of section 210(c)(8)(H) of the Act. Section 210(c)(8)(H) generally provides that if the PFRAs do not prescribe joint final or interim final regulations requiring financial companies to maintain records with respect to QFCs within 24 months from the date of enactment of the Act, the Chairperson of the Council shall prescribe such regulations in consultation with the FDIC. The Secretary, as Chairperson of the Council, is proposing the Proposed Rules in consultation with the FDIC because the PFRAs did not prescribe such joint final or interim final regulations. The recordkeeping required in the Proposed Rules is necessary to assist the FDIC as receiver to exercise its rights and fulfill its obligations under section 210(c)(8), (9), and (10) of the Dodd-Frank Act, by enabling it to assess the consequences (including any financial systemic risks) of decisions to transfer, disaffirm or repudiate, or allow the termination of, QFCs with one or more counterparties.

The recent financial crisis has demonstrated that management of QFC positions, including steps undertaken to close out such positions, can be an

important element of a resolution strategy which, if not handled properly, may magnify market instability. Large, interconnected financial companies may hold very large positions in QFCs involving numerous counterparties. A disorderly unwinding of these QFCs, including the rapid liquidation of collateral, could cause severe negative consequences for not only the counterparties themselves but also U.S. financial stability.

In order for the FDIC to effectuate an orderly liquidation of a covered financial company under Title II and thereby minimize systemic risk, the FDIC would need to make appropriate decisions regarding whether to transfer QFCs to a bridge financial company or other solvent financial institution or leave QFCs in the covered financial company in receivership. It may not be possible for the FDIC to fully analyze a large amount of QFC information in the short time frame afforded by Title II, unless such information is readily available to the FDIC in a standardized format designed to enable the FDIC to conduct the analysis in an expeditious manner.

#### *2. Literature Review*

In assessing the need for these recordkeeping requirements, we have reviewed two categories of academic literature. As highlighted above, one of the potential channels through which the disorderly unwinding of these QFCs could cause severe negative consequences for both the counterparties themselves and U.S. financial stability is through the rapid liquidation of collateral. The disorderly failure of a financial company with a large QFC portfolio may lead QFC counterparties to exercise their contractual remedies and rights by closing out positions and liquidating collateral, while also potentially increasing uncertainty in both derivatives and asset markets. This could lead to lower asset prices, decrease the availability of funding, and increase the likelihood that other financial companies also are forced to liquidate assets. To assess the potential impact of rapid liquidations, or "fire sales," we have reviewed economic studies of fire sales among financial companies. Second, while there is limited academic literature specifically focused on the cost of a disorderly unwinding of a large, complex financial company's QFC portfolio, there has been recent literature analyzing the cost of the Lehman Brothers bankruptcy in

2008, which may be illustrative of the potential costs.<sup>81</sup>

#### a. Fire Sales Among Financial Institutions

The economic literature on financial company fire sales offers insight on their potential internal and external impacts. While not directly addressing QFCs, the fire sale literature can be applied to the potential impact of the rapid liquidation of QFC collateral that might occur in a disorderly unwinding of a large QFC portfolio.

*Principles of Fire Sales Among Financial Companies.* According to the literature, a fire sale can occur when a company cannot pay its creditors without selling assets. During a fire sale, assets sold may be heavily discounted below their fundamental values, depending on the market of participating buyers. If buyers are other investors in the asset class or classes being sold (“specialists”), prices may decline little. However, if the fire sale occurs during a financial crisis when uncertainty is higher and many specialists, including financial companies, may be constrained by solvency or liquidity pressures, they may not participate in the other side of the market. As a result, prices may fall substantially, to a level at which buyers who would only buy the assets in question at a large discount enter the market. Low sale prices may cause other financial companies to reduce the value at which they hold similar assets on their books when marking to market, which may trigger a downward spiral marked by more firms in distress (Shleifer and Vishny, 2011).<sup>82</sup> In addition, because many financial companies rely upon short-term sources of financing, such as repurchase agreements, the falling asset prices and heightened uncertainty may contribute to liquidity pressures as these financing sources withdraw funding or demand more collateral. This may force even solvent financial companies to sell assets in order to deleverage, decrease the size of their balance sheets, and reduce risk. This self-reinforcing cycle can result in additional fire sales, and eventually, precipitate or magnify a financial crisis.

Shleifer and Vishny (2011) believe that before the September 2008 Lehman

Brothers bankruptcy most specialist buyers, including most financial companies, were active in the market, but after the Lehman bankruptcy most of them were unwilling to buy assets, causing security prices to plunge, and prompting fund withdrawals, collateral calls, and self-reinforcing fire sales. This cycle of price collapses and deleveraging increased the fragility of the financial system, and disrupted financial intermediation. The next major section discusses the Lehman failure in more detail.

At the time of a fire sale both seller and non-seller financial companies may curtail their lending, thereby imposing additional social costs associated with reduced financial intermediation. Shleifer and Vishny (2010)<sup>83</sup> use a three-period model of bank lending to illustrate the dynamics. They show that, in normal times, securitization can lead to higher lending volumes and earnings, but market sentiment shocks can quickly reverse these outcomes. When banks are highly leveraged, they may be more vulnerable to unanticipated shocks. A severe shock can lead them to liquidate assets in fire sales, fostering industry-wide asset price declines and weakening the banking system. In that environment, banks may forego lending, both to meet capital requirements and to preserve the capacity to purchase deeply discounted assets in the future. This credit contraction may reduce economic welfare due to a large number of potentially profitable investments that do not receive financing. He *et al.* (2010)<sup>84</sup> and Ivashina and Scharfstein (2010)<sup>85</sup> offer evidence that financial companies used spare balance sheet capacity to purchase discounted securities after the financial crisis rather than to increase lending. Hence, foregone lending during a crisis is a potential social cost, although we do not include it in our summary of costs associated with the Lehman Brothers bankruptcy in the next section, since we find no specific description of it in this context in the literature.

*Potential Effects on Lending.* As predicted by the theoretical models discussed above, empirical research shows bank lending declined sharply during the crisis. Ivashina and Scharfstein (2010) show that in August through December 2008, banks that

depended more heavily on short-term debt (other than insured deposits), reduced their business lending by significantly more than banks less dependent on short-term debt financing. At the time of the Lehman bankruptcy, the paper identifies two channels driving this result that collectively constituted a “run” on financial companies. First, short-term creditors refused to roll over their unsecured commercial paper loans and repo lenders increased collateral requirements, which particularly constrained financial companies dependent on short-term credit for a significant share of their financing. Second, borrowers substantially increased draws on their existing credit lines “to enhance their liquidity and financial flexibility during the credit crisis.” In particular, financial companies that co-syndicated credit lines with Lehman Brothers were more likely to experience larger credit line drawdowns after the Lehman failure, and reduced their new lending more than those without co-syndication relationships with Lehman. Ivashina and Scharfstein conclude the results are consistent with a decline in the supply of funding as a result of the run associated with the Lehman event.

On the borrower side, Campello *et al.* (2010)<sup>86</sup> surveyed the chief financial officers of 1,050 nonfinancial firms in the United States, Europe, and Asia and found that those that identified their firms as “financially constrained”<sup>87</sup> during the financial crisis cut back more on capital and technology investments compared to those that identified their firms as “financially unconstrained.” They also cut marketing expenditures by significantly greater margins, and shed far more employees (financially constrained firms planned to cut 10.9 percent of their personnel in 2009, while financially unconstrained firms planned to shed 2.7 percent). The survey revealed that during the crisis, 86 percent of constrained firms reported foregoing attractive investments, compared to 44 percent of unconstrained firms. This suggests the crisis-related decline in bank credit supply directly contributed to the reduction in constrained firms’ investments, and imposed associated economic effects.

<sup>81</sup> Lehman Brothers Holdings, Inc. (“Lehman Brothers”), Lehman Brothers Inc. (the U.S. registered broker-dealer), and Lehman Brothers International (Europe) (the UK registered broker-dealer) were subject to separate liquidation proceedings.

<sup>82</sup> Shleifer, A., and Vishny, R. (2011). Fire Sales in Finance and Macroeconomics. *Journal of Economic Perspectives* 25: 29–48.

<sup>83</sup> Shleifer, A. and Vishny, R. (2010). Asset Fire Sales and Credit Easing. National Bureau of Economic Research working paper 15652.

<sup>84</sup> He, Z., Khang, I.G., and Krishnamurthy, A. (2010). Balance Sheet Adjustments During the 2008 Crisis. *IMF Economic Review* 58: 118–156.

<sup>85</sup> Ivashina, V. and Scharfstein, D. (2010). Bank Lending During the Financial Crisis of 2008. *Journal of Financial Economics* 97: 319–338.

<sup>86</sup> Campello, M., Graham, J., and Harvey, C. (2010). The Real Effects of Financial Constraints: Evidence from a Financial Crisis. *Journal of Financial Economics* 97: 470–487.

<sup>87</sup> Derived from survey respondents’ self-assessments of their financial condition.

#### b. Costs of Lehman Brothers Bankruptcy

Numerous researchers have provided broad estimates of the economic costs of the 2007–09 financial crisis (see GAO (2013)<sup>88</sup> for a useful review). This section focuses more narrowly on the terminations of derivative contracts associated with the Lehman bankruptcy to help illustrate the potential costs of unwinding the derivatives portfolio of a large, complex financial company under the U.S. Bankruptcy Code.

The net worth of Lehman Brothers derivative positions at the time of bankruptcy totaled \$21 billion, with 96 percent representing over-the-counter (OTC) positions.<sup>89</sup> The portfolio consisted of more than 6,000 OTC derivative contracts involving over 900,000 transactions at the time of bankruptcy on September 15, 2008. Fleming and Sarkar's (2014)<sup>90</sup> detailed assessment of the Lehman Brothers bankruptcy finds the overall recovery rate of all allowed unsecured claims (not limited to QFCs) amounted to roughly 28 percent, a rate the authors describe as low relative to both an estimated 59 percent for other financial company failures and 40 percent for failures occurring in recessions.

We use a framework that divides costs associated with derivatives resolution into private costs and public (external) costs. Private costs consist of direct losses to derivatives counterparties from unrecovered claims, indirect costs to derivatives counterparties from loss of hedged positions, costs to other Lehman Brothers creditors in the bankruptcy proceeding due to reductions in recovery values resulting from the termination and settlement of OTC derivatives, and litigation and administrative expenses. While we find no literature that assesses the public costs directly attributable to the resolution of Lehman's derivatives portfolio, below we examine the literature assessing the public impact of Lehman's failure more broadly.

While rigorous estimates of the value of each cost element listed above would be ideal, in reality we are constrained by a lack of publicly available data. Therefore, this section combines

qualitative descriptions of costs with limited quantitative information when available, in an effort to provide insight on the costs of resolving Lehman's QFC portfolio under the bankruptcy proceedings.

*Private Derivatives Counterparty Costs: Unrecovered Claims.* Estimates of bankruptcy claim recovery rates of OTC derivative counterparties (excluding Lehman affiliate claims) are reported in the literature at the Lehman subsidiary level, and vary widely, ranging from 31 percent for Lehman Brothers Special Financing (the largest Lehman derivatives entity) to 100 percent each for Lehman Brothers OTC Derivatives, Lehman Brothers Derivatives Products, and Lehman Brothers Financial Products, as of March 27, 2014 (Fleming and Sarkar (2014)). Still the authors emphasize that, "most counterparties of Lehman's OTC derivatives suffered substantial losses."

*Private Derivatives Counterparty Costs: Loss of Hedged Positions.* A key reason for many counterparties to acquire derivative positions is to hedge against potential future market developments. These hedges reduce uncertainties and serve as valuable risk management instruments. Fleming and Sarkar (2014) suggest Lehman's abrupt bankruptcy took counterparties by surprise, and allowed them little time to assess their derivative positions facing Lehman, decide whether to terminate contracts, and re hedge their positions as needed.<sup>91</sup> Therefore, many counterparties lost their hedged positions within a brief period and were unexpectedly exposed to risks until new positions could be established. We find no estimates of the costs of these lost hedges in the literature.

*Private Costs to the Entire Lehman Bankruptcy Estate: Settlement of OTC Derivatives.* Fleming and Sarkar (2014) note that the settlement of Lehman's OTC derivatives claims may have also resulted in significant losses to the Lehman bankruptcy estate. Derivatives valuation claims are generally based on replacement costs and they note that due to the large prevailing bid-ask spreads at the time of Lehman's bankruptcy filing, replacement costs

may have diverged significantly from fair value. During the settlement process the Lehman estate received \$11.85 billion in OTC derivatives receivables by January 10, 2011. It is unclear how much in additional receivables may have been "lost" by Lehman due to the termination and settlement of contracts following its bankruptcy filing. The literature notes that the relatively abrupt timing of the bankruptcy filing may have also influenced the magnitude of losses. Valukas (2010) suggested that Lehman insufficiently planned for the possibility of bankruptcy, such that management only began to plan seriously for bankruptcy a few days before the bankruptcy filing. A bankruptcy court document<sup>92</sup> cites a "turnaround specialist" advising Lehman, Bryan Marsal, as telling the court-appointed examiner that the sudden bankruptcy resulted in the loss of 70 percent of \$48 billion of receivables from derivatives that could have been unwound. Yet, the same document notes that Lehman counsel Harvey Miller did not think the rushed filing had an adverse impact on the estate (Valukas 2010). These accounts appear anecdotal and no information is provided on the derivation of the figures cited by Marsal.

*Private Costs: Litigation and Administrative.* The extended duration of the OTC derivatives settlement process included multiple court petitions, procedure approvals, settlement mechanisms, and legal challenges. While 81 percent of derivative contracts in claims against Lehman were terminated by November 13, 2008, the final settlement process moved more deliberately due to the multiple steps involved in properly addressing the unprecedented scale and complexity of claims within the bankruptcy process. Only 84 percent of derivatives claims had been settled by the end of 2012. Estimates of litigation and administrative expenses for OTC derivatives alone are not available, but these expense categories for the full Lehman settlement process were estimated to total \$3.2 billion as of May 13, 2011 (Fleming and Sarkar (2014)).

*Public Costs: Externalities.* The event study is a common method of estimating the market impact of a particular event. Measured market reactions to the Lehman bankruptcy are based on the institution's failure event as a whole; they are not reactions to the QFC resolution process alone and therefore

<sup>88</sup> Government Accountability Office, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act, GAO-13-180 (January 16, 2013).

<sup>89</sup> Most derivatives were held in several subsidiaries specializing in derivatives and related instruments. Since Lehman had numerous subsidiaries with intermingled interests, we simplify the discussion by describing them as if they were a single entity, except when specificity is necessary for descriptive accuracy.

<sup>90</sup> Fleming, M. and Sarkar, A. (2014). The Failure Resolution of Lehman Brothers. Economic Policy Review 20(2). Federal Reserve Bank of New York.

<sup>91</sup> Fleming and Sarkar believe the selection of the termination date for safe harbor purposes influenced this. They write (p. 25), "Although Lehman filed for bankruptcy protection at about 1:00 a.m. on Monday, September 15, 2008, the termination date was set as Friday, September 12 for derivatives subject to automatic termination. Normally, nondefaulting derivatives counterparties of Lehman would have attempted to hedge their positions on Monday to mitigate expected losses on their position. However, they could not do so since their positions were deemed to have terminated two days earlier."

<sup>92</sup> Valukas, A. (2010). "Report of the Examiner in the Chapter 11 Proceedings of Lehman Brothers Holdings Inc." March 11. Accessed at: <http://jenner.com/lehman/>.

overstate the impacts of these terminations. We may plausibly assume, however, that the market reactions to the overall Lehman collapse announcement included a component associated with potential costs of settling their derivative contracts.<sup>93</sup>

Johnson and Mamun (2012)<sup>94</sup> apply an event study approach to assess stock market reactions of a sample of 742 U.S. financial institutions—divided into banks, savings and loans, brokers, and primary dealers—on the date of the Lehman bankruptcy filing. While each group of institutions showed negative abnormal returns, only the bank (-3 percent) and primary dealer (-6 percent) coefficients were statistically significant. The data strongly support the notion that the event had differential impacts by type of financial institution and abnormal returns across institution groups were jointly significantly different from zero.

Dumontaux and Pop (2012)<sup>95</sup> apply a similar approach to assess stock market reactions of a sample of 382 U.S. financial companies, using brief event windows. They report heterogeneous outcomes according to institution size and business lines. Among the twenty large companies<sup>96</sup> (excluding Lehman Brothers), cumulative abnormal stock price returns were highly significantly negative, ranging from -10 percent to -18 percent over five distinct event windows of up to five days in duration. However, the effects on the full sample were not statistically significant, indicating the immediate contagion effect was limited to large companies. The results of both event studies suggest the Lehman bankruptcy likely imparted immediate negative external effects on a subset of financial companies, causing substantial drops in their market valuations. We did not find event studies specifically assessing market impacts on non-financial firms.

*Domestic Public Support: Federal Reserve Facility.* The Federal Reserve provided substantial liquidity to the markets during the 2007–2009 period. Fleming and Sarkar (2014) consider the

support to Lehman in the first week after the bankruptcy as a critical factor in the recovery of claims against at least part of Lehman Brothers, which allowed it to keep operating until it was acquired by Barclays. Between September 15 and 18, 2008, Lehman Brothers Inc. borrowed \$68 billion from the Primary Dealer Credit Facility (PDCF). Because the borrowed funds were fully collateralized and repaid in full with interest, the Congressional Budget Office (2010)<sup>97</sup> estimated that total lending through the PDCF involved a negligible subsidy value.

*Global Public Costs: Externalities.* The economic literature is rich with event studies of market reactions to policy announcements designed to alleviate the financial crisis, however, we find no studies focusing directly on the global market impacts of the Lehman Brothers bankruptcy as an event. We also acknowledge global spillovers as a potential public cost, however, we find no studies focusing directly on the global impacts of the Lehman Brothers bankruptcy as an event.

### c. Conclusion

The economic literature on financial asset fire sales maintains that such events are more systemically harmful when occurring during industry-wide periods of distress, making mitigating these costs a public policy concern. The Lehman Brothers bankruptcy and the resulting QFC terminations occurred during a crisis period, and might have imposed widespread private and public costs. We do not compare the Lehman bankruptcy costs to the alternative of potential resolution costs under a counterfactual case had Title II of the Dodd-Frank Act been in effect at the time of the Lehman bankruptcy filing.

### 3. Baseline

The FDIC promulgated 12 CFR part 371, Recordkeeping Requirements for Qualified Financial Contracts (“Part 371”), pursuant to section 11(e)(8)(H) of the FDIA.<sup>98</sup> The FDIC’s QFC recordkeeping rule applies to insured depository institutions which are in a troubled condition, and was promulgated to enable the FDIC as receiver to make an informed decision as to whether to transfer or retain QFCs and also thereby minimize the potential for market disruptions that could occur with respect to the liquidation of QFC portfolios of insured depository institutions. However, Part 371 does not

apply to non-depository financial companies that are eligible for resolution under Title II of the Dodd Frank Act. The proposed recordkeeping requirements of the Proposed Rules are based, in part, on Part 371, and have been informed by the FDIC’s experience with both large and small portfolios of QFCs of failed insured depository institutions. However, the information requirements of the Proposed Rules are more extensive. While Part 371 requires certain position-level data and counterparty-level data, the Proposed Rules require certain position-level data and counterparty-level data that are not required by Part 371. Part 371 also does not require recordkeeping with regard to Legal Agreements or Collateral Detail Data to the same extent as is contemplated in Tables A–3 and A–4 to the Appendix in the Proposed Rules. Similar to the Proposed Rules, under Part 371, any insured depository institution that is subject to the requirements must produce and maintain the required records in an electronic format, unless the institution has fewer than twenty open QFC positions. However, under Part 371 the records do not necessarily need to be maintained in a standardized format, but must be maintained in a format that is acceptable to the FDIC.

Based on staff-level discussions with the PFRAs who are familiar with financial company operations and have experience supervising financial companies with QFC portfolios, the Secretary believes that the large corporate groups that would be subject to the Proposed Rules should already be maintaining most or all of the QFC records required under the Proposed Rules as part of their ordinary course of business. In order for these large corporate groups to effectively manage their QFC portfolios, they need to have robust recordkeeping systems in place. For example, large corporate groups that trade derivatives out of several distinct legal entities need to have detailed records, including counterparty identification, position-level data, collateral received and posted, and contractual requirements, in order to effectively manage their portfolio, perform on contracts, and monitor risks. However, it is unlikely that these large corporate groups are maintaining the QFC records in the standardized format prescribed by the Proposed Rules and as set forth in the Appendix to the Proposed Rules.

### 4. Evaluation of Alternatives

The Secretary considered alternative forms of the proposed rules, but believes that the current form is the best

<sup>93</sup> Still, we caution that event study results may produce “noisy” signals. For example, attribution is problematic as the period surrounding the Lehman collapse was a particularly active one with nearly two dozen significant economic events in September 2008.

<sup>94</sup> Johnson, M.A. and Mamun, A. (2012). The Failure of Lehman Brothers and its Impact on Other Financial Institutions. *Applied Financial Economics* 22: 375–385.

<sup>95</sup> Dumontaux, N. and Pop, A. (2012). “Contagion Effects in the Aftermath of Lehman’s Collapse: Measuring the Collateral Damage.” University of Nantes working paper 2012/27.

<sup>96</sup> Large financial companies are defined as those with total assets over \$1 billion in their last audited report before the event date.

<sup>97</sup> Congressional Budget Office. (2010). *The Budgetary Impact and Subsidy Costs of the Federal Reserve’s Actions During the Financial Crisis*.

<sup>98</sup> 12 U.S.C. 1821(e)(8)(H).

available method of achieving the regulatory objectives. The assessment of alternatives below is organized into three subcategories: (a) Scope of the proposed rules; (b) content of records; and (c) standardized recordkeeping.

#### a. Scope of the Proposed Rules

In developing the definition of a records entity, the Secretary took into consideration factors such as financial company size, risk, complexity, leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system, as well as other factors described herein. The Secretary included the following entities within the scope of the definition of a records entity: Financial companies that have at least \$50 billion in assets, financial companies that the Council determines could pose a threat to U.S. financial stability, and financial companies that the Council designates as systemically important financial market utilities.

The Secretary believes that the \$50 billion asset threshold is a useful means for identifying entities that are of a sufficient size that they could potentially be considered for orderly liquidation under Title II, and therefore should be incorporated in the definition of a records entity. A \$50 billion asset threshold has been separately established for similar purposes under the Dodd-Frank Act.<sup>99</sup> In particular, the Council applies a \$50 billion threshold as an initial evaluation tool for determining whether a nonbank financial company could pose a threat to the financial stability of the U.S. and should potentially be subject to enhanced prudential standards under Title I of the Dodd-Frank Act.

The Secretary considered alternative criteria in developing the definition of a records entity, such as including financial companies that have more than \$10 billion in assets. This threshold, which would have captured more financial companies that potentially might be considered for orderly liquidation under Title II, has been used in other regulatory requirements. For example, the Dodd-Frank Act requires certain financial companies with more than \$10 billion in total consolidated assets to conduct annual stress tests.<sup>100</sup> Additionally, the CFTC's final rule on the end-user exemption to the clearing requirement for swaps exempts banks, savings associations, farm credit system institutions, and credit unions with total assets of \$10 billion or less from the definition of "financial entity," making

such "smaller" financial institutions eligible for the end-user exception.<sup>101</sup>

However, the Secretary determined that while it is possible that financial companies with more than \$10 billion and less than \$50 billion in total assets potentially would be considered for orderly liquidation under Title II, \$50 billion was a more appropriate threshold. Including all financial companies with over \$10 billion in total assets would substantially increase the number of financial companies subject to recordkeeping requirements, many of which would likely not be considered for orderly liquidation under Title II. A financial company (including a bank holding company) with total assets of \$50 billion or more, is the type of financial company that potentially would be the most likely to be considered for orderly liquidation under Title II. The definition of records entity is thus designed to reduce recordkeeping burdens on smaller financial companies by only capturing those financial companies with QFC positions for which the FDIC is most likely to be appointed as receiver.

The Secretary seeks comment on the following questions: Is the scope of the Proposed Rules adequate? Should additional or different criteria be used to define a records entity? If so, what criteria would be appropriate? For example, should the rules exempt certain entities based on the number of QFC counterparties, QFC notional amounts, or QFC mark-to-market values as of a particular date? If so, at what levels should such exemptions be set? Should there be any other form of de minimis exemption from these criteria? Please provide specific explanations of how such criteria would be applied together with an explanation of whether such criteria would affect the FDIC's ability to resolve a QFC portfolio.

#### b. Content of Records

The Secretary determined, after consulting with the FDIC, that requiring each records entity to maintain the data included in Tables A-1 through A-4 of the Appendix to the Proposed Rules is necessary to assist the FDIC in being able to effectively exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10) of the Act. To facilitate the resolution of QFC portfolios, the FDIC needs to analyze such data and, upon being appointed as receiver under Title II, effectuate decisions with respect to the exercise of such rights. The information must be sufficient to allow the FDIC to estimate the financial and operational

impact on the covered financial company and its counterparties, or affiliated financial companies, of the FDIC's decision to transfer, disaffirm or repudiate, or retain the QFCs. It must also allow the FDIC to assess the potential impact that such decisions may have on the financial markets as a whole.

The position-level data included in Table A-1 to the Appendix is intended to enable the FDIC to evaluate a records entity's exposure to its counterparties. The FDIC would also use these data to evaluate the effects of the receiver's determination to transfer, disaffirm or repudiate, or retain QFCs. In addition, position-level information would assist the receiver or any transferee to comply with the terms of the QFCs and reduce the likelihood of inadvertent defaults. For example, a unique position identifier would allow for the tracking and separation of positions maintained by the records entity.

The primary objective of proposed Table A-2 to the Appendix is to identify exposure of the records entity to each counterparty and its affiliates, as well as the exposure that counterparties might have to the records entity. This information would enable the FDIC to determine the effects of transfer or termination of QFCs with a given counterparty and the potential risk of contagion in the financial markets. Table A-2 would also require comprehensive collateral information, including market value of collateral, location of collateral, and any custodial and segregation arrangements. Collateral excess or deficiency positions as well as collateral thresholds and valuation discounts also would need to be maintained. This information would enable the FDIC as receiver to evaluate counterparty relationships and determine if the receivership would benefit from retaining and repudiating QFCs with certain counterparties. It would also enable the FDIC as receiver to comply with the requirements of the Act by transferring QFC obligations together with the related collateral.<sup>102</sup> In addition, it would enable the receiver to identify excess collateral of counterparties for possible return should the contracts be terminated after the one business day stay.

Table A-3 to the Appendix would require the maintenance of legal agreement data for each QFC agreement or master agreement between each records entity and counterparty. Because the receiver has a limited period of time in which to evaluate QFC provisions, the availability of the legal

<sup>99</sup> See *e.g.*, 12 U.S.C. 5365(a).

<sup>100</sup> 12 U.S.C. 5365(i)(2).

<sup>101</sup> 17 CFR 39.6(d).

<sup>102</sup> 12 U.S.C. 5390(c)(9)(A)(i)(IV).

agreements in fully searchable electronic form is of utmost importance. In particular, the identification of any support by or linkage to a parent entity or affiliate and the identification of any transfer restrictions and non-standard covenants would enable the FDIC as receiver to evaluate the treatment of QFCs under such contracts in an orderly liquidation of the records entity or its affiliated financial company under Title II of the Act.

Table A-4 to the Appendix would require each records entity to maintain collateral detail data both with respect to collateral received and with respect to collateral posted on a counterparty-by-counterparty basis. The data in this Table, together with the data in Table A-2, would allow the FDIC to better understand the QFC portfolio risk, and to model various QFC transfer or termination scenarios.

As indicated above, the proposed recordkeeping requirements of the Proposed Rules are similar to the FDIC's Part 371 but the information requirements of the Proposed Rules are more extensive. The Secretary considered reducing recordkeeping burden by aligning the requirements more closely with those of the FDIC's Part 371. However, the Secretary determined, in consultation with the FDIC, that additional recordkeeping beyond that required by Part 371 would be needed for the FDIC to resolve a financial company with significant QFC positions under Title II. In particular, the FDIC will need this additional information to analyze the QFC portfolio and determine whether to transfer, disaffirm or repudiate, or retain the QFCs during the one business day stay and to perform the obligations under the QFCs, including meeting collateral requirements. For example, the proposed position-level and counterparty-level data included in Tables A-1 and A-2 to the Appendix would require recordkeeping for inter-affiliate transactions, which was not included in Part 371. Recordkeeping with respect to inter-affiliate QFCs is necessary to enable the FDIC to quickly understand all QFC linkages in a corporate group and to evaluate the potential systemic effects of FDIC decisions. Table A-2, the counterparty collateral data, is also more extensive than the FDIC's Part 371 due to the inclusion of pending margin calls in the calculation of the excess or deficiency of the counterparty's collateral. This will assist the FDIC in meeting the obligations under the QFCs, including certain clearing organization margin calls. The Table A-3 legal agreements, which were not included in Part 371,

are necessary to enable the FDIC as receiver to evaluate the treatment of QFCs under such contracts, including any support by or linkage to a parent entity or affiliate and the identification of any transfer restrictions and non-standard covenants. Table A-4 includes additional collateral detail data, such as the collateral jurisdiction, the collateral segregation status, and whether the collateral may be subject to re-hypothecation by the counterparty. These additional data are necessary to enable the FDIC to assess risks associated with the collateral and improve the FDIC's ability to analyze various QFC transfer or termination scenarios. For example, for cross-border transactions, this information would help the FDIC evaluate the availability of collateral in different jurisdictions and the related close-out risks if the receiver cannot arrange for the transfer of QFC positions under local law.

Because the information requirements of the Proposed Rules are more extensive than Part 371, the Secretary, in consultation with the FDIC, has also proposed to allow for a longer compliance period than the compliance period set forth under Part 371. An insured depository institution subject to the FDIC's Part 371 recordkeeping requirements must comply within 60 days of notification.<sup>103</sup> Under the Proposed Rules, a financial company would be required to comply with the recordkeeping requirements within 270 days of becoming a records entity.

The Secretary seeks comment on the following questions: Are any of the proposed recordkeeping requirements not necessary or appropriate to assist the FDIC as receiver? Please include the rationale for why these requirements are not necessary or appropriate. Should the determination on whether some records are not necessary or appropriate be based on the type of records entity? Would any of the contemplated records (including any of the data fields in the appendix) or data result in unnecessary burden on records entities? Are there ways to further align the recordkeeping requirements set forth herein with the requirements of other recordkeeping and reporting rules to reduce regulatory burden (*e.g.*, the respective CFTC and SEC regulations on swap and security-based swap data recordkeeping and reporting?) If so, how should this burden be reduced? Do the proposed recordkeeping requirements appropriately measure and identify the size and complexity of entities that likely qualify as records entities? Are there any additional records or data that

would assist the FDIC in its role as receiver with respect to a covered financial company? If so, please explain the rationale for why such additional records or data is necessary.

#### c. Standardized Recordkeeping

The Secretary determined that requiring records entities to have the capacity to maintain and generate QFC records in the uniform, standardized format set forth in the Appendix to the Proposed Rules is necessary to assist the FDIC in being able to effectively exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10) of the Act. Specifically, when the FDIC is appointed as receiver of a covered financial company, the covered financial company's QFC counterparties are prohibited from exercising their contractual right of termination until 5 p.m. (eastern time) on the first business day following the date of appointment. After its appointment as receiver and prior to the close of the aforementioned 5 p.m. deadline, the FDIC has three options in managing a covered financial company's QFC portfolio. Specifically, with respect to all of the covered financial company's QFCs with a particular counterparty and all its affiliates, the FDIC may: (1) Transfer the QFCs to a financial institution, including a bridge financial company established by the FDIC; (2) retain the QFCs within the receivership and allow the counterparty to exercise contractual remedies to terminate the QFCs; or (3) retain the QFCs within the receivership, disaffirm or repudiate the QFCs, and pay compensatory damages. If the FDIC transfers the QFCs to a financial institution, the counterparty may not terminate the QFCs solely by reason of the covered financial company's financial condition or insolvency or the appointment of the FDIC as receiver. If the FDIC does not transfer the QFCs and does not repudiate such QFCs, the counterparty may exercise contractual remedies to terminate the QFCs and assert claims for payment from the covered financial company and may have rights to liquidate the collateral pledged by the covered financial company.

The Secretary considered reducing recordkeeping burdens by requiring the maintenance of non-standardized records. After consulting with the FDIC, the Secretary determined that this alternative may reduce the FDIC's flexibility in managing the QFC portfolio, increase systemic risk, and impair the FDIC's ability as receiver to manage the assets of the covered financial company in terms of

<sup>103</sup> 12 CFR 371.1(c).

maximizing the value of the assets in the context of orderly liquidation.<sup>104</sup> For example, in the absence of updated and standardized information, it is possible that QFCs could be transferred to a bridge financial company, when leaving them in the receivership would be a better course of action. If such QFCs were transferred to the bridge financial company, the bridge financial company would be required to perform the obligations under the QFCs, including meeting collateral requirements, and, to the extent set forth in the QFCs, would be liable for losses under the contracts.<sup>105</sup> Alternatively, QFCs could be left in the receivership, when transfer to a solvent financial institution or a bridge financial company would be a better course of action. In such a case, the lack of uniform data may, among other things, prevent the FDIC from determining the value of any collateral pledged to secure the QFCs and from considering the impact QFC terminations may have on broader financial stability.

However, while the Proposed Rules specify a standardized recordkeeping format, the Secretary also recognizes the need to provide flexibility for possible alternate recordkeeping formats if they are sufficient to meet the needs of the FDIC. The Proposed Rules provide the Secretary with the discretion to grant conditional or unconditional exemptions from compliance with one or more of the requirements of the Proposed Rules, which could include exemptions to the standardized recordkeeping format. For example, a conditional exemption could be granted if an alternate format, such as one used for a separate recordkeeping requirement, would still allow the FDIC to manipulate and analyze the data to determine the effect of FDIC decisions under Title II with respect to a covered financial company's QFC portfolio and enable the FDIC to fulfill its obligations under section 210(c)(8), (9), or (10) of the Act within the narrow time window afforded by section 210(c)(10) of the Act.

#### 5. Affected Population

Instead of requiring all financial companies to maintain records with respect to QFCs, the Secretary is limiting the scope of the Proposed Rules to a smaller subset of financial companies. Discretion to do so is afforded under section 210(c)(8)(H)(iv) of the Act, which authorizes

differentiation among financial companies by taking into consideration, among other things, their size and risk. The Secretary is exercising this discretion to exclude from the scope of the Proposed Rules financial companies that do not meet one of the following three criteria: (1) Are designated pursuant to section 113 of the Act (12 U.S.C. 5323) to be a nonbank financial company that could pose a threat to U.S. financial stability; (2) are designated pursuant to section 804 of the Act (12 U.S.C. 5463) as a financial market utility that is, or is likely to become, systemically important; or (3) have total assets equal to or greater than \$50 billion. Since the Act's enactment in 2010 through 2013, eleven financial companies have been designated by the Council under categories (1) and (2), and the Secretary's understanding is that each of those designated companies has revenues in excess of the Small Business Administration's revised size standards for small entities. As a result, the Proposed Rules would only apply to large corporate groups (including a large corporate group's affiliated financial companies, regardless of their size, if the affiliated financial company is a party to an open QFC or guarantees, supports or is linked to an open QFC of an affiliate and is not an "exempt entity" under the Proposed Rules).

The types of financial companies that would qualify as records entities under the Proposed Rules include: Bank holding companies, savings and loan holding companies, broker-dealers, derivatives clearing organizations, payment and settlement systems, and registered clearing agencies. The Secretary proposes that the recordkeeping requirements in the Proposed Rules apply to all affiliated financial companies in a large corporate group that meet the definition of records entity, regardless of their size, because a broad exemption for small entities could significantly impair the FDIC's ability to enforce certain QFCs of affiliates of covered financial companies under section 210(c)(16) of the Act within the narrow time window afforded by section 210(c)(10) of the Act.

#### 6. Assessment of Potential Costs and Benefits

##### a. Potential Costs

Based on discussions with the PFRAs who are familiar with financial company operations and have experience supervising financial companies with QFC portfolios, the Secretary believes that the costs of implementing the Proposed Rules may

be mitigated by the fact that records entities should be maintaining most of the QFC records required by the Proposed Rules as part of their ordinary course of business. However, the Secretary recognizes that the Proposed Rules' standardized form and availability requirements may impose costs and burdens on records entities. In order to comply with the Proposed Rules, each of the approximately 140 large corporate groups that the Secretary estimates would be subject to the recordkeeping requirements will need to have network infrastructure to maintain data in the required format. The Secretary expects that this will likely impose one-time initial costs on each large corporate group in connection with necessary updates to their recordkeeping systems, such as systems development or modifications. The initial costs to set up network infrastructure will depend on whether a large corporate group already holds and maintains QFC data in an organized electronic format, and if so, whether the data currently reside on different systems rather than on one centralized system. Large corporate groups may need to amend internal procedures, reprogram systems, reconfigure data tables, and implement compliance processes. Moreover, they may need to standardize the data and create tables to match the format required by the Proposed Rules. However, the Secretary believes that the large corporate groups that would be subject to the Proposed Rules are likely to rely on existing centralized systems for recording and reporting QFC activities to perform most of the recordkeeping and reporting requirements set forth herein. The entity within the corporate group responsible for this centralized system will likely operate and maintain a technology shared services model with the majority of technology applications, systems, and data shared by the affiliated financial companies within the large corporate group. Therefore, the Proposed Rules will likely impose the most significant costs on the entities responsible for the centralized systems within the large corporate group, and not on the affiliated financial companies. The affiliated financial companies will likely have much lower costs because they can utilize and rely upon the technology and network infrastructure operated and maintained by the entity responsible for the centralized system within the large corporate group.

It is estimated that the initial recordkeeping burden for all records entities will be approximately 62,063 hours with a total one-time initial cost

<sup>104</sup> 12 U.S.C. 5390(a)(1)(B)(iv).

<sup>105</sup> See FDIC article, "The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act" (2011), p.8, available at <http://www.fdic.gov/regulations/reform/lehman.html>.

of approximately \$8,030,599.<sup>106</sup> The total estimated annual recordkeeping burden for all records entities will be approximately 28,463 hours with a total annual cost of approximately \$2,077,799. The estimated average hourly wage rate for recordkeepers to comply with the initial and annual recordkeeping burden is approximately \$73 per hour based in part on the U.S. Department of Labor, Bureau of Labor Statistics' national occupational employment statistics and wage statistics, dated May 2012.<sup>107</sup>

With regard to reporting burdens under the Proposed Rules, a records entity may request in writing an extension of time with respect to compliance with the recordkeeping requirements or a specific exemption from the recordkeeping requirements. The total estimated annual reporting burden under the Proposed Rules will be approximately 3,500 hours with a total annual cost of approximately \$542,500. The estimated average hourly rate for recordkeepers to comply with the annual reporting burden is approximately \$155 per hour based on the U.S. Department of Labor, Bureau of Labor Statistics' national occupational employment statistics and wage statistics, dated May 2012.<sup>108</sup>

The Secretary seeks comment on whether the cost estimates are reasonable.

#### b. Potential Benefits

As noted earlier, QFCs tend to increase the interconnectedness of the

<sup>106</sup> This amount includes \$3,500,000 in systems development/modification costs. Specifically, based in part on staff-level discussions with several of the PFRAAs, it is expected that each of the approximately 140 large corporate groups will incur approximately \$25,000 in systems development/modification costs, including the purchase of computer software, with a total cost of approximately \$3,500,000. These costs will likely be borne by the entity responsible for maintaining the centralized system within each large corporate group. Additionally, the total estimated initial cost for large corporate group respondents to comply with the initial recordkeeping burden is \$3,679,200, based on the following formula: Initial burden hours multiplied by the average hourly wage rate for recordkeepers (50,400 hours multiplied by \$73/hour). The total estimated initial cost for affiliated financial company respondents to comply with the initial recordkeeping burden is \$851,399, based on the following formula: Initial burden hours multiplied by the average hourly wage rate for recordkeepers (11,663 hours multiplied by \$73/hour).

<sup>107</sup> The \$73 hourly wage rate is based on the average hourly wage rates for senior programmers, programmer analysts, senior system analysts, compliance managers, compliance clerks, directors of compliance, and compliance attorneys that will conduct the recordkeeping.

<sup>108</sup> The \$155 hourly wage rate is based on the average hourly wage rates for compliance managers, directors of compliance, and compliance attorneys that will conduct the reporting.

financial system and systemic risk, and the recent financial crisis demonstrated that the management of QFC positions can be an important element of a resolution strategy which, if not handled properly, may magnify market instability. The recordkeeping requirements of the Proposed Rules are designed to ensure that the FDIC, as receiver of a covered financial company, will have comprehensive information about the QFC portfolio of such financial company subject to orderly resolution, and enable the FDIC to carry out the rapid and orderly resolution of a financial company's QFC portfolio in the event of insolvency, for example, by transferring QFCs to a bridge financial company within the narrow time window afforded by the Act. Given the short time frame for FDIC decisions regarding a QFC portfolio of significant size or complexity, the Proposed Rules would require the use of an updated and standardized format to allow the FDIC to process the large amount of QFC information quickly. In the absence of updated and standardized information, it is conceivable that, for example, the FDIC could leave QFCs in the receivership when transferring to a bridge financial company or other solvent financial institution would have been the preferred course of action had better information been available. Specifically, if the FDIC does not transfer the QFCs and does not repudiate such QFCs, counterparties may terminate the QFCs and assert claims for payment from the covered financial company and may have rights to liquidate the collateral pledged by the covered financial company. Because a large, interconnected financial company can often hold very large positions in QFCs involving numerous counterparties, the disorderly unwinding of QFCs, including the rapid liquidation of collateral, could cause severe negative consequences for U.S. financial stability. The FDIC as receiver may also wish to make sure that affiliates of the covered financial company continue to perform their QFC obligations in order to preserve the critical operations of the covered financial company and its affiliates. In such cases, the FDIC may need to arrange for additional liquidity, support or collateral to the affiliates to enable them to meet collateral obligations and generally perform their QFC obligations.

While there could be significant benefits from the Proposed Rules, such benefits are difficult to quantify, as the Proposed Rules are only one component of the orderly liquidation authority and the benefits of the Proposed Rules

would only be realized upon such authority being exercised. In addition, implementation of the Dodd-Frank Act will: (1) Subject large, interconnected financial companies to stronger supervision, and as a result, reduce the likelihood of their failure; and (2) blunt the impact of any such failure on U.S. financial stability and the economy. For example, bank holding companies with total consolidated assets of \$50 billion or more and nonbank financial companies supervised by the Board are subject to supervisory and company-run stress tests to help the Board and the company measure the sufficiency of capital available to support the company's operations throughout periods of stress.<sup>109</sup> These financial companies also are or will be subject to more stringent prudential standards, including risk-based capital and liquidity requirements, which will make their failure less likely. However, if such a financial company does fail, the implementation of the Dodd-Frank Act is also intended to ensure that its failure and resolution under the Bankruptcy Code may occur without adverse effects on U.S. financial stability. For example, each of these large bank holding companies and nonbank financial companies supervised by the Board will have in place resolution plans/"living wills" to facilitate their rapid and orderly resolution under the Bankruptcy Code in the event of material financial distress or failure.<sup>110</sup> The Title II orderly liquidation authority will only be used to resolve a failing financial company if its resolution under the Bankruptcy Code would have serious adverse effects on U.S. financial stability. In addition, there are substantial procedural safeguards to prevent the unwarranted use of the Title II orderly liquidation authority.

Nevertheless, one way to gauge the potential benefits of the Proposed Rules is to examine the effect of the recent financial crisis on the real economy and how the Title II orderly liquidation authority as a whole will help reduce the probability or severity of a future financial crisis. For example, in a 2013 Government Accountability Office (GAO) report, GAO stated that there is some research that suggests that U.S. output losses associated with the 2007–2009 financial crisis could range from several trillion dollars to over \$10 trillion.<sup>111</sup> GAO also surveyed financial

<sup>109</sup> 12 U.S.C. 5365(i); 12 CFR part 252.

<sup>110</sup> 12 U.S.C. 5365(d).

<sup>111</sup> Government Accountability Office, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act, GAO–13–180 at 15–16 (January 16, 2013).

market regulators, academics, and industry and public interest groups who identified, *inter alia*, the more stringent prudential standards discussed above and the orderly liquidation authority as not only enhancing financial stability, at least in principle, but also helping to reduce the probability or severity of a future crisis.<sup>112</sup>

However, as discussed above, even if the benefits of preventing future financial crises are significant, it is difficult to quantify what portion of such benefits would be attributable to any single provision of the Dodd-Frank Act, let alone those benefits directly attributable to the Proposed Rules. For example, GAO also noted that such benefits are not assured and will depend on, among other things, how regulators implement the provisions.<sup>113</sup> In addition, the benefits would not be attributable solely to the Proposed Rules, as a number of other reforms are also intended to reduce the probability and severity of future financial crises. Finally, as discussed above, the benefits associated with the Proposed Rules would only be realized if the Title II orderly liquidation authority is exercised and, even if utilized, the Proposed Rules are only one component of the orderly liquidation authority and the resulting benefits.

## 7. Retrospective Analysis

Executive Order 13563 also directs the Secretary to develop a plan, consistent with law and resources and regulatory priorities, to conduct a periodic retrospective analysis of significant regulations to determine whether such regulations should be modified, streamlined, expanded, or repealed so as to make the regulations more effective and less burdensome. The Secretary expects to conduct a retrospective analysis not later than seven years after the effective date of the rule. This review will consider whether the recordkeeping requirements are necessary or appropriate to assist the FDIC as receiver in being able to exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10) of the Dodd-Frank Act, and may result in proposed amendments to the rule. For example, the Secretary will review whether the data set forth in Tables A-1 through A-4 to the Appendix are necessary or appropriate to assist the FDIC as receiver, and/or whether maintaining

additional, less, or different data is necessary or appropriate. The Secretary seeks comment on the following question: Is it appropriate for the Secretary to conduct the “lookback review” not later than seven years after the effective date of the rule, or would a different period be preferable?

## Text of the Proposed Rules

### List of Subjects in 31 CFR Part 148

Reporting and recordkeeping requirements.

### Authority and Issuance

For the reasons set forth in the preamble, the Department of the Treasury proposes to add part 148 to 31 CFR chapter I to read as follows:

### Part 148—Qualified Financial Contracts Recordkeeping Related to the FDIC Orderly Liquidation Authority

Sec.

148.1 Scope, purpose, effective date, and compliance dates.

148.2 Definitions.

148.3 Form, availability and maintenance of records.

148.4 Content of records.

### Appendix to Part 148—File Structure for Qualified Financial Contract Records

**Authority:** 31 U.S.C. 321(b) and 12 U.S.C. 5390(c)(8)(H).

## PART 148—QUALIFIED FINANCIAL CONTRACTS RECORDKEEPING RELATED TO THE FDIC ORDERLY LIQUIDATION AUTHORITY

### § 148.1 Scope, purpose, effective date, and compliance dates.

(a) *Scope.* This part applies to each financial company that qualifies under the definition of “records entity” set forth in § 148.2 of this part.

(b) *Purpose.* This part establishes recordkeeping requirements with respect to qualified financial contracts for a records entity in order to assist the Federal Deposit Insurance Corporation (“FDIC”) as receiver for a covered financial company (as defined in 12 U.S.C. 5381(a)(8)) in being able to exercise its rights and fulfill its obligations under 12 U.S.C. 5390(c)(8), (9), or (10).

(c) *Effective date.* This part shall become effective 60 days after publication of the final rule in the **Federal Register**.

(d) *Compliance dates*—(1) *Initial compliance dates.* A records entity must comply with § 148.3(a)(3) on the effective date and with all other requirements of this part within 270 days from first becoming subject to this part. In the case of a financial company

that becomes a records entity subject to this part after the effective date, such records entity must comply with § 148.3(a)(3) within 60 days of becoming a records entity and with all other requirements of this part within 270 days from first becoming subject to this part.

(2) *Subsequent compliance date.* If a financial company ceases to be a records entity subject to this part after the initial compliance dates, and remains so for at least one year (calculated on a rolling 12-month basis), it is no longer required to comply with this part. However, if at any time after the one-year period, such financial company again becomes a records entity subject to this part, it must comply with all of the requirements of this part no later than 90 days after becoming subject to this part.

### § 148.2 Definitions.

For purposes of this part:

*Affiliate* means any entity that controls, is controlled by, or is under common control with a financial company or counterparty.

*Control.* An “entity controls another entity” if it:

(1) Directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of another entity;

(2) Controls in any manner the election of a majority of the directors or trustees of another entity; or

(3) Must consolidate another entity for financial or regulatory reporting purposes.

*Corporate group* means an entity and all affiliates of that entity.

*Counterparty* means any natural person or entity (or separate non-U.S. branch of any entity) that is a party to a QFC with a records entity, including any affiliate or any non-U.S. branch of such records entity if such affiliate or branch is a party to a QFC with such records entity, or is a party to a QFC that is guaranteed or supported by a records entity.

*Exempt entity* means:

(1) An insured depository institution as defined in 12 U.S.C. 1813(c)(2);

(2) A subsidiary of an insured depository institution that is not a functionally regulated subsidiary as defined in 12 U.S.C. 1844(c)(5), a security-based swap dealer as defined in 15 U.S.C. 78c(a)(71) or a major security-based swap participant as defined in 15 U.S.C. 78c(a)(67); or

(3) A financial company that is not a party to a QFC and controls only exempt entities as defined in paragraphs (1) and (2) of this definition.

<sup>112</sup> *Id.* at 33–34. GAO added that the experts it surveyed had differing views on these provisions but that many expect some or all of the provisions to improve the financial system’s resilience to shocks.

<sup>113</sup> *Id.* at 33.

*Financial company* has the meaning set forth in 12 U.S.C. 5381(a)(11).

*Guarantees, supports and guaranteed or supported* mean to:

- (1) Guarantee, indemnify, or undertake to make any loan or advance;
- (2) Undertake to make capital contributions; or
- (3) Be contractually obligated to provide any other financial assistance.

*Linked*. A QFC is “linked” to a financial company if it contains a specified financial condition clause that specifies such financial company. A “specified financial condition clause” means any provision of any QFC (whether expressly stated in the QFC or incorporated by reference in any other contract, agreement or document) that permits a contract counterparty to terminate, accelerate, liquidate or exercise any other remedy under any QFC or other contract to which an affiliate of the financial company is a party or to obtain possession or exercise control over any property of such affiliate or affect any contractual rights of such affiliate directly or indirectly based upon or by reason of:

- (1) A change in the financial condition or the insolvency of a financial company;
- (2) The appointment of the FDIC as receiver for the financial company or any actions incidental thereto, including, without limitation, the filing of a petition seeking judicial action with respect to the appointment of the FDIC as receiver for the financial company or the issuance of recommendations or determination of systemic risk;
- (3) The exercise of rights or powers by the FDIC as receiver for the financial company, including, without limitation, the appointment of the Securities Investor Protection Corporation (SIPC) as trustee in the case of a financial company that is a covered broker or dealer and the exercise by SIPC of its rights and powers as trustee;
- (4) The transfer of assets or liabilities to a bridge financial company or other qualified transferee;
- (5) Any actions taken by the FDIC as receiver for the financial company to effectuate the liquidation of the financial company; or
- (6) Any actions taken by or on behalf of the bridge financial company to operate and terminate the bridge financial company, including the dissolution, conversion, merger or termination of the bridge financial company or actions incidental or related thereto. Without limiting the foregoing, a specified financial condition clause includes a “walkaway clause” as defined in 12 U.S.C. 5390(c)(8)(F)(iii) or

any regulations promulgated thereunder.

*Position* means the rights and obligations of a party to an individual transaction under a QFC.

*Primary financial regulatory agency* means, with respect to each financial company, each primary financial regulatory agency as specified for such financial company in subparagraphs (A), (B), (C), and (E) of 12 U.S.C. 5301(12).

*Qualified financial contract* or “QFC” means any qualified financial contract defined in 12 U.S.C. 5390(c)(8)(D), including without limitation, any “swap” defined in section 1a(47) of the Commodities Exchange Act (7 U.S.C. 1a(47)) and in any rules or regulations issued by the Commodity Futures Trading Commission (CFTC) pursuant to such section; any “security-based swap” defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) and in any rules or regulations issued by the Securities and Exchange Commission (SEC) pursuant to such section; and any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the FDIC determines by regulation, resolution, or order to be a qualified financial contract as provided in 12 U.S.C. 5390(c)(8)(D).

*Records entity*—(1) *Records entity* means a financial company that:

- (i) Is not an exempt entity;
- (ii) Is a party to an open QFC or guarantees, supports or is linked to an open QFC; and
- (iii) (A) Has been determined pursuant to 12 U.S.C. 5323 to be an entity that could pose a threat to the financial stability of the United States;
- (B) Has been designated pursuant to 12 U.S.C. 5463 as a financial market utility that is, or is likely to become, systemically important;
- (C) Has total assets equal to or greater than \$50 billion; or
- (D) Is:

(1) A party to an open QFC or guarantees, supports or is linked to an open QFC of an affiliate; and

(2) A member of a corporate group in which at least one financial company meets the criteria under paragraphs (1)(iii)(A), (B), or (C) of this definition.

(2) For the purpose of this definition, “total assets” means the total assets reported in the most recent year-end audited consolidated statement of financial condition of the applicable financial company filed with its primary financial regulatory agency, or, for financial companies not required to file such statements, the total assets shown on the consolidated balance sheet of the

financial company for the most recent fiscal year end.

*SDR* means any swap data repository or security-based swap data repository registered with the CFTC or the SEC and any other similar data repository established to enable reporting of QFC data.

*Secretary* means the Secretary of the Treasury or the Secretary’s designee.

*Subsidiary* means any company that is controlled by another company.

#### **§ 148.3 Form, availability and maintenance of records.**

(a) *Form and availability*—(1)

*Electronic records*. A records entity is required to maintain all records described in section 148.4 in electronic form and be able to generate data in the format set forth in Tables A–1 through A–4 of the appendix to this part. Such records shall be capable of being transmitted electronically to the records entity’s primary financial regulatory agencies and the FDIC. All affiliated records entities in a corporate group must be able to generate data in the format set forth in Tables A–1 through A–4 of the appendix to this part in the same data format and use the same unique counterparty identifiers to enable the aggregation of data both:

- (i) For all affiliated records entities in the corporate group; and
- (ii) By counterparty, for all records entities in a corporate group.

(2) *Position records*. A records entity must maintain records for all QFCs to which it is a party, including inter-affiliate QFCs to which it is a party. A records entity must also maintain records for all QFCs that are guaranteed or supported by such records entity.

(3) *Point of contact*. A records entity must provide to each of its primary financial regulatory agencies and the FDIC a point of contact at the records entity who is responsible for recordkeeping under this part, by written notice to its primary financial regulatory agencies and the FDIC on the effective date of this part and, thereafter, within 30 days of any change in the point-of-contact information.

(4) *Access to records*. A records entity that is regulated by a primary financial regulatory agency shall be capable of providing to such primary financial regulatory agency, within 24 hours of request, the records specified in § 148.4.

(b) *Maintenance and updating*—(1) *Daily updating*. A records entity shall maintain the capacity to generate the data in the format set forth in Tables A–1 through A–4 of the appendix to this part, based on the previous end-of-day records and values. Data that are more current than previous end-of-day

records and values are deemed to satisfy this requirement.

(2) *Records maintenance.* The records required under this part may be maintained on behalf of the records entity by any affiliate of such records entity, or any third-party service provider that maintains the records in the ordinary course of business.

(3) *Record retention.* Unless otherwise indicated in this part, the requirement on a records entity to maintain records applies to records and values with respect to open QFC positions and any other QFC positions needed to generate reports based on end-of-day records and values for at least the five business days prior to the date of a request.

(c) *Exemptions—(1) General exemptions.* Upon receipt of a written recommendation from the FDIC, prepared in consultation with the primary financial regulatory agencies for the applicable records entities that takes into consideration each of the factors referenced in 12 U.S.C.

5390(c)(8)(H)(iv), the Secretary may grant conditional or unconditional exemptions from compliance with one or more of the requirements of this part by issuing an exemption to one or more types of records entities. In determining whether to grant a general exemption, the Secretary will consider any factors deemed necessary or appropriate by the Secretary, including whether application of one or more requirements of this part is not necessary to achieve the purpose of this part.

(2) *Specific exemptions.* Upon written request by a records entity, the FDIC may recommend, after taking into consideration each of the factors referenced in 12 U.S.C.

5390(c)(8)(H)(iv), that the Secretary grant a conditional or unconditional specific exemption from compliance with one or more of the requirements of this part. Upon receipt of a written recommendation from the FDIC, prepared in consultation with the primary financial regulatory agencies for the records entity, the Secretary may grant a conditional or unconditional specific exemption from compliance with one or more requirements of this part by issuing an exemption to such records entity. In determining whether to grant a specific exemption, the Secretary will consider any factors deemed necessary or appropriate, including whether application of one or more requirements of this part is not necessary to achieve the purpose of this part.

(3) *Extensions of time.* The Secretary, in consultation with the FDIC, may grant one or more extensions of time for compliance with this part. A records

entity may request an extension of time by submitting a written request to the Department of the Treasury, at least 30 days prior to the deadline for its compliance with the requirements of this part. The written request for an extension must contain:

(i) A statement of the reasons why the records entity cannot comply by the deadline for compliance; and

(ii) A plan for achieving compliance during the requested extension period.

#### **§ 148.4 Content of records.**

(a) *All records entities.* Subject to § 148.3(c), a records entity must maintain all records required under this part, including:

(1) The position-level data listed in Table A-1 in the appendix of this part.

(2) The counterparty collateral data listed in Table A-2 in the appendix of this part.

(3) The legal agreements information listed in Table A-3 in the appendix of this part.

(4) The collateral detail data listed in Table A-4 in the appendix of this part.

(5) Any written data or information that is not listed in Tables A-1 through A-4 in the appendix to this part that the records entity is required to provide to an SDR, the CFTC, the SEC or any non-U.S. regulator with respect to any QFC, for any period that such data or information is required to be maintained by its primary financial regulatory agency.

(6)(i) For each counterparty that is not an affiliate of the records entity, a list specifying all other counterparties that are members of the same corporate group as the counterparty and that are parties to open QFCs with the records entity or guarantee, support or are linked to such QFCs, as well as an organizational chart that explains the affiliate relationships of such counterparties. Such list shall include the unique counterparty identifier for each counterparty in the counterparty's corporate group. The unique counterparty identifier shall be based on the global legal entity identifier issued by:

(A) Utilities endorsed by the Regulatory Oversight Committee, whose charter was set forth by the Finance Ministers and Central Bank Governors of the Group of Twenty and the Financial Stability Board; or

(B) Utilities endorsed or otherwise governed by the Global LEI Foundation, but must include additional identifiers in the event one counterparty transacts with the records entity as separate non-U.S. branches or divisions, as appropriate to enable the FDIC to aggregate or disaggregate the data for

each counterparty and for the counterparty's corporate group as necessary to determine the effects of potential QFC transfers or terminations, including the effects of any ring-fencing with regard to any such non-U.S. branch or division.

(ii) All records entities in a corporate group must use the same unique counterparty identifier for each counterparty.

(7) A list of all affiliates of the records entity that are parties to open QFCs or guarantee, support or are linked to open QFCs, as well as an organizational chart that explains the affiliate relationships for such records entities. Such list shall specify which affiliates are counterparties to inter-affiliate QFCs with such records entity for which the records entity is required to maintain records pursuant to this part. Such list shall include the unique counterparty identifier for each affiliated counterparty in the records entity's corporate group as set forth in paragraph (a)(6) of this section.

(8) Full-text searchable copies of all agreements that govern QFC transactions between the records entity and each counterparty, including without limitation, master agreements and annexes, supplements, or other modifications with respect to the agreements.

(9) Copies of the active or "open" confirmations, if the position has been confirmed or the trade acknowledgment if the position has not been confirmed.

(10) Full-text searchable copies of all credit support documents including, but not limited to, any credit support annexes, any guarantees, keep-well agreements, or net worth maintenance agreements that are relevant to one or more QFCs.

(11) Full-text searchable copies of all assignment or novation documents, if applicable, including documents which confirm that all required consents, approvals, or other conditions precedent for such assignment or novation have been obtained or satisfied.

(12) A list of vendors directly supporting the QFC-related activities of the records entity and the vendors' contact information.

(13) Risk metrics used to monitor the QFC portfolio, including without limitation, credit risk, market risk and liquidity risk measures.

(14) Risk manager contact information for each portfolio that includes QFCs.

#### **Appendix to Part 148—File Structure for Qualified Financial Contract Records**

In maintaining the records required under this part, a records entity may leave an entry

blank or insert N/A for the data fields that do not apply to a given QFC transaction or agreement.

TABLE A-1—POSITION-LEVEL DATA  
[For a records entity]

Field	Example	Data application
Unique position identifier .....	20058953 .....	Information needed to readily track and distinguish positions.
Unique counterparty identifier <sup>1</sup> of records entity	999999999 .....	Information needed to review position-level data by records entity.
Unique counterparty identifier of counterparty to records entity (non-reporting party).	888888888 .....	Information needed to identify and, if necessary, communicate with counterparty.
Legal name of counterparty (non-reporting party).	John Doe & Co. ....	Information needed to identify and, if necessary, communicate with counterparty.
Industry code (GIC or SIC code) of counterparty to records entity (non-reporting party).	2096 .....	Information needed to analyze knock-on effects by industry.
Internal booking location identifier (for headquarters or branch where the position is booked).	XY12Z .....	Information needed to determine the headquarters or branch where the position is booked, including the system on which the trade is booked, as well as the system on which the trade is settled.
Unique booking unit or desk identifier .....	xxxxxx .....	Additional information to help determine purpose of position.
Unique booking unit or desk description .....	North American Trading Desk .....	Additional information to help determine purpose of position.
Contact information of person responsible for position, including name, phone number and e-mail address.	John Smith x-xxx-xxx-xxxx <i>jsmith@domain.com</i> .	Information needed to maintain a point of contact with the records entity.
Unique master agreement or governing documentation identifier.	xxxxxx .....	Information needed to identify master agreement or governing documentation.
Form of master agreement or governing documentation.	ISDA 1992 .....	Information needed to determine whether a standard form agreement governs the transaction.
Unique master netting agreement identifier .....	xxxxxxxxx .....	Information needed to identify, and determine effects of, any cross-product and other master netting agreements (sometimes called “master master agreements”).
Name of master netting agreement .....	[Agreement name] .....	Information needed to identify, and determine effects of, any cross-product and other master netting agreements.
Position standardized asset class (or QFC asset class of the reference asset or interest rate).	Credit; equity; foreign exchange; interest rate (including cross-currency); other commodity; securities repurchase agreement; securities lending; loan repurchase agreement.	Information needed to determine the extent to which the entity is involved in any particular QFC market.
Position standardized contract type (or QFC contract type of the reference asset or interest rate) <sup>2</sup> .	Mortgage loan repurchase agreement .....	Information needed to determine the extent to which the entity is involved in any particular QFC market.
Purpose of the position (if the purpose consists of hedging strategies, include the general category of the item(s) hedged).	Trading or hedging (e.g., hedging mortgage servicing or hedging a mortgage pipeline).	Information needed to determine the role of the QFC in the records entity and the corporate group’s business strategy. For example, if the purpose of a QFC is to hedge a non-QFC arrangement, the FDIC has the potential for a broken-hedge because the non-QFC arrangement is not subject to the “all or none” QFC transfer and repudiation rule.
Issue date .....	6/31/2010 .....	Information needed to determine the date the entity entered into the agreement.
Termination date (date the position terminates or is expected to terminate, expire, mature, or when final performance is required).	3/31/2014 Overnight Open .....	Information needed to determine when the entity’s rights and obligations regarding the position are expected to end.
Next call, put, or cancellation date .....	9/30/2014 .....	Information needed to determine when a call, put, or cancellation may occur with respect to a position.
Next payment date .....	9/30/2014 .....	Information needed to anticipate potential upcoming obligations.
Local currency of position (e.g. USD, GBP, EUR, JPY).	USD .....	Information needed to determine currency.
Current market value of the position in local currency (as of the date of the file).	995,000 .....	Information needed to determine the current size of the obligation/benefit in association with the QFC.

TABLE A-1—POSITION-LEVEL DATA—Continued  
[For a records entity]

Field	Example	Data application
Current market value of the position in USD equivalent (as of the date of the file).	995,000 .....	Information needed to determine the current size of the obligation/benefit in association with the QFC.
Notional or principal amount of the position in local currency (as applicable).	1,000,000 .....	Information needed to help evaluate the position.
Notional or principal amount of the position in USD equivalent (as applicable).	1,000,000 .....	Information needed to help evaluate the position.
Documentation status of the position .....	Affirmed, confirmed, or neither affirmed nor confirmed.	Information needed to determine reliability of the position and its legal status.
Credit support documents (including any security agreement or guarantee) (If more than one, delimit each with a comma.).	Credit Support Annex .....	Information needed to identify and review credit support related to the position, including any applicable covenants.
Name of position or agreement guarantor, if applicable.	Holdco .....	Information needed to identify entity with potential credit exposure.
Unique counterparty identifier of guarantor .....	888888888 .....	Information needed to identify the guarantor's exposure to swaps of affiliates.
Reference number of guarantee agreement .....	xxxxxx .....	Information needed to be able to connect data on Table A-1 with Table A-2.
Unique counterparty identifier of counterparty to related inter-affiliate position(s) with other records entity in the corporate group (If more than one, delimit each with a comma.).	777777777 .....	Information needed to identify counterparty to inter-affiliate position that is back-to-back with, or otherwise related to, this position.
Name of counterparty to related inter-affiliate position(s) (If more than one, delimit each with a comma.).	Jane Doe & Co. ....	Information needed to identify counterparty to inter-affiliate position that is back-to-back with, or otherwise related to, this position.
Related inter-affiliate position ID(s) .....	Unique position ID(s) for related inter-affiliate position (If more than one, delimit each with a comma.).	Information needed to identify all related positions, i.e., each position with an affiliated records entity that is back-to-back with, or otherwise relates to, this position.
Reference number for any related loan (If more than one, delimit each with a comma.).	Unique reference number(s) for loans related to this position.	Information necessary to identify any loan(s) within the corporate group that are related to this position.
Legal name of records entity or any affiliate of the records entity that is lender of related loan (If more than one, delimit each with a comma.).	[Insert legal name of each records entity that is lender of related loan].	Information needed to identify lender.
Classification under GAAP or IFRS .....	Level 1, Level 2, Level 3 .....	Information with respect to carrying value for the position.

<sup>1</sup> The unique counterparty identifier shall be based on the global legal entity identifier, but must include additional identifiers in the event one counterparty transacts with the records entity as separate non-U.S. branches or divisions, as appropriate to enable the FDIC to aggregate or disaggregate the data for each counterparty and for the counterparty's corporate group as necessary to determine the effects of potential QFC transfers or terminations, including the effects of any ring-fencing with regard to any such non-U.S. branch or division. All records entities in an affiliated group must use the same unique counterparty identifier for a specific counterparty.

<sup>2</sup> Position "types" shall be used consistently for all records entities within the corporate group. If the OFR adopts or authorizes a unique product identifier for a given type of position/transaction, then within 180 days after such action, the records entity shall substitute such identifier for "Type of Position," and shall utilize such identifier for purposes of this part for all records entities within its corporate group.

TABLE A-2—COUNTERPARTY COLLATERAL DATA <sup>1</sup>  
[For positions between a records entity and each counterparty<sup>2</sup>]

Field	Example	Data application
Unique counterparty identifier <sup>3</sup> of records entity	999999999 .....	Information needed to review counterparty-level data by records entity.
Unique counterparty identifier of counterparty to records entity (non-reporting party).	888888888 .....	Information needed to aggregate positions by counterparty.
Legal name of counterparty .....	John Doe & Co. ....	Information needed to aggregate positions by counterparty.
Industry code (GIC or SIC code) of counterparty.	2096 .....	Information needed to analyze knock-on effects by industry
Contact information for counterparty, including name, phone number, and email address.	xxxxxxx .....	Information needed to maintain a point of contact with the counterparty for the portfolio.
Master Netting Agreement for counterparty's corporate group (Y/N).	Yes .....	Information needed to determine how positions of a records entity can be transferred.
Name of each master agreement, master netting agreement or governing documentation related to netting among affiliates in a counterparty's corporate group <sup>4</sup> (if more than one, list each).	ISDA Master Agreement .....	Information needed to identify the agreement.

TABLE A-2—COUNTERPARTY COLLATERAL DATA <sup>1</sup>—Continued[For positions between a records entity and each counterparty<sup>2</sup>]

Field	Example	Data application
Unique master agreement, master netting agreement or governing documentation identifier for agreements related to netting among affiliates in a counterparty's corporate group (if more than one, list each).	xxxxxx .....	Internal reference number of the master agreement or governing documentation.
Current market value in USD equivalent of all positions, as aggregated and, to the extent permitted under each applicable agreement, netted.	(1,000,000) .....	Information needed to help evaluate the positions.
Current market value in USD equivalent of all collateral, if any, posted against all positions of the records entity with the counterparty by collateral provider.	950,000 .....	Information needed to determine the extent to which collateral has been provided.
Current market value in USD equivalent of all collateral posted against all positions of the records entity with the counterparty that is subject to re-hypothecation by the counterparty, if any, by collateral provider.	950,000 .....	Information needed to determine exposure of a records entity or other collateral provider(s) to the creditworthiness of a counterparty
Current market value in USD equivalent of all collateral, if any, posted against all counterparty positions with the records entity by collateral provider.	50,000 .....	Information needed to determine the extent to which collateral has been provided on behalf of a counterparty.
Current market value in USD equivalent of all collateral posted against all positions of the counterparty with the records entity that is subject to re-hypothecation by the records entity, if any, by collateral provider.	50,000 .....	Information needed to determine un-collateralized liability of records entity to a counterparty or other collateral provider(s) for re-hypothecated collateral
With respect to all collateral posted against the record entity's positions, collateral excess or deficiency (including pending margin calls in this calculation) in USD equivalent with respect to all of the records entity's positions, as determined under each applicable agreement, including thresholds and haircuts where applicable. <sup>5</sup>	(25,000) .....	Information needed to determine the extent to which the records entity has satisfied collateral requirements under each applicable agreement.
With respect to all collateral posted against each counterparty's positions collateral excess or deficiency (including pending margin calls in this calculation) in USD equivalent with respect to all of such counterparty's positions with the records entity, as determined under each applicable agreement, including thresholds and haircuts where applicable.	150,000 .....	Information needed to determine the extent to which the counterparty has satisfied collateral requirements under each applicable agreement.
With respect to all collateral posted against the records entity's positions, collateral excess or deficiency (including pending margin calls in this calculation) in USD equivalent with respect to all the positions, based on the aggregate market value of the positions of a counterparty (after netting to the extent permitted under each applicable agreement) and the aggregate market value of all collateral posted against the records entity's positions, in whole or in part.	(50,000) .....	Information needed to determine the extent to which the record entity's obligations regarding the positions may be unsecured.
Collateral safekeeping agent contact information, including name, email address, phone number.	xxxxxxxx .....	Information needed to maintain a point of contact with the collateral safekeeping agent.
For each records entity, current market value of all inter-affiliate positions with this records entity (multiple entries depending on number of entities and complexity of inter-company transactions).	Records entity 1, Records entity 2, Counterparty xxx, aggregate current market value.	Information needed to assess both cross border positions as well as transfer links.
Risk or relationship manager contact information, including name, phone number and email address.	xxxxxxxx .....	Information needed to maintain a point of contact for the counterparty relationship.
Master Netting Agreement for records entity's corporate group (Y/N).	Yes .....	Information needed to determine how positions are netted among records entities.

TABLE A-2—COUNTERPARTY COLLATERAL DATA <sup>1</sup>—Continued  
 [For positions between a records entity and each counterparty<sup>2</sup>]

Field	Example	Data application
Name of each master agreement, master netting agreement or governing documentation related to netting among records entities (if more than one, list each).	ISDA Master Agreement .....	Information needed to identify the agreement.
Unique master agreement, master netting agreement or governing documentation identifier for agreements related to netting among records entities (if more than one, list each).	xxxxxx .....	Internal reference number of the master agreement or governing documentation.
Legal name of master agreement guarantor, if any.	xxxxxx .....	Information needed to determine credit exposure of the guarantor.
Unique counterparty identifier of guarantor .....	xxxxxx .....	Information needed to determine credit exposure of the guarantor.

<sup>1</sup> All amounts shall be provided in U.S. Dollar equivalent. For collateral denominated in non-U.S. currency, the value in such non-U.S. currency shall also be provided.

<sup>2</sup> Table A-2 shall be provided at the first level of netting under a master agreement. If a master agreement includes Annexes or other provisions that are subject to intermediate netting, each netting set shall be reported separately. The table shall have a separate entry for each netting agreement that is applicable to one or more counterparties in the counterparty corporate group. The FDIC intends to use the data both to determine net positions between each counterparty and a records entity and to determine the records entity's aggregated position with respect to all affiliates in a counterparty's corporate group based on the enforceability of the netting agreements.

<sup>3</sup> The unique counterparty identifier shall be based on the global legal entity identifier, but must include additional identifiers in the event one counterparty transacts with the records entity as separate non-U.S. branches or divisions, as appropriate to enable the FDIC to aggregate or disaggregate the data for each counterparty and for the counterparty's corporate group as necessary to determine the effects of potential QFC transfers or terminations, including the effects of any ring-fencing with regard to any such non-U.S. branch or division. All records entities in an affiliated group must use the same unique counterparty identifier for a specific counterparty.

<sup>4</sup> If one or more positions cannot be netted against others, they shall be maintained as separate entries and each such entry shall identify the applicable netting agreement, if any, to which it relates (if none, specify "none").

<sup>5</sup> If all positions are not secured by the same collateral, then separate entries shall be maintained for each position or set of positions secured by the same collateral and each such entry shall identify the applicable credit support document, if any, to which it relates (if none, specify "none").

TABLE A-3—LEGAL AGREEMENTS

[For each QFC agreement or master agreement between a records entity and each counterparty]

Field	Example	Data application
Name of agreement .....	ISDA Master Agreement .....	Information needed to identify the agreement.
Reference Number .....	xxxxxx .....	Internal reference number of the master agreement or governing documentation.
Basic form of agreement .....	[1992/2002] version .....	Information needed to identify the basic form of agreement.
Agreement governing law .....	[State/Country] .....	Information needed to determine the law governing contract disputes.
Cross defaults (Y/N and description of type of cross default and identity of cross-default entity).	Y .....	Information needed to determine exposure to affiliates or other entities.
Transfer restrictions (Y/N and description of transfer restriction).	Insolvency. [parent].	Information needed to determine QFC transfer limitations per agreement terms.
Events of Default/Termination Events added to the basic form of agreement (Y/N and brief description or excerpts of each).	Y .....	Information needed to determine whether there are events of default or termination events that have been added to those provided in the basic form of agreement and the likelihood of occurrence of event of default.
Events of Default/Termination Events deleted from the basic form of agreement (Y/N and excerpts of each).	Y .....	Information needed to determine if there are any events of default or termination events of the basic form of agreement that have been removed.
Guarantee agreement with respect to records entity obligations (Y/N).	Y .....	Information needed to determine if there is credit exposure because of a guaranty.
Reference number of guarantee agreement .....	xxxxxxx .....	Internal reference number to enable aggregation of exposures to a guarantor.
Legal name of guarantor of records entity obligations, if any.	xxxxxxx .....	Information needed to identify the guarantor.
Unique counterparty identifier of guarantor of records entity obligations.	xxxxxxx .....	Information needed to identify the guarantor.
Unique counterparty identifier of counterparty to records entity (non-reporting party).	88888888 .....	Information needed to aggregate information by counterparty.
Legal name of Counterparty .....	John Doe & Co. ....	Information needed to aggregate information by counterparty.
Industry code (GIC or SIC code) of counterparty.	2096 .....	Information needed to analyze knock-on effects by industry.

TABLE A-3—LEGAL AGREEMENTS—Continued

[For each QFC agreement or master agreement between a records entity and each counterparty]

Field	Example	Data application
Contact information for counterparty, including name, phone number, and email address.	.....	Information needed to maintain a point of contact with the counterparty for the portfolio.
Guarantee agreement with respect to counterparty obligation (Y/N).	Y .....	Information needed to determine if there is guarantor exposure with respect to the counterparty.
Reference number of counterparty guarantee agreement.	xxxxxxx .....	Internal reference number to enable aggregation of guarantor exposure.
Legal name of guarantor of counterparty obligations, if any.	xxxxxxx .....	Information needed to determine credit exposure of guarantor for counterparty obligations.
Unique counterparty identifier of counterparty guarantor.	xxxxxxx .....	Information needed to determine credit exposure of guarantor for counterparty obligations.

TABLE A-4—COLLATERAL DETAIL DATA

[For a records entity with respect to each counterparty, and for each counterparty with respect to a records entity and aggregated for such record entity's corporate group as well as such counterparty corporate group to the extent required or permitted by any applicable netting agreements]

Field	Example	Data application
Unique collateral identifier for a collateral item ..	CUSIPs .....	Reference required to identify individual collateral posted.
Local currency of collateral item (e.g. USD, GBP, EUR, JPY).	USD .....	Information needed to determine the type of collateral
Original face amount of collateral item in local currency.	1,500,000 .....	Information needed to evaluate collateral sufficiency and marketability.
Original face amount of collateral item in USD equivalent.	1,500,000 .....	Information needed to evaluate collateral sufficiency and marketability and to assist in aggregation across currencies.
Current end of day market value amount of collateral item in local currency.	850,000 .....	Information needed to evaluate collateral sufficiency and marketability.
Current end of day market value amount of collateral item in USD equivalent.	850,000 .....	Information needed to evaluate collateral sufficiency and marketability and to assist in aggregation across currencies.
Description of collateral item or items .....	U.S. Treasury Strip, maturity 6/30/2020 .....	Information needed to evaluate collateral sufficiency and marketability.
Collateral currency .....	USD .....	Information needed to determine the type of collateral
Collateral Code, <sup>1</sup> if any, of the collateral that the records entity has posted against all positions with the counterparty.	xxxxx .....	Information needed to identify and aggregate collateral.
Unique entity identifier of collateral posting entity.	999999999 .....	Information needed to determine the headquarters or branch where the position is booked.
Name of master agreement or governing documentation.	ISDA Master Agreement .....	Information needed to identify the agreement.
Unique master agreement or governing documentation identifier.	xxxxxx .....	Internal reference number of the master agreement or governing documentation.
Collateral or portfolio segregation status (Y/N/ and the scope of such segregation).	Y, segregated with third party custodian specified below.	Information needed to evaluate the extent of segregation of the specific item of collateral or the related collateral portfolio.
Credit support documents (including any security agreement) (If applicable, unique credit support document identifier.).	Credit Support Annex .....	Information needed to identify and review credit support, including any applicable covenants.
Unique counterparty identifier .....	888888888 .....	Information needed to aggregate positions by counterparty.
Legal name of counterparty .....	John Doe & Co. ....	Information needed to identify counterparty.
Collateral location .....	ABC Broker-Dealer (in safekeeping account of counterparty).	Information needed to identify location of collateral posted.
Collateral jurisdiction .....	New York, NY .....	Information needed to identify jurisdiction of location of collateral posted.
Is collateral re-hypothecation by the counterparty allowed (Y/N).	Yes .....	Information needed to evaluate exposure of the records entity to the counterparty for re-hypothecated collateral.
Master (cross-product) netting agreement name	NA .....	Information needed to determine effects of any cross-product and other master netting agreements (sometimes referred to as "master master agreements").

TABLE A-4—COLLATERAL DETAIL DATA—Continued

[For a records entity with respect to each counterparty, and for each counterparty with respect to a records entity and aggregated for such record entity's corporate group as well as such counterparty corporate group to the extent required or permitted by any applicable netting agreements]

Field	Example	Data application
Master (cross-product) netting agreement unique identifier (If applicable, unique master netting agreement identifier. If not applicable, enter "N/A").	NA .....	Information needed to determine effects of any cross-product and other master netting agreements.
Classification under GAAP (FAS 157) .....	Level 1, Level 2, Level 3 .....	Information with respect to carrying value for the position.

<sup>1</sup> CFTC collateral codes and collateral "types" shall be used consistently for collateral posted by a records entity or counterparty, as applicable. If the OFR adopts or authorizes a unique identifier for a given type of collateral, then within 180 days after such action, the records entity shall instead use such identifier as the code for such collateral for purposes of this part and shall utilize such identifier for purposes of this part for all records entities within its corporate group. For repurchase or securities lending agreements, separate collateral tables should be provided that list the type, CUSIP or ISEN number of such securities.

**Matthew Rutherford,**  
*Acting Under Secretary for Domestic Finance.*

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