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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–0085; Directorate Identifier 2011–SW–004–AD; Amendment 39–17389; AD 2013–05–17]**

**RIN 2120–AA64**

## Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–61A, D, E, L, N, NM, R, and V helicopters to require replacing each forward and aft fuel system 40 micron fuel filter element with a 10 micron nominal (40 micron absolute) fuel filter element. This AD was prompted by a National Transportation Safety Board (NTSB) review of in-service events where engine performance degradation occurred, and the review determined that some of these events were caused by contaminants larger than 10 microns present in the engine fuel control units (FCUs). The actions are intended to prevent particulate contamination in the FCU, which could lead to malfunction of an internal valve, power loss at a critical phase of flight, and loss of control of the helicopter.

**DATES:** This AD is effective April 26, 2013.

**ADDRESSES:** For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main St., Stratford, CT; telephone (203) 383–4866; email *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Kirk Gustafson, Aerospace Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7190; email *kirk.gustafson@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

On February 3, 2012, at 77 FR 5418, the **Federal Register** published our notice of proposed rulemaking (NPRM or the proposed rule), which proposed to amend 14 CFR part 39 to include an AD that would apply to Sikorsky Model S–61A, D, E, L, N, NM, R, and V helicopters with a fuel system 40 micron fuel filter element, part number (P/N) 52–0505–2 or 52–01064–1. That NPRM proposed to require replacing each forward and aft fuel system 40 micron fuel filter element with a 10 micron fuel filter element. The proposed requirements were intended to prevent malfunction of an internal valve, power loss at a critical phase of flight, and loss of control of the helicopter.

### Comments

After our NPRM (77 FR 5418, February 3, 2012) was published, we received comments from two commenters.

### Requests

Sikorsky stated that the description of the applicable replacement fuel filter is inaccurate and requested that the proposed rule (77 FR 5418, February 3, 2012) be changed to include both nominal and absolute ratings (''10 micron nominal (40 micron absolute) fuel filter element'') when referencing fuel filter, P/N 52–01064–1. We agree. We have included this information in the summary and required action sections of the AD.

Sikorsky also stated that the proposed rule (77 FR 5418, February 3, 2012) incorrectly indicates that the effect of the alleged fuel contamination would be a power loss, because GE and the NTSB characterize the potential effect as slowing or degrading throttle changes (either increasing or decreasing). Sikorsky further stated that an unsafe condition does not exist because a contaminated FCU will not cause a reduction in power, and that the NPRM inaccurately indicated that a loss of power will lead to a loss of control of the aircraft because as long as the main rotor speed is maintained between 91% and 111% Nr, the pilot may experience a loss of altitude but will have full control authority and the ability to land without injury or damage. Sikorsky requested that we modify the description of the effect of a contaminated FCU and the overall effect on the helicopter's operation in the proposed rule, and change our determination that an unsafe condition exists or is likely to exist to instead reflect an opportunity to improve safety to prevent possible added pilot workload.

We disagree. Fuel contamination in the FCU can result in abnormal operation of specific internal components, which, depending on the exact circumstances of the contamination condition and the operating condition of the engine, could result in a reduced or erratic engine acceleration rate. A slow acceleration rate to a higher power level at a critical phase of flight where the expected aircraft performance is dependent on a normal engine acceleration rate to a higher power level is an unsafe condition. Fuel contamination in the FCU can also result in the pressure regulating valve becoming stuck during acceleration or deceleration, causing the engine to continue to accelerate or decelerate to an unintended power condition. If the engine were to accelerate to the overspeed trip or decelerate to an unintended low power

condition, this would result in a significant power loss. Consequently, a power shortfall during a critical phase of flight due to a slow or erratic acceleration of the engine can result in the inability to sustain continued safe flight. Therefore, we determined that this AD is necessary because an unsafe condition does exist.

To the extent Sikorsky supports its request with data from an NTSB accident report, we note that the actions proposed by the NPRM (77 FR 5418, February 3, 2012) were not directly associated with a specific accident investigation. We reviewed the specific accident investigation mentioned by the commenter and several service incidents, and found several situations in which anomalous engine performance was attributed to internal FCU contamination. Based on these incidents, we determined it necessary to impose this action to further reduce the potential for anomalous engine performance during critical flight phases.

The second commenter, the NTSB, commented that it supports the NPRM (77 FR 5418, February 3, 2012).

### FAA's Determination

We have reviewed the relevant information, considered the comments received, and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed with the change in the description of the replacement fuel filter described previously. This change is consistent with the intent of the NPRM's proposals and will not increase the economic burden on any operator nor increase the scope of the AD.

### Related Service Information

We reviewed Sikorsky Alert Service Bulletin (ASB) No. 61B30–16, dated February 2, 2010 (ASB No. 61B30–16), which supersedes ASB No. 61B28–1, dated January 15, 2010 (ASB No. 61B28–1). ASB No. 61B28–1 specified replacing the forward and aft fuel system 40 micron fuel filter elements with 10 micron fuel filter elements at the next scheduled inspection or within 150 flight hours from the issuance of the ASB. ASB 61B30–16 retains the same instructions as ASB 61B28–1, but deletes the compliance time ''at the next scheduled preventative maintenance inspection.'' Also, ASB No. 61B30–16 was issued because ASB No. 61B28–1 was incorrectly numbered.

### Costs of Compliance

We estimate that this AD will affect 78 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. It will take approximately 4 work-hours to replace the fuel system fuel filters and re-identify the fuel tank fuel filter and fuel control assembly bracket. The average labor rate is $85 per work-hour and required parts will cost about $370 per helicopter. Based on these figures, we estimate the cost of the AD on U.S. operators to be $710 per helicopter and the total cost of this AD on U.S. operators to be $55,380.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2013–05–17 Sikorsky Aircraft Corporation:** Amendment 39–17389; Docket No. FAA–2012–0085; Directorate Identifier 2011–SW–004–AD.

**(a) Applicability**

This AD applies to Sikorsky Aircraft Corporation Model S–61A, D, E, L, N, NM, R, and V helicopters with a fuel system 40 micron fuel filter element, part number (P/N) 52–0505–2 or 52–01064–1, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as contaminants present in the engine fuel control units (FCUs). This AD was prompted by a National Transportation Safety Board review of in-service events where engine performance degradation occurred. This condition could result in particulate contamination in the FCU, which could lead to malfunction of an internal valve, power loss at a critical phase of flight, and loss of control of the helicopter.

**(c) Effective Date**

This AD becomes effective April 26, 2013.

**(d) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(e) Required Actions**

(1) Within 150 hours time-in-service, do the following:

(i) Replace each forward and aft fuel system 40 micron fuel filter element with a 10 micron nominal (40 micron absolute) fuel filter element, P/N AM52–01064–1.

(ii) Re-identify the fuel filter, P/N 52–2145–009, and fuel control assembly bracket as follows:

(A) On the fuel filter identification plate, cross out the last two digits (''09'') of the

existing fuel filter P/N 52–2145–009, and replace those last two digits with ''14'' to re-identify the fuel filter as P/N 52–2145–014.

(B) Change the existing fuel control assembly part number on the fuel control assembly bracket to re-identify it as follows:

(1) Change fuel control assembly P/N S6130–63209–001 to P/N S6130–63209–041.

(2) Change fuel control assembly P/N S6130–63209–002 to P/N S6130–63209–042.

(3) Change fuel control assembly P/N S6130–63209–003 to P/N S6130–63209–043.

(4) Change fuel control assembly P/N S6130–63209–004 to P/N S6130–63209–044.

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

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Kirk Gustafson, Aerospace Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7190; email *kirk.gustafson@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(g) Additional Information**

Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B30–16, dated February 2, 1010, which is not incorporated by reference, contains additional information about the subject of this AD. For this service information, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main St., Stratford, CT; telephone (203) 383–4866; email *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.* You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 2821, Aircraft Fuel Filter/Strainer.

Issued in Fort Worth, Texas, on March 6, 2013.

**Lance T. Gant,**

*Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2013–05874 Filed 3–21–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–1016; Directorate Identifier 2010–SW–009–AD; Amendment 39–17386; AD 2013–05–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron, Inc.

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Bell Helicopter Textron, Inc. (Bell), Model 412 and 412EP helicopters. This AD requires establishing a lower life limit on certain swashplate outer ring assemblies (outer ring), revising the retirement life on the components' history card or equivalent record, and revising the maintenance manual or Instructions for Continued Airworthiness (ICA). This AD also prohibits installing these outer rings on any helicopter. This AD was prompted by reports of cracking in the outer rings. The actions are intended to prevent failure of an outer ring because of cracking, which could lead to the loss of main rotor (M/R) blade pitch control and subsequent loss of helicopter control.

**DATES:** This AD is effective April 26, 2013.

**ADDRESSES:** For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5447; email *7-avs-asw-170@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

On September 24, 2012, at 77 FR 58794, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Bell Model 412 and 412EP helicopters, with an outer ring, part number (P/N) 412–010–407–105. That NPRM proposed to require establishing a lower life limit on certain outer rings, revising the retirement life on the components' history card or equivalent record, and revising the maintenance manual or ICA. The proposal also proposed prohibiting the installation of these outer rings on any helicopter. The outer rings had a life limit of 10,000 hours TIS, but Bell has recommended reducing that limit to 2,500 hours TIS because of reports of cracking in the outer rings. The proposed requirements were intended to prevent failure of an outer ring, which could lead to the loss of M/R blade pitch control and subsequent loss of helicopter control.

### Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (77 FR 58794, September 24, 2012).

### FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed with minor editorial changes. These changes are consistent with the intent of the proposals in the NPRM (77 FR 58794, September 24, 2012) and will not increase the economic burden on any operator nor increase the scope of the AD.

### Related Service Information

We have reviewed Bell Helicopter Alert Service Bulletin No. 412–08–131, Revision B, dated October 29, 2009 (ASB), which describes procedures for establishing a new retirement life for the

outer ring and replacing the outer ring at 2,500 hours TIS.

**Differences Between This AD and the Service Information**

The ASB sets a calendar date for compliance. This AD does not.

**Costs of Compliance**

We estimate that this AD affects 143 helicopters. We estimate that it takes about 1 work-hour to revise the component history card or equivalent record, as well as the maintenance manual or ICA, at an average labor rate of $85 per work hour, for a total cost of $85 per helicopter and $12,155 for the U.S. operator fleet. Replacing an outer ring takes 26 work-hours and required parts costs an estimated $25,725. Based on these figures, we calculate the total cost to be $27,935 per helicopter to replace an outer ring.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2013–05–14 Bell Helicopter Textron, Inc. (Bell):** Amendment 39–17386; Docket No. FAA–2012–1016; Directorate Identifier 2010–SW–009–AD.

**(a) Applicability**

This AD applies to Bell Model 412 and 412EP helicopters, with a swashplate outer ring assembly (outer ring), part number (P/N) 412–010–407–105, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as cracking in the outer ring, which could result in the loss of main rotor (M/R) blade pitch control and subsequent loss of helicopter control.

**(c) Effective Date**

This AD becomes effective April 26, 2013.

**(d) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(e) Required Actions**

(1) Within 30 days, establish a retirement life of 2,500 hours time-in-service (TIS) for any affected outer ring on the component history card or equivalent record. Revise the helicopter Airworthiness Limitations section of the applicable maintenance manual or Instructions for Continued Airworthiness (ICA) by establishing the new retirement life by making pen-and-ink changes or inserting a copy of this AD into the maintenance manual or the ICAs.

(2) For any affected outer ring that, on the effective date of this AD, has 2,200 or more hours TIS, within 300 hours TIS, replace the outer ring with an airworthy outer ring.

(3) Within 12 months, for any affected outer ring, regardless of the number of hours TIS, replace the outer ring with an airworthy outer ring.

(4) Do not install outer ring, P/N 412–010–407–105, on any helicopter.

**(f) Special Flight Permits**

No special flight permits will be issued for any helicopter installed with outer ring, P/N 412–010–407–105, if the outer ring has 2,500 hours or more TIS.

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

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5447; email *7-avs-asw-170@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(h) Additional Information**

Bell Helicopter Alert Service Bulletin No. 412–08–131, Revision B, dated October 29, 2009, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/*. You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth Texas 76137.

**(i) Subject**

Joint Aircraft Service Component (JASC) Code: 6230, Main Rotor Mast/Swashplate.

Issued in Fort Worth, Texas, on March 6, 2013.

**Lance T. Gant,**

*Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2013–05875 Filed 3–21–13; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 510, 520, 522, 524, 529, and 558**

**[Docket No. FDA–2013–N–0002]**

## New Animal Drugs; Changes of Sponsor

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 21 approved new animal drug applications (NADAs) and 43 approved abbreviated new animal drug applications (ANADAs) from Teva Animal Health, Inc., to Bayer HealthCare LLC.

**DATES:** This rule is effective March 22, 2013.

**FOR FURTHER INFORMATION CONTACT:** Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855; 240–276–8300; email: *steven.vaughn@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Teva Animal Health, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503 has informed FDA that it has transferred ownership of, and all rights and interest in, the following 21 approved NADAs and 43 approved ANADAs to Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201:

TABLE 1—APPLICATIONS TRANSFERRED

| Application No. | Trade name |
|---|---|
| 6–391 | S.Q. (sulfaquinoxaline) 40% Type A Medicated Article. |
| 6–677 | S.Q. (sulfaquinoxaline) 20% Solution. |
| 7–087 | Sulfaquinoxaline Solubilized. |
| 33–157 | SPECTAM (spectinomycin) Scour Halt. |
| 40–040 | SPECTAM (spectinomycin) Injectable Solution. |
| 45–416 | TEVCODYNE (phenylbutazone) Injectable Solution. |
| 48–287 | Oxytetracycline-50 Injectable Solution. |
| 55–002 | TEVCOCIN (chloramphenicol) Injection. |
| 65–110 | PEN–G–MAX (penicillin G procaine) Injectable Suspension. |
| 65–498 | DUAL–CILLIN (penicillin G benzathine and penicillin G procaine). |
| 91–818 | Phenylbutazone Tablets, USP 1 gram. |
| 93–483 | SPECTAM (spectinomycin) Injectable Solution. |
| 94–170 | Phenylbutazone Tablets, USP 100 or 200 mg. |
| 99–169 | Oxytocin Injection. |
| 119–142 | PVL Iron Dextran Injectable (iron hydrogenated dextran injection). |
| 123–815 | Dexamethasone Sodium Phosphate Injection. |
| 124–241 | PVL (oxytocin) Injectable. |
| 128–089 | ZONOMETH (dexamethasone) Solution. |
| 140–270 | SULFASURE (sulfamethazine) SR Cattle Bolus. |
| 141–070 | RAPINOVET (propofol) Injectable Emulsion. |
| 141–245 | TRIBUTAME (embutramide, chloroquine, and lidocaine) Euthanasia Solution. |
| 200–042 | Ketamine Hydrochloride Injection, USP. |
| 200–068 | Oxytetracycline Hydrochloride Injection 100. |
| 200–069 | FERTELIN (gonadorelin diacetate tetrahydrate) Injection. |
| 200–108 | Dexamethasone Solution. |
| 200–118 | Neomycin Oral Solution. |
| 200–123 | MAXIM–200 (oxytetracycline hydrochloride) Injection. |
| 200–124 | Flunixin Meglumine Injection. |
| 200–126 | Phenylbutazone 20% Injection. |
| 200–137 | Gentamicin Sulfate Solution (IU). |
| 200–147 | Gentamicin Sulfate Injection. |
| 200–153 | NEO 200 (neomycin sulfate) Oral Solution. |
| 200–162 | Tripelennamine Hydrochloride Injection. |
| 200–174 | Gentamicin Sulfate Pig Pump Oral Solution. |
| 200–177 | Sulfadimethoxine Injection 40%. |
| 200–178 | Amikacin Sulfate Injection. |
| 200–181 | Amikacin Sulfate Solution. |
| 200–192 | Sulfadimethoxine 12.5% Oral Solution. |
| 200–193 | Clindamycin Hydrochloride Oral Liquid. |
| 200–202 | PHOENECTIN (ivermectin) Oral Solution. |
| 200–219 | Ivermectin Pour-On for Cattle. |
| 200–228 | PHOENECTIN (ivermectin) Injectable Solution. |
| 200–230 | Guaifenesin Injection. |
| 200–246 | Pyrantel Pamoate Oral Suspension (OTC and Rx). |
| 200–248 | Pyrantel Pamoate Oral Suspension. |
| 200–253 | PROSTAMATE (dinoprost tromethamine) Injectable Solution. |
| 200–254 | Iron Dextran Injection—100. |
| 200–256 | Iron Dextran Injection—200. |
| 200–265 | Praziquantel Tablets (OTC and Rx). |
| 200–286 | PHOENECTIN (ivermectin) Paste 1.87%. |
| 200–287 | GBC (gentamicin sulfate, betamethasone valerate, and clotrimazole) Ointment. |
| 200–293 | Furosemide Injection 5%. |
| 200–297 | Ivermectin Chewable Tablets. |
| 200–298 | Clindamycin Hydrochloride Capsules. |
| 200–319 | Acepromazine Maleate Injection. |

TABLE 1—APPLICATIONS TRANSFERRED—Continued

| Application No. | Trade name |
|---|---|
| 200–322 | Butorphanol Tartrate Injection. |
| 200–342 | Pyrantel Pamoate Paste. |
| 200–351 | Lincomycin Injectable, USP. |
| 200–360 | TIAGARD (tiamulin) Liquid Concentrate. |
| 200–365 | ROBINUL–V (glycopyrrolate) Injectable. |
| 200–382 | Furosemide Syrup 1%. |
| 200–389 | Amprolium 9.6% Oral Solution. |
| 200–408 | Butorphanol Tartrate Injection. |
| 200–463 | Amprolium-P 9.6% Oral Solution. |

Accordingly, the Agency is amending the regulations in 21 CFR parts 510, 520, 522, 524, 529, and 558 to reflect these transfers of ownership. Following these changes of sponsorship, Teva Animal Health, Inc., is no longer the sponsor of an approved application. As such, 21 CFR 510.600 is being amended to remove the entries for this firm.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects**

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Parts 520, 522, 524, and 529*

Animal drugs.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 524, 529, and 558 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

**§ 510.600 [Amended]**

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for ''Teva Animal Health, Inc.''; and in the table in paragraph (c)(2), remove the entry for ''059130''.

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

**§ 520.100 [Amended]**

■ 4. In paragraph (b)(3) of § 520.100, remove ''059130'' and in its place add ''000859''.

**§ 520.446 [Amended]**

■ 5. In paragraph (b)(1) of § 520.446, remove ''059130'' and in its place add ''000859''.

**§ 520.447 [Amended]**

■ 6. In paragraph (b) of § 520.447, remove ''000009, 051311, 058829, and 059130'' and in its place add ''000009, 000859, 051311, and 058829''.

**§ 520.1010 [Amended]**

■ 7. In paragraph (b)(3) of § 520.1010, remove ''058829 and 059130'' and in its place add ''000859 and 058829''.

**§ 520.1044b [Amended]**

■ 8. In paragraph (b) of § 520.1044b, remove ''059130'' and in its place add ''000859''.

**§ 520.1192 [Amended]**

■ 9. In paragraph (b)(2) of § 520.1192, remove ''051311, 054925, 059130, and 061623'' and in its place add ''000859, 051311, 054925, and 061623''.

**§ 520.1193 [Amended]**

■ 10. In paragraph (b)(2) of § 520.1193, remove ''051311 and 059130'' and in its place add ''000859 and 051311''.

**§ 520.1195 [Amended]**

■ 11. In paragraph (b)(1) of § 520.1195, remove ''050604, 054925, and 059130'' and in its place add ''000859, 050604, and 054925''.

**§ 520.1484 [Amended]**

■ 12. In paragraph (b)(3) of § 520.1484, remove ''000009, 054925, 058005, and 059130'' and in its place add ''000009, 000859, 054925, and 058005''.

**§ 520.1720a [Amended]**

■ 13. In paragraph (b)(2) of § 520.1720a, remove ''059130'' and in its place add ''000859''.

**§ 520.1870 [Amended]**

■ 14. In paragraph (b)(2) of § 520.1870, remove ''059130'' and in its place add ''000859''.

**§ 520.2043 [Amended]**

■ 15. In paragraph (b)(1) of § 520.2043, remove ''000069, 058829, and 059130'' and in its place add '' 000069, 000859, and 058829''.

**§ 520.2044 [Amended]**

■ 16. In paragraph (b)(2) of § 520.2044, remove ''059130'' and in its place add ''000859''.

**§ 520.2123c [Amended]**

■ 17. In paragraph (b) of § 520.2123c, remove ''059130'' and in its place add ''000859''.

**§ 520.2220a [Amended]**

■ 18. In paragraph (a)(1) of § 520.2220a, remove ''000010, 000069, 054925, 057561, and 059130'' and in its place add ''000010, 000069, 000859, 054925, and 057561''.

**§ 520.2260b [Amended]**

■ 19. In paragraph (f)(1) of § 520.2260b, remove ''059130'' and in its place add ''000859''.

**§ 520.2325a [Amended]**

■ 20. In paragraph (a)(1) of § 520.2325a, remove ''059130'' and in its place add ''000859''.

■ 21. In § 520.2455, revise paragraph (b)(2) and add paragraph (b)(3) to read as follows:

**§ 520.2455 Tiamulin.**

* * * * *

(b) * * *

(2) No. 066104 for the product described in paragraph (a)(1) of this section.

(3) No. 000859 for the product described in paragraph (a)(3) of this section.

* * * * *

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 22. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

### § 522.23 [Amended]

■ 23. In paragraph (b)(2) of § 522.23, remove ''059130'' and in its place add ''000859''.

### § 522.56 [Amended]

■ 24. In paragraph (b) of § 522.56, remove ''059130'' and in its place add ''000859''.

### § 522.246 [Amended]

■ 25. In § 522.246, in paragraphs (b)(2) and (b)(3), remove ''059130'' and in its place add ''000859''.

### § 522.390 [Amended]

■ 26. In paragraph (b) of § 522.390, remove ''059130'' and in its place add ''000859''.

### § 522.540 [Amended]

■ 27. In § 522.540, in paragraphs (a)(2)(i), (d)(2)(i), and (e)(2), remove ''059130'' and in its place add ''000859''; in paragraphs (b)(3)(i), (b)(3)(ii), (c)(3)(i), and (c)(3)(ii), remove the footnote reference ''1''; and remove the text of footnote 1.

### § 522.810 [Amended]

■ 28. In paragraph (b) of § 522.810, remove ''059130'' and in its place add ''000859''.

### § 522.1010 [Amended]

■ 29. In paragraph (b)(3) of § 522.1010, remove ''059130'' and in its place add ''000859''.

### § 522.1044 [Amended]

■ 30. In paragraph (b)(4) of § 522.1044, remove ''059130'' and in its place add ''000859''.

### § 522.1066 [Amended]

■ 31. In paragraph (b) of § 522.1066, remove ''059130'' and in its place add ''000859''.

### § 522.1086 [Amended]

■ 32. In paragraph (b) of § 522.1086, remove ''037990 and 059130'' and in its place add ''000859 and 037990''.

### § 522.1182 [Amended]

■ 33. In § 522.1182, in paragraph (b)(1), remove ''042552 and 059130'' and in its place add ''000859 and 042552''; in paragraph (b)(6), remove ''058005 and 059130'' and in its place add ''000859 and 058005''; and in paragraph (b)(7), remove ''042552 and 059130'' and in its place add ''000859 and 042552''.

### § 522.1192 [Amended]

■ 34. In paragraph (b)(2) of § 522.1192, remove ''055529, 058005, 059130, and 061623'' and in its place add ''000859 055529, 058005, and 061623''.

### § 522.1222a [Amended]

■ 35. In paragraph (b) of § 522.1222a, remove ''059130'' and in its place add ''000859''.

### § 522.1260 [Amended]

■ 36. In paragraph (b)(2) of § 522.1260, remove ''058005 and 059130'' and in its place add ''000859 and 058005''.

### § 522.1660a [Amended]

■ 37. In paragraph (b) of § 522.1660a, remove ''000010, 000069, 048164, 055529, 057561, 059130, and 061623'' and in its place add ''000010, 000069, 000859, 048164, 055529, 057561, and 061623''.

### § 522.1662a [Amended]

■ 38. In paragraph (i)(2) of § 522.1662a, remove ''059130'' and in its place add ''000859''.

### § 522.1680 [Amended]

■ 39. In paragraph (b) of § 522.1680, remove ''000010, 000856, 059130, 059130, and 061623'' and in its place add ''000010, 000856, 000859, and 061623''.

### § 522.1696a [Amended]

■ 40. In paragraph (b)(2) of § 522.1696a, remove ''055529, 059130, and 061623'' and in its place add ''000859, 055529, and 061623''.

### § 522.1696b [Amended]

■ 41. In § 520.1696b:

■ a. In paragraph (b)(1), remove ''053501, 055529, and 059130'' and in its place add ''000859, 053501, and 055529''.

■ b. In paragraph (d)(2)(i)(A), remove ''053501, 055529, 059130, and 061623'' and in its place add ''000859, 053501, 055529, and 061623''.

■ c. In paragraph (d)(2)(iii)(B), remove ''055529 and 059130'' and in its place add ''000859 and 055529''.

### § 522.1720 [Amended]

■ 42. In paragraph (b)(1) of § 522.1720, remove ''059130'' and in its place add ''000859''.

### § 522.2005 [Amended]

■ 43. In paragraph (b)(1) of § 522.2005, remove ''059130'' and in its place add ''000859''.

### § 522.2120 [Amended]

■ 44. In paragraph (b) of § 522.2120, remove ''059130'' and in its place add ''000859''.

### § 522. 2220 [Amended]

■ 45. In paragraph (a)(2)(iii) of § 522.2220, remove ''059130'' and in its place add ''000859''.

### § 522.2615 [Amended]

■ 46. In paragraph (b) of § 522.2615, remove ''053501 and 059130'' and in its place add ''000859 and 053501''.

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 47. The authority citation for 21 CFR part 524 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

### § 524.1044g [Amended]

■ 48. In paragraph (b)(3) of § 524.1044g, remove ''059130'' and in its place add ''000859''.

### § 524.1193 [Amended]

■ 49. In paragraph (b)(2) of § 524.1193, remove ''054925, 059130, and 066916'' and in its place add ''000859, 054925, and 066916''.

## PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 50. The authority citation for 21 CFR part 529 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

### § 529.56 [Amended]

■ 51. In paragraph (b) of § 529.56, remove ''059130'' and in its place add ''000859''.

### § 529.1044a [Amended]

■ 52. In paragraph (b) of § 529.1044a, remove ''000010, 000061, 000856, 057561, 058005, 059130, and 061623'' and in its place add ''000010, 000061, 000856, 000859, 057561, 058005, and 061623''.

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 53. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

### § 558.586 [Amended]

■ 54. In paragraph (b) of § 558.586, remove ''059130'' and in its place add ''000859''.

Dated: March 12, 2013.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 2013–06126 Filed 3–21–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2013–0006]**

## Special Local Regulation; Southern California Annual Marine Events for the San Diego Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the 2013 San Diego Crew Classic Special Local Regulation located in the regulated area encompasses that portion of Mission Bay, San Diego, California bounded by Enchanted Cove, Fiesta Island, Pacific Passage and DeAnza Point, from 7 a.m. to 7 p.m. on April 6, 2013 and 7 a.m. to 7 p.m. on April 7, 2013. This action is necessary to provide to provide for the safety of the participants, crew, spectators, sponsor vessels of the event, and general users of the waterway. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by Coast Guard Patrol Commander or through an official supporting vessel.

**DATES:** The regulations in 33 CFR 100.1101 will be enforced from 7 a.m. to 7 p.m. on April 6, 2013 and 7 a.m. to 7 p.m. on April 7, 2013.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Petty Officer Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *D11-PF-MarineEventsSanDiego@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Special Local Regulation for the 2013 San Diego Crew Classic in 33 CFR 100.1101 from 7 a.m. to 7 p.m. on April 6, 2013 and from 7 a.m. to 7 p.m. on April 7, 2013.

Under provisions of 33 CFR 100.1101, a vessel may not enter the regulated area, unless it receives permission from the COTP. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1101 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port or his designated representative determines that the regulated area need not be enforced for the full duration stated on this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: March 6, 2013.

**S.M. Mahoney,**

*Captain, US Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2013–06587 Filed 3–21–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF EDUCATION

## 34 CFR Parts 600, 602, 603, 668, 682, 685, 686, 690, and 691

**[Docket ID ED–2010–OPE–0004]**

**RIN 1840–AD02**

## Program Integrity Issues

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Final regulations; revisions to preamble.

**SUMMARY:** On October 29, 2010, the Department of Education published in the **Federal Register** final regulations for improving integrity in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA) (October 29, 2010, final regulations). This document revises the preamble discussion to the October 29, 2010, final regulations in accordance with the remand in *Association of Private Sector Colleges and Universities* v. *Duncan* (D.C. Cir. 2012).

**DATES:** These revisions apply to the preamble for the October 29, 2010, regulations (75 FR 66832), which were generally effective July 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Marty Guthrie, U.S. Department of Education, 1990 K Street NW., Room 8042, Washington, DC 20006. Telephone: (202) 219–7031 or by email at *Marty.Guthrie@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the contact person listed in this section.

**SUPPLEMENTARY INFORMATION:** The October 29, 2010, final regulations (75 FR 66832) amended the regulations for Institutional Eligibility Under the HEA, the Secretary's Recognition of Accrediting Agencies, the Secretary's Recognition Procedures for State Agencies, the Student Assistance General Provisions, the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, the Federal Pell Grant Program, and the Academic Competitiveness Grant (AGC) and National Science and Mathematics Access to Retain Talent Grant (National Smart Grant) Programs. This document revises the preamble discussion to the October 29, 2010, final regulations in accordance with the remand in *Association of Private Sector Colleges and Universities* v. *Duncan,* 681 F.3d 427 (D.C. Cir. 2012).

We note that the Court in *APSCU* v. *Duncan,* also remanded certain provisions of the Department's misrepresentation regulations for revision consistent with the Court's opinion. We will be publishing a separate notice in the **Federal Register** addressing this issue.

### Electronic Access to This Document

The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.*

At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.*

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Revisions to the Preamble of the Final Rule**

*Current Safe Harbors*

We are revising our response to the third comment under the Current Safe Harbors heading. Our discussion and response to this comment that begins in the first column on page 66874 is revised as follows:

''Discussion: The Department believes that an institution's resolute and ongoing goal should be for its students to complete their educational programs. Employees should not be rewarded beyond their standard salary or wages for their contributions to this fundamental duty.

The safe harbor in § 668.14(b)(22)(ii)(E), as promulgated on November 1, 2002 (67 FR 67048), permits compensation based upon students successfully completing their educational programs or one academic year of their educational programs, whichever is shorter. However, as we discussed in the NPRM, it is the Department's experience that institutions use this safe harbor to provide recruiters with compensation that is ''indirectly'' based upon securing enrollments in violation of the HEA. 20 U.S.C. 1094(a)(20) (''The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance. * * *'') In other words, because a student cannot successfully complete an educational program without first enrolling in the program, the compensation for securing program completion requires the student's enrollment as a necessary preliminary step.

This is particularly the case with short-term, accelerated programs, where the Department was advised in comments received during and following the November 2009 Negotiated Rulemaking Meeting that there is the potential for increased efforts by institutions to rely upon this safe harbor to provide incentives to recruiters. Concern over recruiters guiding students to short-term programs was not as prominent when the safe harbor was adopted in 2002 because the number of such programs was not as widespread then, having grown dramatically in more recent years. The shorter the program, the more likely the student will complete the program, thus rewarding enrollment and completion notwithstanding the student's academic performance or the quality of the program. We are also concerned that, if this safe harbor is not removed, recruiters will steer students to the shortest possible programs regardless of whether the programs are appropriate for the students, or to an even smaller number of program options where the recruiter believes completion is most likely to be obtained. As the primary function of admissions representatives is to serve as counselors, their primary goal should be to make sure that the student is a good fit for the institution and the program, to make sure that the institution and program are a good fit for the student, and not to enroll the student if this is not the case. A decision by a recruiter not to enroll a student should be considered every bit as valuable to the institution as a decision to enroll the student, if, in fact, the student and the institution or the program are not a good match.

As discussed in the NPRM, the Department also is aware of schools that have devised and operated grading policies that all but ensure that students who enroll will graduate, regardless of their academic performance. Thus, as explained in comments received during and following the November 2009 Negotiated Rulemaking Meeting, the Department believes that retaining this safe harbor could contribute to lowered admissions standards, misrepresented program offerings, lowered academic progress standards, altered attendance records, and a lack of meaningful emphasis on academic performance and program quality. We also note that recruiters are aware that many of the schools that would be most affected by the removal of the safe harbor have poor completion rates—approximately 10 to 25 percent.

As a result, if the safe harbor were retained, in order for recruiters to secure incentive compensation, they would likely need to enroll even more marginal students, and make even greater unfounded claims about a program, to increase the potential that some will actually complete their programs of instruction. And, of course, there is the further potential for unscrupulous actors to manipulate the process to obtain student completions, through grade or attendance manipulation.

Accordingly, this safe harbor ultimately does not benefit students, and because institutions have sufficient reasons to value student retention and completion without providing incentives to recruiters, we believe it is appropriate to remove the safe harbor.

We disagree with the commenter who stated that removal of this safe harbor is inconsistent with the Administration's goal of increasing student retention in postsecondary education. Institutions should not need this safe harbor to demonstrate their commitment to retaining students within their program of instruction.

We disagree with the commenters who indicated that incentive payments under this safe harbor have a positive effect on a student's educational experience. There is nothing about the making of incentive payments to recruiters based upon student retention that enhances the quality of a student's educational experience or makes it more likely a student will complete a program. If the program of instruction has value and is appropriate for a student's needs, a student will likely enjoy a positive educational experience regardless of the manner in which the student's recruiter is compensated, whereas retention bonuses can cause recruiters to pressure students to remain enrolled even when a student is dissatisfied with a program or is eligible for a refund of charges paid. Rather than providing a benefit by bolstering the quality of students that are enrolled, retention of the safe harbor is likely to perpetuate abuses by fostering enrollment and retention in programs that do not best reflect a student's needs or desires, but are designed to secure completion of the programs at all costs.

Finally, the removal of this safe harbor would not permit payments based on a student's employment in the field of study after graduation. Here again, the potential for manipulation and abuse is significant. The Department's experience has shown that some institutions pay incentive compensation to recruiters based upon claims that the students whom the recruiter enrolled graduated and received jobs in their fields of study. Yet, included among the abuses the Department has witnessed, for example, is a circumstance where the institution counted a student who studied culinary arts and was working in an entry-level position in the fast food industry as being employed in his field of study. Such a position did not require the student to purchase a higher education 'credential.' As a result, we believe that paying bonuses to recruiters based upon retention, completion, graduation, or placement should be considered to violate the HEA's prohibition on the payment of incentive compensation.''

We are also amending our response to the fourth comment under the *Current Safe Harbors* heading. Our discussion and response to this comment found in the third column on page 66874 is amended by adding the following after the second paragraph of our discussion:

''In further response to commenters' questions about whether an institution could provide incentive compensation to employees in college diversity offices who recruit minority students, we note that the HEA prohibits all direct or indirect payments of incentive compensation to personnel or staff engaged in student recruitment and does not distinguish between incentives for personnel or staff recruitment actions that could have certain effects, e.g., recruitment of a well-qualified or diverse student body. The prohibition thus includes a prohibition on paying incentive compensation for efforts to promote diversity at an institution. The Department's objective in removing all of the safe harbors is to separate the meritorious performance of all employees from an enrollment-based compensation system, consistent with the statute's language, regardless of what the purpose of the enrollment might be.

We also wish to reiterate that the incentive compensation prohibition is designed to protect all students from receiving undue pressure to enroll or to graduate. The statute and the implementing regulations ban all compensation to persons and entities that directly or indirectly provide an incentive to encourage enrollment. The incentive compensation ban is designed, among other things, to keep students of all races and backgrounds from being urged or cajoled into enrolling in a program that will not best meet their needs. Minority and low income students are often the targeted audience of recruitment abuses, and our regulatory changes are intended to end that abuse. It is our expectation and objective that enrollment of students, including minority students, against their best educational interests would be reduced with the elimination of improper incentive compensation.

In point of fact, there never was a safe harbor addressing minority recruitment; neither the prior regulations nor these regulations provided a change in this area. Institutions are encouraged to continue to enroll all students in programs of instruction that are designed to promote their academic achievement and occupational success. We believe our regulations encourage and support this outcome.''

**List of Subjects**

*34 CFR Part 600*

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

*34 CFR Part 602*

Colleges and universities, Reporting and recordkeeping requirements.

*34 CFR Part 603*

Colleges and universities, Vocational education.

*34 CFR Part 668*

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

*34 CFR Part 682*

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

*34 CFR Part 685*

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

*34 CFR Part 686*

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

*34 CFR Part 690*

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

*34 CFR Part 691*

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

Dated: March 18, 2013.

**Arne Duncan,**

*Secretary of Education.*

[FR Doc. 2013–06656 Filed 3–21–13; 8:45 am]

BILLING CODE 4000–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2011–1026; FRL–9380–6]**

## Banda de Lupinus albus doce (BLAD); Exemption From the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of banda de *Lupinus albus* doce (BLAD), a naturally occurring polypeptide from the catabolism of a seed storage protein (β-conglutin) of sweet lupines (*Lupinus albus*), in or on all food commodities when applied as a fungicide and used in accordance with label directions and good agricultural practices. On behalf of Consumo Em Verde S.A., Bert Volger of Ceres International LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of BLAD under the FFDCA.

**DATES:** This regulation is effective March 22, 2013. Objections and requests for hearings must be received on or before May 21, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–1026, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Menyon Adams, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8496; email address: *adams.menyon@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following

list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–1026 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 21, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–1026, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Background and Statutory Findings

In the **Federal Register** of March 14, 2012 (77 FR 15012) (FRL–9335–9), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 1F7917) by Bert Volger of Ceres International LLC, 1087 Heartsease Drive, West Chester, PA 19382, on behalf of Consumo Em Verde S.A, Biotecnologia De Plantas, Parque Technologico de Cantanhede, Nucleo 04, Lote 2, 3060–197 Cantanhede, Portugal. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of BLAD. This notice referenced a summary of the petition prepared by the petitioner, Bert Volger of Ceres International LLC (on behalf of Consumo Em Verde S.A.), which is available in the docket via *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

## III. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), EPA reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information to human risk. EPA also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

BLAD, used as a fungicide, is a naturally occurring 20 kilo Dalton (kDa) polypeptide of β-conglutin formed during days 4 to 12 of the germination process of the flowering plant, sweet lupines (*Lupinus albus*). It is also characterized as a fragment of the amino acid sequence of β-conglutin and the main storage protein in sweet lupines with a long history of safe use in human and livestock consumption without any adverse effects. (Ref. 1).

Lupines albus, commonly known as white or sweet lupine or lupin, is a member of the genus Lupinus in the family of Fabaceae. Lupines albus contains the full range of essential amino acids and for hundreds of years has been widely cultivated worldwide; for example, in the Mediterranean Basin and also Egypt, Sudan, Ethiopia, Syria, Central and Western Europe, the United States and South America, Tropical and Southern Africa, Russia and the Ukraine. (Ref. 1).

BLAD is directly extracted from the flowering plant, sweet lupines. It has a dark brown color with a sweet odor and is 60% biodegradable within 14 days after application. (Ref. 1). Data submitted and reviewed by the Agency demonstrate that BLAD has a nontoxic mode of action in that it binds to chitin, a major component of the fungal cell wall, thereby inhibiting any fungal

growth. (Ref. 1). More specifically, BLAD degrades chitin by catalyzing and successfully removing the N-acetyl-D-glucosamine terminal monomers, resulting in the destruction of the fungal cells. (Ref. 1).

All of the data requirements to support a tolerance exemption were fulfilled by the applicant. EPA concluded that the data are acceptable and no additional data are required. No acute, subchronic, or chronic toxicity endpoints were identified in guideline studies or in data obtained from open technical literature. Moreover, BLAD is not a mutagen, and is not a developmental toxicant. There are no known effects on endocrine systems via oral, dermal, or inhalation exposure. (Ref. 1).

Summaries of the toxicological data submitted by the petitioner in support of this tolerance exemption follows:

Acute toxicity. Acute toxicity studies confirm BLAD's low toxicity profile for all routes of exposure. For more information about the Toxicity Categories mentioned in the summaries directly below refer to 40 CFR 156.62.

1. The acute oral median lethal dose ($LD_{50}$) in rats was greater than 5,000 milligrams per kilogram of bodyweight (mg/kg/bwt). There were no observed toxicological effects on the test subjects in the acute oral study submitted by the petitioner. BLAD is classified as Toxicity Category IV for acute oral toxicity. (Harmonized Guideline 870.1100; Master Record Identification (MRID) No. 48587904). (Ref. 1).

2. The acute dermal $LD_{50}$ in rats was greater than 2,000 mg/kg/bwt. BLAD is classified as Toxicity Category III for acute dermal toxicity. (Harmonized Guideline 870.1200; MRID No. 48587905). (Ref. 1).

3. The acute inhalation median lethal concentration ($LC_{50}$) was greater than 5.34 milligrams per liter (mg/L) in rats and showed no significant inhalation toxicity. BLAD is classified as Toxicity Category IV for acute inhalation toxicity. (Harmonized Guideline 870.1300; MRID No. 48587906). (Ref. 1).

4. A primary eye irritation study on rabbits indicates that BLAD is mildly irritating to the eye. BLAD is classified as Toxicity Category III for primary eye irritation. (Harmonized Guideline 870.2400; MRID No. 48587907). (Ref. 1).

5. A skin irritation study on rabbits indicates that BLAD is mild to slightly irritating to the skin. BLAD is classified as Toxicity Category IV for primary dermal irritation. (Harmonized Guideline 870.2500; MRID No. 48587908). (Ref. 1).

6. Data indicate that BLAD is not a contact dermal sensitizer. (Harmonized Guideline 870.2600; MRID No. 48587909). (Ref. 1).

Scientific rationale and public literature were provided to fulfill the following data requirements: 90-Day Oral (Harmonized Guideline 870.3100), 90-Day Dermal (Harmonized Guideline 870.3250), 90-Day Inhalation (Harmonized Guideline 870.3465), Prenatal Development (Harmonized Guideline 870.3700), Bacterial Reverse Mutation Test (Harmonized Guideline 870.5100), *In vitro* Mammalian Chromosome Aberration (Harmonized Guideline 870.5375). (Ref. 1).

According to the acceptable scientific information submitted in lieu of a study in satisfying the data requirements provided to EPA (MRID No's. 485879109–48587914), BLAD has the following properties and characteristics:

i. BLAD is used in human and animal nutrition as a food and feed item; and

ii. BLAD has a nontoxic mode of action against fungal pests and 60% is biodegradable within 14 days in the environment, thereby minimizing any potential for toxic risk, such that there is no concern for potential exposure. (Ref. 1).

Additionally, EPA reviewed studies pertaining to the chronic exposure of lupine products. One study of the potential reproductive and developmental toxicity of lupin protein was identified in the literature (Ref. 2). Dietary administration of 20% lupin protein isolated from *Lupinus albus* administered to 3 generations of rats for 270 days each (providing 7 to 35.4 grams lupin protein/kg/bwt/day over the study duration) was reported to result in significantly decreased relative liver weights in both sexes in the second and third generation rats; however, these changes were not accompanied by any histological changes. No other effects on organ weights occurred, and the lupin protein was reported to have no effect on either fertility or reproductive parameters in any of the generations (Ref. 2). Studies of the mutagenic/genotoxic potential of lupin or its fractions were not identified in the literature, nor were traditional carcinogenicity studies; however, chronic life-time studies (*i.e.,* 700 and 800 days) in rats did not reveal any evidence of carcinogenicity in lupin-treated animals, and no signs of toxicity or decreases in body weight occurred (Refs. 3 and 4).

## IV. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

### *A. Dietary Exposure*

Dietary risks to humans are considered negligible, based on the lack of dietary toxicological endpoints for BLAD and its nontoxic mode of action as a fungicide. No acute, subchronic, mutagenic, immunotoxic, developmental, or chronic dietary hazards were identified in the studies and information submitted to support this exemption from the requirement of a tolerance. Based on BLAD's lack of dietary toxicity hazards for mammals, no dietary exposure concerns are expected.

1. *Food.* While the proposed use pattern may result in dietary exposure with possible residues in or on agricultural commodities, minimal to no risk is expected for the general population, including infants and children, or animals because BLAD has low toxicity, has a history of safe consumption and degrades rapidly.

2. *Drinking water exposure.* The potential for transfer of BLAD to surface or ground water associated with intended use applications is considered minimal to non-existent due to the low application rate and rapid biodegradation of BLAD. In the unlikely event that residues of BLAD in water exceed currently existing background levels, the toxicity data demonstrate a lack of toxicity by the oral route of exposure.

### *B. Other Non-Occupational Exposure*

Non-occupational exposure is not expected because BLAD will not be applied in residential settings. BLAD is applied directly to food commodities and degrades rapidly after application.

1. *Dermal exposure.* No non-occupational dermal exposures are expected to result from the agricultural uses of BLAD. Any dermal exposure is expected to be occupational in nature.

2. *Inhalation exposure.* No non-occupational inhalation exposures are expected to result from the agricultural uses of BLAD. Any inhalation exposure is expected to be occupational in nature.

## V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance exemption, EPA consider ''available information concerning the cumulative effects of [a particular

pesticide's] * * * residues and other substances that have a common mechanism of toxicity.''

EPA has not found BLAD to share a common mechanism of toxicity with any other substances, and BLAD does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that BLAD does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine chemicals that have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

## VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that, in considering the establishment of a tolerance or tolerance exemption for a pesticide chemical residue, EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure, unless EPA determines that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data are available to support the choice of a different safety factor.

The acute, subchronic, and developmental toxicity data discussed in Unit III. indicate that BLAD has negligible toxicity. In addition, BLAD is used in human and animal nutrition as a food and feed item, has a nontoxic mode of action against fungal pests, and rapidly degrades in the environment. EPA therefore concludes that there are no threshold effects of concern to infants, children, or adults when BLAD is applied as a fungicide and used in accordance with label directions and good agricultural practices. As a result, EPA concludes that no additional margin of exposure (safety) is necessary.

Moreover, based on the same data and EPA analysis as presented directly above, EPA is able to conclude that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of BLAD when it is applied as fungicide and used in accordance with label directions and good agricultural practices. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has arrived at this conclusion because, considered collectively, the data and information available on BLAD do not demonstrate toxic potential to mammals, including infants and children.

## VII. Other Considerations

### *A. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes for the reasons stated above and because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitations.

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. In this context, EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for BLAD.

## VIII. Conclusions

EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of BLAD. Therefore, an exemption from the requirement of a tolerance is established for residues of BLAD, a naturally occurring polypeptide from the catabolism of a seed storage protein (β-conglutin) of sweet lupines (*Lupinus albus*), in or on food commodities when applied as a fungicide and used in accordance with label directions and good agricultural practices.

## IX. References


1. U.S. EPA. 2012. Memorandum from Miachel Rexrode, Ph.D., Senior Biologist to Menyon Adams, Biologist. Request for a new product registration for β-Conglutin Section 3 with tolerance. Science Review of Product Chemistry, non-Target Organism and Toxicity Data in support of new product registration. U.S. Environmental Protection Agency Office of Pesticide Programs. May 24, 2012.
2. Ballester, D.R.; Brunser, O.; Saitua, M.T.; EgaAa, J.I.; Yaiiez, E.O.; Owen, D.F. 1984. Safety evaluation of sweet lupine *(Lupinus albus* cv. Multolupa). II. Nine-month feeding and multigeneration study in rats. *Food and Chemical Toxicology* 22(1):45–48.
3. Grant, G.; Dorward, P.M.; Pusztai, A. 1993. Pancreatic enlargement is evident in rats fed diets containing raw soybeans (*Glycine rnax*) or cowpeas (*Vigna unguiculata*) for 800 days but not in those fed diets based on kidney beans (*Phaseolus vulgaris*) or lupinseed (*Lupinus angustifolius*). *Journal of Nutrition* 123(12):2207–2215.
4. Grant, G.; Dorward, P.M.; Buchan, W.C.; Armour, J.C.; Pustzai, A. 1995. Consumption of diets containing raw soya beans (*Glycine rnax*), kidney beans (*Phaseolus vulgaris*), cowpeas (*Vigna unguiculata*) or lupin seeds (*Lupinus angustifolius*) by rats for up to 700 days: Effects on body composition and organ weights. *British Journal of Nutrition* 73(1):17–29.


## X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled

''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

### XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 29, 2013.

**Steven Bradbury,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.1319 to subpart D to read as follows:

**§ 180.1319 Banda de *Lupinus albus* doce (BLAD); exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for the residues of Banda de *Lupinus albus* doce (BLAD), a naturally occurring polypeptide from the catabolism of a seed storage protein (β-conglutin) of sweet lupines (*Lupinus albus*), in or on all food commodities when applied as a fungicide and used in accordance with label directions and good agricultural practices.

[FR Doc. 2013–06683 Filed 3–21–13; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 25

**[IB Docket No. 06–154; FCC 12–116]**

## 2006 Biennial Regulatory Review—Revision of the Commission's Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the revision of the Commission's 2006 Biennial Regulatory Review, Report and Order. This notice is consistent with the *Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the requirements.

**DATES:** The amendments to 47 CFR 25.110 and 25.137, published at 78 FR 8417, February 6, 2013, are effective March 22, 2013.

**FOR FURTHER INFORMATION CONTACT:** William Bell, Satellite Division, International Bureau, at (202) 418–0741, or via email at *William.Bell@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This document announces that, on February 6, 2013, OMB approved, for a period of three years, the information collection requirements contained in the Commission's *Report and Order,* FCC 12–116, published at 78 FR 8417, February 6, 2013. The OMB Control Number is 3060–0678. The Commission publishes this notice as an announcement of the effective date of the requirements.

### Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on February 6, 2013, for the information collection requirements contained in the Commission's rules at 47 CFR 25.110 and 25.137.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0678.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control No.:* 3060–0678.

*OMB Approval Date:* March 13, 2013.

*OMB Expiration Date:* March 31, 2016.

*Title:* Part 25 of the Federal Communications Commission's Rules Governing the Licensing of, and Spectrum Usage by, Commercial Earth Stations and Space Stations.

*Form No.:* FCC Form 312; Schedule S.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 1,248 respondents; 1,248 responses.

*Estimated Time per Response:* 0.25–22 hours per response.

*Frequency of Response:* On occasion and annual reporting requirements; third-party disclosure requirement; recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 301, 302, 303, 307, 309, 332 and 705 unless otherwise noted.

*Total Annual Burden Hours:* 9,765 hours.

*Total Annual Cost Burden:* $22,375,860.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* On September 28, 2012, the Federal Communications Commission (''Commission'') released a Report and Order (R&O) titled, ''In the Matter of 2006 Biennial Regulatory Review—Revision of Part 25,'' FCC 12–116. With two exceptions, the amendments are non-substantive; that is, they neither impose new requirements nor eliminate or alter existing requirements. The two substantive amendments adopted in the R&O do not increase paperwork burdens. Therefore, the number of respondents, number of responses, annual burden hours and annual costs have not been amended from the previous submission to the Office of Management and Budget (OMB) on September 2, 2010.

In this Report and Order, the Commission amended various provisions of Part 25 of its rules pertaining to licensing and operation of satellite service radio stations. Among other things, the Commission added definitions for several technical terms that appear in Part 25 but are not defined there, and it deleted definitions of terms that are not used in Part 25. The Commission also eliminated redundant text from several rule sections, revised the wording of other provisions that were ambiguous or unduly confusing, updated cross-references to Commission rules or recommendations of the International Telecommunication Union (ITU), and corrected grammatical, spelling, and typographical errors. The two substantive amendments the Commission adopted in this Report and Order amended the rules in minor ways by: (1) Eliminating requirements to identify a radio service and station location in correspondence in 47 CFR 25.110 and (2) codifying an established practice of allowing applicants to cross-reference, rather than re-submit, previously filed information regarding non-U.S.-licensed satellites in 47 CFR 25.137. Collectively, the changes adopted in this Report and Order will facilitate preparation of earth and space station applications, promote compliance with the Commission's operating rules, and ease administrative burdens for applicants, licensees, and the Commission.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–06566 Filed 3–21–13; 8:45 am]

**BILLING CODE 6712–01–P**

# Proposed Rules

Federal Register
Vol. 78, No. 56
Friday, March 22, 2013

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

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**[Docket No. FCIC- 12–0008]**

**RIN 0563–AC38**

## Common Crop Insurance Regulations; Arizona-California Citrus Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Arizona-California Citrus Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of policyholder, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2015 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business April 22, 2013 and will be considered when the rule is to be made final.

**ADDRESSES:** FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–12–0008, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

*Privacy Act:* Anyone is able to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice.*

**FOR FURTHER INFORMATION CONTACT:** Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

### Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the

kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

**Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11, or 7 CFR part 400, subpart J for determinations of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

**Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.121 Arizona-California Citrus Crop Insurance Provisions, to be effective for the 2015 and succeeding crop years. Several requests have been made for changes to improve the insurance coverage offered, address program integrity issues, simplify program administration, and improve clarity of the policy provisions.

Some of the proposed changes are a result of the United States Department of Agriculture (USDA) Acreage Crop Reporting Streamlining Initiative, which has an objective of using common standardized data and terminology to consolidate and simplify reporting requirements for farmers. USDA has made a concerted effort to standardize terms between agencies as much as possible to allow the sharing of data, thereby reducing the burden on producers in reporting their information. Many of the changes proposed in this rule are a part of that effort. As part of this initiative FCIC is proposing to change the term ''crop'' to ''citrus fruit commodity'' and to rename the ''citrus fruit commodities'' to be consistent with the crop names used by other USDA agencies. This change will allow information to be shared among agencies, thereby relieving producers of the burden of reporting the same information multiple times. The addition of the term ''citrus fruit group'' is intended to negate the impact of changes to ''citrus fruit commodity'' names on coverage levels, unit structure, and administrative fees. The ''citrus fruit groups'' for each ''citrus fruit commodity'' will be listed in the Special Provisions. The ''citrus fruit groups'' will be the basis for determining coverage levels and identifying the insured crop. These proposed changes are expected to result in no change from the current basis by which coverage levels are selected, basic units are established, and administrative fees are assessed.

To be consistent with the objectives of the Acreage Crop Reporting Streamlining Initiative, FCIC is planning to replace the category of ''type'' in the actuarial documents with four categories named ''commodity type,'' ''class,'' ''subclass,'' and ''intended use.'' FCIC is also planning to replace the category of ''practice'' in the actuarial documents with four categories named ''cropping practice,'' ''organic practice,'' ''irrigation practice,'' and ''interval.'' Proposed changes to the Arizona-California Citrus Crop Provisions, such as replacing references to the term ''type'' with the term ''commodity type'' will provide an avenue for this transition.

The proposed changes are as follows:

1. FCIC proposes to remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict. This same information is contained in the Basic Provisions. Therefore, it is duplicative and should be removed in the Arizona-California Citrus Crop Insurance Provisions.

FCIC proposes to remove all section titles of the Basic Provisions. This information is currently contained in parenthesis following references to section numbers of the Basic Provisions throughout the Arizona-California Citrus Crop Insurance Provisions.

2. Section 1—FCIC proposes to revise the definition of ''carton'' to allow the container size and weight to be changed by the Special Provisions. This will provide flexibility to update these figures as industry standards change. This will also allow standards to be added through the Special Provisions for any other citrus fruit commodities designated as insurable in the actuarial documents. FCIC proposes to revise the list of ''citrus fruit commodities'' to align with the proposed ''citrus fruit commodity'' names.

FCIC proposes to remove the definition of ''crop'' and replace it with a definition of ''citrus fruit commodity'' since insurable commodities are identified in the actuarial documents. FCIC proposes to replace the term ''crop'' with the term ''citrus fruit commodity'' where appropriate throughout the Crop Provisions. However, in some places the term ''crop'' will be changed to ''insured crop'' or ''agricultural commodity'' which are defined in the Basic Provisions or the term ''crop'' may be retained if using the common meaning. The current definition of ''citrus fruit crop'' states that the crops are listed in the Special Provisions. Adding the ''citrus fruit commodity'' names to the Arizona-California Crop Insurance Provisions will make it easier to determine the crops that are insurable under the Arizona-California Citrus Crop Insurance Provisions. In some cases, the new ''citrus fruit commodities'' will result in several of the current ''crops'' being combined into a single ''citrus fruit commodity.'' For example, the current crops ''Navel,'' ''Valencia,'' and ''Sweet'' will all fall under the new ''citrus fruit commodity'' of ''oranges.'' This change is being proposed because of the Acreage Crop Reporting Streamlining Initiative. This proposed change in terminology does not change the varieties of citrus that are insurable.

FCIC proposes to add the definition of ''citrus fruit group.'' The term ''citrus fruit group'' refers to a method of grouping commodity types within the ''citrus fruit commodity'' through the Special Provisions for the purposes of electing coverage levels, establishing

basic units, guarantees, and assessing administrative fees. This change is being proposed because of the Acreage Crop Reporting Streamlining Initiative.

FCIC proposes to add the definition of ''commodity type'' because this is the category that will replace type in the actuarial documents that is applicable to the Arizona-California Citrus Crop Provisions. The expected ''commodity types'' and ''citrus fruit groups'' are as follows:

| Citrus fruit commodity | Commodity type | Citrus fruit group |
|---|---|---|
| Grapefruit | No Commodity Type Specified | A |
| Lemons | No Commodity Type Specified | B |
| Oranges | Navel | C |
| Oranges | Valencia | D |
| Oranges | Sweet | E |
| Mandarins/Tangerines | Clementine | F |
| Mandarins/Tangerines | W. Murcott | F |
| Mandarins/Tangerines | All Other | F |
| Tangelos | Minneola | G |
| Tangelos | Orlando | H |

FCIC proposes to remove the definition of ''dehorning'' because this term is no longer used with the revision of section 3.

FCIC proposes to add the definitions of ''graft,'' ''interstock,'' ''scion,'' and ''topwork.'' The term ''topwork'' is proposed to be added because it is used in a provision proposed to be added to section 6 that will require the insured trees to have reached a designated growing season after ''topwork'' to be insurable. The terms ''graft,'' ''interstock,'' and ''scion'' are proposed to be added because they are used in the proposed definition of ''topwork.''

FCIC proposes to remove the definition of ''variety'' because all references to the term ''variety'' have been removed from the Crop Provisions and replaced with the term ''commodity type.''

3. Section 2—FCIC proposes to revise section 2(a) to state that basic units will be established in accordance with section 1 of the Basic Provisions. The definition of basic unit in section 1 of the Basic Provisions states that basic units include all insurable acreage of the insured crop in the county on the day coverage begins for the crop year in which you have 100 percent crop share or which is owned by one person and operated by another person on a share basis. Because each ''citrus fruit group'' will be considered a separate insured crop, separate basic units will be established for each ''citrus fruit group.'' For example, under the new ''citrus fruit commodity'' of ''oranges'' all Navel oranges could be one ''citrus fruit group'' and all Valencia oranges could be another ''citrus fruit group.'' This means that all of the policyholder's Navel orange acreage can be insured as one basic unit and all of the policyholder's Valencia orange acreage can be insured as a separate basic unit. This proposed change in terminology will allow policyholders to keep their current unit structure under the new classification system.

FCIC proposes to revise section 2(b) by adding language to allow optional units by commodity type if allowed by the Special Provisions. Adding this language will give FCIC the flexibility to allow optional units by commodity type for some citrus fruit commodities or citrus fruit groups where it may be appropriate, but not for others.

4. Section 3—FCIC proposes to revise section 3(a) by adding language to allow the policyholder to select separate coverage levels and price elections by ''citrus fruit group.'' For example, under the new citrus fruit commodity of ''oranges'' all Navel oranges will be grouped together as one ''citrus fruit group'' so that the policyholder must select the same coverage level and price election for all fruit insured under this ''citrus fruit group.'' These revisions to terminology will allow policyholders to continue to elect coverage levels and price elections on the same basis they currently elect coverage levels and price elections. FCIC also proposes to update the example in this section to be consistent with the proposed changes to this section.

FCIC proposes to revise section 3(b) by removing the years in the example. This will prevent the provision from appearing out of date in the future.

FCIC proposes to designate the undesignated paragraph following section 3(c) as section 3(d). FCIC proposes to revise newly designated section 3(d) to add provisions to specify the adjustment to be made, if an event or action occurs that may reduce the yield potential, based on when the situation occurred. The current provision states that FCIC will reduce the yield used to establish the production guarantee, but does not provide additional details. The proposed section 3(d)(1) states that if a situation that may reduce the yield occurred before the beginning of the insurance period, the yield used to establish the production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss. The proposed section 3(d)(2) states that if a situation that may reduce the yield occurred after the beginning of the insurance period and the policyholder notifies the insurance provider by the production reporting date, the yield used to establish the production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss. The proposed section 3(d)(3) states that if a situation that may reduce the yield occurred after the beginning of the insurance period and the policyholder fails to notify the insurance provider by the production reporting date, an amount equal to the reduction in the yield will be added to the production count calculated in section 11(c) due to uninsured causes and the insurance provider may reduce the yield used to establish the production guarantee for the subsequent crop year. Adding these provisions removes any ambiguity regarding the consequences when situations occur that will reduce the yield potential of insured acreage.

FCIC also proposes to revise newly designated section 3(d) to remove the list of possible situations that affect yield and instead refer back to section 3(c), which contains the same information. This eliminates redundancy and is consistent with other perennial Crop Provisions, such as apples, grapes, and stonefruit.

5. Section 6—FCIC proposes to revise the introductory paragraph of section 6 by adding language to allow the insured crop to be all acreage of each ''citrus fruit group.'' Because the ''citrus fruit groups'' will be considered separate

insured crops, they will be assessed separate administrative fees in accordance with section 7 of the Basic Provisions. This proposed change also allows the policyholder to elect to insure one ''citrus fruit group'' and not another ''citrus fruit group'' within the same ''citrus fruit commodity.'' However, since the current ''citrus fruit crops'' will become ''citrus fruit groups,'' this proposed change should not result in any changes to the administrative fees the policyholder pays or the crops the policyholder is able to elect to insure.

FCIC proposes to revise section 6(b) to clarify that the insured crop must be grown on rootstock and trees adapted to the area. The current provision states that the insured crop must be adapted to the area, but it is actually the rootstock and trees the insured crop is grown on that need to be adapted to the area.

FCIC proposes to revise section 6(e) by adding a provision to require trees to have reached the fifth growing season after topwork, unless otherwise provided in the Special Provisions or if acreage is inspected and insurance is allowed by written agreement. This provision is being proposed to address situations where established trees are ''top-worked.'' Since trees that have been topworked will produce little or no fruit for several years after grafting, it is not appropriate to insure the fruit these trees produce until the trees have reached the designated age.

6. Section 8—FCIC proposes to revise section 8(a)(2)(i) by adding the names of the counties in Southern California that have an end of insurance date of August 31. The current provision indicates Southern California has an end of insurance date of August 31, but does not specify what areas are considered Southern California.

7. Section 9—FCIC proposes to add provisions in section 9(a) that allow insects and disease to be insurable causes of loss unless damage is due to insufficient or improper application of control measures. FCIC proposes to remove the provisions in section 9(b)(1) that exclude insects and disease from insurability unless adverse weather prevents the proper application of control measures or causes properly applied control measures to be ineffective or causes disease or insect infestation for which no effective control mechanism is available. These changes will provide more comprehensive coverage and are consistent with revisions to other crop policies.

8. Section 10—FCIC proposes to revise section 10 by adding a new section 10(a) to clarify the policyholder must leave representative samples for appraisal purposes in accordance with the Basic Provisions. The Basic Provisions stipulate representative samples must be left if required by the Crop Provisions. Representative samples are necessary in order to appraise damaged production for claims purposes. The rest of the provisions in section 10 are proposed to be redesignated.

FCIC proposes to revise the newly redesignated section 10(b)(2) to clarify if the policyholder intends to claim an indemnity on any unit, the policyholder must notify the insurance provider at least 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest so that the insurance provider may have an opportunity to inspect it. This change provides a timeframe for reporting damage and is consistent with revisions to other perennial crop policies.

9. Section 11—FCIC proposes to revise section 11(b) by removing the phrase ''crop, or variety if applicable'' and inserting the term ''commodity type'' in its place. This change is being proposed because ''commodity type'' is the category in the actuarial documents that is applicable to determining the amount of insurance for the unit. This is a proposed change in terminology and does not change how claims are settled.

FCIC proposes to revise section 11(c)(1)(iv) by removing the term ''crop'' and adding the term ''insured crop'' in its place. This change is being made to clarify that the provision is referencing the ''insured crop'' as defined in the Basic Provisions and section 6 of the Crop Provisions.

FCIC proposes to revise section 11(f) to clarify that this provision only applies if the policyholder elects the frost protection option. FCIC also proposes to revise this section to clarify that frost protection equipment requirements will be specified in the Special Provisions.

**List of Subjects in 7 CFR Part 457**

Crop insurance, Arizona-California citrus, Reporting and recordkeeping requirements.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2015 and succeeding crop years as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.121 as follows:
■ a. In the introductory text by removing ''2000'' and adding ''2015'' in its place;
■ b. By removing the undesignated paragraph immediately preceding section 1;
■ c. In section 1:
■ i. By revising the definition of ''carton'';
■ ii. By removing the definitions of ''crop,'' ''dehorning,'' and ''variety'';
■ iii. By adding the definitions of ''citrus fruit commodity,'' ''citrus fruit group,'' ''commodity type,'' ''graft,'' ''interstock,'' ''scion,'' and ''topwork'';
■ iv. In the definition of ''crop year'' by removing the term ''citrus'' and adding the term ''insured'' in its place;
■ v. In the definition of ''direct marketing'' by adding the term ''insured'' directly preceding the term ''crop'' in the second sentence; and
■ vi. In the definition of ''interplanted'' by removing the term ''crops'' and adding the term ''agricultural commodities'' in its place;
■ d. In section 2:
■ i. By revising paragraph (a); and
■ ii. In paragraph (b) by removing the term ''only'' and adding the phrase ''by commodity type if allowed by the Special Provisions or'' in its place;
■ e. In section 3:
■ i. By revising paragraph (a);
■ ii. In paragraph (b) by removing the term ''1998'' and adding the term ''current'' in its place and by removing the phrase ''1996 crop year production'' and adding the phrase ''production from two crop years ago'' in its place;
■ iii. In paragraph (c) introductory text by removing the phrase ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)'' and adding the term ''commodity'' directly preceding the term ''type'' in the introductory paragraph;
■ iv. In paragraph (c)(4) introductory text by removing the phrase ''crop, and anytime'' and adding the phrase ''agricultural commodity and any time'' in its place;
■ v. In paragraph (c)(4)(i) by removing the phrase ''crop, and type'' and adding the phrase ''agricultural commodity and commodity type'' in its place;
■ vi. By designating the undesignated paragraph following paragraph (c)(4)(iii) as paragraph (d); and
■ vii. By revising the newly designated paragraph (d);

■ f. In section 4 by removing the phrase ''(Contract Changes)'';
■ g. In section 5 by removing the phrase ''(Life of Policy, Cancellation, and Termination)'';
■ h. In section 6;
■ i. By revising the introductory text;
■ ii. In paragraph (b) by adding the phrase ''grown on rootstock and trees'' following the phrase ''That is''; and
■ iii. By revising paragraph (f);
■ i. Revise section 7;
■ j. In section 8:
■ i. In paragraph (a) introductory text by removing the phrase ''(Insurance Period)'';
■ ii. In paragraph (a)(1) by removing the space between the number ''10'' and the term ''day'' and adding a hyphen in its place and by adding the term ''insured'' directly preceding the phrase ''crop or to determine the condition of the grove'';
■ iii. By revising paragraph (a)(2)(i);
■ iv. In paragraph (a)(2)(iii) by removing the term ''citrus crops'' and adding the term ''citrus fruit commodities'' in its place; and
■ v. In paragraph (b) introductory text by removing the phrase ''(Insurance Period)'';
■ k. In section 9:
■ i. In paragraph (a) introductory text by removing the phrase ''(Cause of Loss)'';
■ ii. In paragraph (a)(5) by removing the term ''or'' after the semicolon;
■ iii. In paragraph (a)(6) by removing the period at the end of the sentence and adding a semicolon in its place;
■ iv. By adding new paragraphs (a)(7) and (8); and
■ v. By revising paragraph (b);
■ l. In section 10:
■ i. By redesignating paragraph (a) as (b)(1);
■ ii. By redesignating paragraph (b) as (b)(2);
■ iii. By adding a new paragraph (a);
■ iv. By designating the introductory text as paragraph (b);
■ v. In the newly designated paragraph (b) by removing the phrase ''(Duties in the Event of Damage or Loss)'';
■ vi. In the newly designated paragraph (b)(2) by removing the phrase ''before beginning to harvest any damaged production'' and adding the phrase ''at least 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest'' in its place; and by adding the term ''insured'' directly preceding the phrase ''crop until after we have given you written consent to do so'';
■ m. In section 11:
■ i. In paragraph (b)(1) by removing the phrase ''crop, or variety if applicable,'' and adding the term ''commodity type'' in its place;
■ ii. In paragraph (b)(2) by removing the phrase ''crop, or variety, if applicable'' and adding the phrase ''commodity type'' in its place;
■ iii. In paragraph (b)(4) by removing the phrase ''variety, if applicable'' and adding the phrase ''commodity type'' in its place;
■ iv. In paragraph (c)(1)(iv) by removing the term ''crop'' in all three places it appears and adding the term ''insured crop'' in its place; and
■ v. By revising paragraph (f).

The revisions and additions read as follows:

**§ 457.121 Arizona-California citrus crop insurance provisions.**

* * * * *

1. * * *

* * * * *

*Carton.* The standard container for marketing the fresh packed citrus fruit commodity as shown below unless otherwise provided in the Special Provisions. In the absence of marketing records on a carton basis, production will be converted to cartons on the basis of the following average net pounds of packed fruit in a standard packed carton unless otherwise provided in the Special Provisions.

| Container size | Citrus fruit commodity | Pounds |
|---|---|---|
| Container #58 ... | Oranges ..... | 38 |
| Container #58 ... | Lemons ..... | 40 |
| Container #59 ... | Grapefruit ..... | 32 |
| Container #63 ... | Mandarins/Tangerines. | 25 |
| Container #63 ... | Tangelos ..... | 25 |

*Citrus fruit commodity.* Citrus fruit as follows:

(1) Oranges;
(2) Grapefruit;
(3) Tangelos;
(4) Mandarins/Tangerines;
(5) Lemons; and
(6) Any other citrus fruit commodity designated in the actuarial documents.

*Citrus fruit group.* A designation in the Special Provisions used to identify commodity types within a citrus fruit commodity that may be grouped together for the purposes of electing coverage levels and identifying the insured crop.

*Commodity type.* A specific subgroup of a commodity having a characteristic or set of characteristics distinguishable from other subgroups of the same commodity.

* * * * *

*Graft.* To unite a bud or scion with a rootstock or interstock in accordance with recommended practices to form a living union.

* * * * *

*Interstock.* The area of the tree that is grafted to the rootstock.

* * * * *

*Scion.* A detached living portion of a plant joined to a rootstock or interstock in grafting.

* * * * *

*Topwork.* Grafting a scion onto a pruned scaffold limb of an interstock.

2. * * *

(a) Basic units will be established in accordance with section 1 of the Basic Provisions.

* * * * *

3. * * *

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election and coverage level for each citrus fruit group you elect to insure. The price election you choose for each citrus fruit group need not bear the same percentage relationship to the maximum price offered by us for each citrus fruit group. For example, if you choose one hundred percent (100%) of the maximum price election for the citrus fruit group for Valencia oranges, you may choose seventy-five percent (75%) of the maximum price election for the citrus fruit group for Navel oranges. However, if separate price elections are available by commodity type within each citrus fruit group, the price elections you choose for each commodity type must have the same percentage relationship to the maximum price offered by us for each commodity type within the citrus fruit group.

* * * * *

(d) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any such situation listed in section 3(c) that may occur. If you fail to notify us of any situation in section 3(c), we will reduce your production guarantee as necessary at any time we become aware of the circumstance. If the situation in 3(c) occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss;

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) After the beginning of the insurance period and you fail to notify

us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 11(c) due to uninsured causes. We may reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees.

* * * * *

6. * * *

In accordance with section 8 of the Basic Provisions, the insured crop will be all the acreage in the county of each citrus fruit group you elect to insure and for which a premium rate is provided by the actuarial documents:

* * * * *

(f) That is grown on trees that have reached at least:

(1) The sixth growing season after being set out, unless otherwise provided in the Special Provisions or if we inspect and approve a written agreement to insure such acreage; or

(2) The fifth growing season after topwork, unless otherwise provided in the Special Provisions or if we inspect and approve a written agreement to insure such acreage.

7. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to interplanted acreage, citrus interplanted with another perennial agricultural commodity is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy.

8. * * *

(a) * * *

(2) * * *

(i) August 31 for:

(A) Navel oranges; and

(B) Southern California lemons (Imperial, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties);

* * * * *

9. * * *

(a) * * *

* * * * *

(7) Insects, but not damage due to insufficient or improper application of pest control measures; or

(8) Plant disease, but not damage due to insufficient or improper application of disease control measures.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to the inability to market the citrus for any reason other than actual physical damage from an insurable cause of loss specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. * * *

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

* * * * *

11. * * *

* * * * *

(f) If you elect the frost protection option and we determine that frost protection equipment, as specified in the Special Provisions, was not properly utilized or not properly reported, the indemnity for the unit will be reduced by the percentage of premium reduction allowed for frost protection equipment. You must, at our request, provide us records showing the start-stop times by date for each period the frost protection equipment was used.

* * * * *

Signed in Washington, DC, on March 11, 2013.

**Brandon Willis,**

*Administrator, Federal Crop Insurance Corporation.*

[FR Doc. 2013–06106 Filed 3–21–13; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part Chapter 1

**[Docket No. FDA–2013–N–0260]**

## Provisions of the Food and Drug Administration Safety and Innovation Act Related to Medical Gases; Request for Comments Regarding Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is inviting comments from the public on whether any potential changes to the Federal drug regulations are necessary for medical gases.

**DATES:** Submit electronic or written comments by May 21, 2013.

**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 be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:**

Christine Kirk, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6280, Silver Spring, MD 20993–0002, 301–796–2465, *christine.kirk@fda.hhs.gov;* or

Germaine Connolly, Center for Veterinary Medicine (HFV–116), Food and Drug Administration, 7500 Standish Pl., MPN2, Rockville, MD 20855, 240–276–8331, *germaine.connolly@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On July 9, 2012, President Obama signed the Food and Drug Safety and Innovation Act (FDASIA) (Pub. L. 112–144) into law. Section 1112(a) of FDASIA provides that not later than 18 months after its enactment, the Secretary of Health and Human Services, after obtaining input from medical gas manufacturers and any other interested members of the public, shall determine whether any changes to the Federal drug regulations are necessary for medical gases and submit a report regarding any such changes to the Committee on Health, Education, Labor, and Pensions of the U.S. Senate and the Committee on Energy and Commerce of the U.S. House of Representatives. Section 1112(c)(l) defines ''Federal drug regulations'' to mean ''regulations in title 21 of the Code of Federal Regulations pertaining to drugs.''

Section 1112(b) provides that if the Secretary determines that changes to the Federal drug regulations are necessary for medical gases, the Secretary shall issue final regulations revising the Federal drug regulations with respect to medical gases not later than 48 months after the enactment of FDASIA. FDA is opening this docket to provide the public with an opportunity to submit comments on whether any potential changes to Federal drug regulations are necessary for medical gases.

### II. Opportunities for Comment on Other Medical Gas Dockets

FDASIA also added new sections regarding medical gases to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (see Title XI, Subtitle B, section 1111 of FDASIA, adding new sections 575, 576, and 577 to the FD&C Act). FDA has previously issued two other **Federal Register** notices related to these new sections.

On November 23, 2012 (77 FR 70166), FDA issued a **Federal Register** notice

establishing a public docket (Docket No. FDA–2012–N–1090) for information pertaining to FDA's implementation of the provisions of FDASIA related to medical gases. Interested persons may submit comments relevant to that **Federal Register** notice (see **ADDRESSES**) under Docket No. FDA–2012–N–1090.

On December 18, 2012 (77 FR 74852), FDA issued a notice of availability announcing publication of a draft guidance for industry entitled ''Certification Process for Designated Medical Gases'' (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM332136.pdf*) (Docket No. FDA–2012–D–1197). The draft guidance describes the new certification process created by FDASIA for certain medical gases and explains how FDA plans to implement that process. Interested persons may submit comments regarding the draft guidance (see **ADDRESSES**) under Docket No. FDA–2012–D–1197. Please note that although comments on draft guidance may be submitted at any time, FDA requested that comments be submitted by February 19, 2013, in order to allow adequate time for the comments to be considered while the Agency is preparing final guidance.

## III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: March 18, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–06526 Filed 3–21–13; 8:45 am]

**BILLING CODE 4160–01–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 31**

**[REG–130074–11]**

**RIN 1545–BK54**

## Rules Relating to Additional Medicare Tax; Hearing Cancellation

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

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on proposed regulations under sections 3101(b), 3102, 3202(a), 1401(b), 6205, and 6402 of the Internal Revenue Code; relating to the Additional Hospital Insurance Tax on income above threshold amounts as added by the Affordable Care Act.

**DATES:** The public hearing originally scheduled for April 4, 2013 at 10 a.m. is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Oluwafunmilayo Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on Wednesday, December 5, 2012 (77 FR 72268) announced that a public hearing was scheduled for April 4, 2013, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under sections 3101(b), 3102, 3202(a), 1401(b), 6205, and 6402 of the Internal Revenue Code.

The public comment period for these regulations expired on March 5, 2013. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Monday, March 18, 2013, no one has requested to speak. Therefore, the public hearing scheduled for April 4, 2013, is cancelled.

**LaNita VanDyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2013–06557 Filed 3–21–13; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 57**

**[REG–118315–12]**

**RIN 1545–BL20**

## Health Insurance Providers Fee; Correction

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

**ACTION:** Correction to notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains a correction to a notice of proposed rulemaking and notice of public hearing (REG–118315–12) that was published in the **Federal Register** on Monday, March 4, 2013 (78 FR 14034). The proposed regulations provide guidance on the annual fee imposed on covered entities engaged in the business of providing health insurance for United States health risks.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Langley, Jr. at (202) 622–3130 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The notice of proposed rulemaking and notice of public hearing (REG–118315–12) that is the subject of this correction is under Section 9010 of the Patient Protection and Affordable Care Act.

### Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG–118315–12) contains an error that may prove to be misleading and is in need of clarification.

### Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG–118315–12), that was the subject of FR Doc. 2013–04836, is corrected as follows:

**§ 57.1 [Corrected]**

On page 14042, column 1, line 17 of paragraph (b), the language ''section 9010 of the ACA, as amended.'' is corrected to read ''section 9010 of the ACA.''.

**LaNita VanDyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2013–06701 Filed 3–21–13; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 100 and 165**

**[Docket No. USCG–2012–1057]**

**RIN 1625–AA08; AA00**

## Special Local Regulations and Safety Zones; Recurring Events in Northern New England

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to update special local regulations and permanent safety zones in the Coast Guard Captain of the Port (COTP) Northern New England Zone for annual recurring marine events. When these special local regulations or safety zones are activated and subject to enforcement, this rule would restrict vessels from portions of water areas during these annual recurring events. The revised special local regulations and safety zones would expedite public notification of events, and ensure the protection of the maritime public and event participants from the hazards associated with these annual recurring events.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 21, 2013. Requests for public meetings must be received by the Coast Guard on or before April 12, 2013.

**ADDRESSES:** You may submit comments identified by docket number USCG–2012–1057 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Ensign Elizabeth Morris, Waterways Management Division at Coast Guard Sector Northern New England, telephone 207–767–0398, email *Elizabeth.V.Morris@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### A. Public Participation and Request for Comments

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

*1. Submitting Comments*

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

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2013–0052 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2013–0052 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*3. Privacy Act*

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

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1226, 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones and special local regulations.

Swim events, fireworks displays, and marine events are held on an annual recurring basis on the navigable waters within the Coast Guard COTP Northern New England Zone. In the past, the Coast Guard has established special local regulations, regulated areas, and safety zones for these annual recurring events on a case by case basis to ensure the protection of the maritime public and event participants from the hazards associated with these events. The Coast Guard has not received public comments or concerns regarding the impact to waterway traffic from these annually recurring events.

This rulemaking will update the existing regulation in order to meet the Coast Guard's intended purpose of ensuring safety during these events.

**Discussion of Proposed Rule**

The Coast Guard proposes to amend 33 CFR 100.120 (Special Local Regulations) and 33 CFR 165.171 (Safety Zones). The final rule was originally published at 76 FR 17530 on March 30, 2011.

The proposed rule would update the list of annual recurring events in the existing regulation for the Coast Guard COTP Northern New England Zone. The Tables provide the event name, sponsor, and type, as well as approximate times, dates, and locations of the events. Advanced public notification of specific times, dates, regulated areas, and enforcement periods for each event will be provided through appropriate means, which may include, but are not limited to, the Local Notice to Mariners, Broadcast Notice to Mariners, or a Notice of Enforcement published in the **Federal Register**. If an event does not have a date and time listed in this regulation, then the precise dates and times of the enforcement period for that event will be announced through a Notice of Enforcement in the **Federal Register**.

**Regulatory Analyses**

The Coast Guard developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

**Executive Order 12866 and Executive Order 13563**

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

We expect the economic impact of this proposed rule to be minimal. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: The Coast Guard is only modifying an existing regulation to account for new information.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: Owners or operators of vessels intending to transit, fish, or anchor in the areas where the listed annual recurring events are being held.

The proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessels will only be restricted from safety zones and special local regulation areas for a short duration of time; vessels may transit in portions of the affected waterway except for those areas covered by the proposed regulated areas. In addition, this action is only modifying an existing rule which, in and of itself, did not have a significant impact on a substantial number of small entities.

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

**Assistance for Small Entities**

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

**Collection of Information**

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

**Federalism**

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

**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.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action appears to be one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under **ADDRESSES**. This proposed rule involves water activities including swimming events and fireworks displays. This rule appears to be categorically excluded, under figure 2–1, paragraph (34)(g) (Safety Zones) and (34)(h) (Special Local Regulations) of the Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects**

*33 CFR Part 100*

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

*33 CFR Part 165*

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 100 and 165 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Revise TABLE TO § 100.120 to read as follows:

**§ 100.120 Special Local Regulations; Marine Events Held in the Coast Guard Sector Northern New England Captain of the Port Zone.**

* * * * *

TABLE TO § 100.120

| 5.0 | MAY |
|---|---|
| 5.1 Champlain Bridge Celebration Flotilla Parade ..... | • Event Type: Regatta and Boat Parade<br>• Sponsor: Lake Champlain Maritime Museum.<br>• Date: A two day event on Saturday and Sunday during the third weekend in May.*<br>• Time (Approximate): 12:00 p.m. to 2:00 p.m. each day<br>• Location: The regulated area includes all waters of Lake Champlain in the vicinity of the new bridge between Crown Point, New York and Chimney Point, Vermont within the following points (NAD 83):<br>44°02′29″ N 073°26′26″ W<br>44°02′38″ N 073°25′58″ W<br>44°01′18″ N 073°24′08″ W<br>44°01′04″ N 073°24′31″ W |
| 5.2 Tall Ships Visiting Portsmouth ..... | • Event Type: Regatta and Boat Parade<br>• Sponsor: Portsmouth Maritime Commission, Inc.<br>• Date: A four day event from Friday through Monday on a weekend between the 15th of May and the 15th of June.*<br>• Time (Approximate): 9:00 a.m. to 8:00 p.m. each day<br>• Location: The regulated area includes all waters of Portsmouth Harbor, New Hampshire in the vicinity of Castle Island within the following points (NAD 83):<br>43°03′11″ N 070°42′26″ W<br>43°03′18″ N 070°41′51″ W<br>43°04′42″ N 070°42′11″ W<br>43°04′28″ N 070°44′12″ W<br>43°05′36″ N 070°45′56″ W<br>43°05′29″ N 070°46′09″ W<br>43°04′19″ N 070°44′16″ W<br>43°04′22″ N 070°42′33″ W |

TABLE TO § 100.120—Continued

| | |
|---|---|
| 6.0 | JUNE |
| 6.1 Bar Harbor Blessing of the Fleet | • Event Type: Regatta and Boat Parade<br>• Sponsor: Town of Bar Harbor, Maine<br>• Date: A one day event on a Sunday between the 15th of May and the 15th of June.*<br>• Time (Approximate): 12:00 p.m. to 1:30 p.m.<br>• Location: The regulated area includes all waters of Bar Harbor, Maine within the following points (NAD 83):<br>44°23′32″ N 068°12′19″ W<br>44°23′30″ N 068°12′00″ W<br>44°23′37″ N 068°12′00″ W<br>44°23′35″ N 068°12′19″ W |
| 6.2 Charlie Begin Memorial Lobster Boat Races | • Event Type: Power Boat Race<br>• Sponsor: Boothbay Harbor Lobster Boat Race Committee<br>• Date: A one day event on Saturday during the third weekend of June.*<br>• Time (Approximate): 10:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Boothbay Harbor, Maine in the vicinity of John's Island within the following points (NAD 83):<br>43°50′04″ N 069°38′37″ W<br>43°50′54″ N 069°38′06″ W<br>43°50′49″ N 069°37′50″ W<br>43°50′00″ N 069°38′20″ W |
| 6.3 Rockland Harbor Lobster Boat Races | • Event Type: Power Boat Race<br>• Sponsor: Rockland Harbor Lobster Boat Race Committee<br>• Date: A one day event on Sunday during the third weekend of June.*<br>• Time (Approximate): 9:00 a.m. to 5:00 p.m.<br>• Location: The regulated area includes all waters of Rockland Harbor, Maine in the vicinity of the Rockland Breakwater Light within the following points (NAD 83):<br>44°05′59″ N 069°04′53″ W<br>44°06′43″ N 069°05′25″ W<br>44°06′50″ N 069°05′05″ W<br>44°06′05″ N 069°04′34″ W |
| 6.4 Windjammer Days Parade of Ships | • Event Type: Tall Ship Parade<br>• Sponsor: Boothbay Region Chamber of Commerce<br>• Date: A one day event on last Wednesday of June.*<br>• Time (Approximate): 12:00 p.m. to 5:00 p.m.<br>• Location: The regulated area includes all waters of Boothbay Harbor, Maine in the vicinity of Tumbler's Island within the following points (NAD 83):<br>43°51′02″ N 069°37′33″ W<br>43°50′47″ N 069°37′31″ W<br>43°50′23″ N 069°37′57″ W<br>43°50′01″ N 069°37′45″ W<br>43°50′01″ N 069°38′31″ W<br>43°50′25″ N 069°38′25″ W<br>43°50′49″ N 069°37′45″ W |
| 7.0 | JULY |
| 7.1 Moosabec Lobster Boat Races | • Event Type: Power Boat Race<br>• Sponsor: Moosabec Boat Race Committee<br>• Date: A one day event held on July 4th.*<br>• Time (Approximate): 10:00 a.m. to 12:30 p.m.<br>• Location: The regulated area includes all waters of Jonesport, Maine within the following points (NAD 83):<br>44°31′21″ N 067°36′44″ W<br>44°31′36″ N 067°36′47″ W<br>44°31′44″ N 067°35′36″ W<br>44°31′29″ N 067°35′33″ W |
| 7.2 The Great Race | • Event Type: Rowing and Paddling Boat Race<br>• Sponsor: Franklin County Chamber of Commerce<br>• Date: A one day event on a Sunday between the 15th of August and the 15th of September.*<br>• Time (Approximate): 10:00 a.m. to 12:30 p.m.<br>• Location: The regulated area includes all waters of Lake Champlain in the vicinity of Saint Albans Bay within the following points (NAD 83):<br>44°47′18″ N 073°10′27″ W<br>44°47′10″ N 073°08′51″ W |
| 7.3 Searsport Lobster Boat Races | • Event Type: Power Boat Race<br>• Sponsor: Searsport Lobster Boat Race Committee<br>• Date: A one day event on the second Saturday of July.*<br>• Time (Approximate): 9:00 a.m. to 4:00 p.m.<br>• Location: The regulated area includes all waters of Searsport Harbor, Maine within the following points (NAD 83): |

TABLE TO § 100.120—Continued

| | |
|---|---|
| | 44°26′50″ N 068°55′20″ W<br>44°27′04″ N 068°55′26″ W<br>44°27′12″ N 068°54′35″ W<br>44°26′59″ N 068°54′29″ W |
| 7.4 Stonington Lobster Boat Races | • Event Type: Power Boat Race<br>• Sponsor: Stonington Lobster Boat Race Committee<br>• Date: A one day event on the second Saturday of July.*<br>• Time (Approximate): 8:00 a.m. to 3:30 p.m.<br>• Location: The regulated area includes all waters of Stonington, Maine within the following points (NAD 83):<br>44°08′55″ N 068°40′12″ W<br>44°09′00″ N 068°40′15″ W<br>44°09′11″ N 068°39′42″ W<br>44°09′07″ N 068°39′39″ W |
| 7.5 Mayor's Cup Regatta | • Event Type: Sailboat Parade<br>• Sponsor: Plattsburgh Sunrise Rotary<br>• Date: A one day event on the second Saturday of July.*<br>• Time (Approximate): 10:00 a.m. to 4:00 p.m.<br>• Location: The regulated area includes all waters of Cumberland Bay on Lake Champlain in the vicinity of Plattsburgh, New York within the following points (NAD 83):<br>44°39′26″ N 073°26′25″ W<br>44°41′27″ N 073°23′12″ W |
| 7.6 The Challenge Race | • Event Type: Rowing and Paddling Boat Race<br>• Sponsor: Lake Champlain Maritime Museum<br>• Date: A one day event on the third Saturday of July.*<br>• Time (Approximate): 11:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Lake Champlain in the vicinity of Button Bay State Park within the following points (NAD 83):<br>44°12′25″ N 073°22′32″ W<br>44°12′00″ N 073°21′42″ W<br>44°12′19″ N 073°21′25″ W<br>44°13′16″ N 073°21′36″ W |
| 7.7 Yarmouth Clam Festival Paddle Race | • Event Type: Rowing and Paddling Boat Race<br>• Sponsor: Maine Island Trail Association<br>• Date: A one day event on the third Saturday of July.*<br>• Time (Approximate): 8:00 a.m. to 4:00 p.m.<br>• Location: The regulated area includes all waters in the vicinity of the Royal River outlet and Lane's Island within the following points (NAD 83):<br>43°47′47″ N 070°08′40″ W<br>43°47′50″ N 070°07′13″ W<br>43°47′06″ N 070°07′32″ W<br>43°47′17″ N 070°08′25″ W |
| 7.8 Friendship Lobster Boat Races | • Event Type: Power Boat Race<br>• Sponsor: Friendship Lobster Boat Race Committee<br>• Date: A one day event on a Saturday on a weekend between the 15th of July and the 15th of August.*<br>• Time (Approximate): 9:30 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Friendship Harbor, Maine within the following points (NAD 83):<br>43°57′51″ N 069°20′46″ W<br>43°58′14″ N 069°19′53″ W<br>43°58′19″ N 069°20′01″ W<br>43°58′00″ N 069°20′46″ W |
| 7.9 Arthur Martin Memorial Regatta | • Event Type: Rowing and Paddling Boat Race<br>• Sponsor: I Row<br>• Date: A one day event on the third Saturday of July.*<br>• Time (Approximate): 9:00 a.m. to 1:00 p.m.<br>• Location: The regulated area includes all waters of the Piscataqua River, in the vicinity of Kittery Point, Maine within the following points (NAD 83):<br>43°03′51″ N 070°41′55″ W<br>43°04′35″ N 070°42′18″ W<br>43°04′42″ N 070°43′15″ W<br>43°05′14″ N 070°43′12″ W<br>43°05′14″ N 070°43′06″ W<br>43°04′44″ N 070°43′11″ W<br>43°04′35″ N 070°42′13″ W<br>43°03′53″ N 070°41′40″ W |
| 7.10 Harpswell Lobster Boat Races | • Event Type: Power Boat Race<br>• Sponsor: Harpswell Lobster Boat Race Committee<br>• Date: A one day event on a Sunday between the 15th of July and the 15th of August.*<br>• Time (Approximate): 10:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes waters of Middle Bay near Harpswell, Maine within the following points (NAD 83): |

TABLE TO § 100.120—Continued

| | |
|---|---|
| | 43°44′15″ N 070°02′06″ W<br>43°44′59″ N 070°01′21″ W<br>43°44′51″ N 070°01′05″ W<br>43°44′06″ N 070°01′49″ W |
| 8.0 | AUGUST |
| 8.1 Eggemoggin Reach Regatta | • Event Type: Wooden Boat Parade<br>• Sponsor: Rockport Marine, Inc. and Brookline Boat Yard<br>• Date: A one day event on a Saturday between the 15th of July and the 15th of August.*<br>• Time (Approximate): 11:00 a.m. to 7:00 p.m.<br>• Location: The regulated area includes all waters of Eggemoggin Reach and Jericho Bay in the vicinity of Naskeag Harbor, Maine within the following points (NAD 83):<br>44°15′16″ N 068°36′26″ W<br>44°12′41″ N 068°29′26″ W<br>44°07′38″ N 068°31′30″ W<br>44°12′54″ N 068°33′46″ W |
| 8.2 Southport Rowgatta Rowing and Paddling Boat Race. | • Event Type: Rowing and Paddling Boat Race<br>• Sponsor: Boothbay Region YMCA<br>• Date: A one day event on the second Saturday of August.*<br>• Time (Approximate): 8:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Sheepscot Bay and Boothbay, on the shore side of Southport Island, Maine within the following points (NAD 83):<br>43°50′26″ N 069°39′10″ W<br>43°49′10″ N 069°38′35″ W<br>43°46′53″ N 069°39′06″ W<br>43°46′50″ N 069°39′32″ W<br>43°49′07″ N 069°41′43″ W<br>43°50′19″ N 069°41′14″ W<br>43°51′11″ N 069°40′06″ W |
| 8.3 Winter Harbor Lobster Boat Races | • Event Type: Power Boat Race<br>• Sponsor: Winter Harbor Chamber of Commerce<br>• Date: A one day event on the second Saturday of August.*<br>• Time (Approximate): 9:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Winter Harbor, Maine within the following points (NAD 83):<br>44°22′06″ N 068°05′13″ W<br>44°23′06″ N 068°05′08″ W<br>44°23′04″ N 068°04′37″ W<br>44°22′05″ N 068°04′44″ W |
| 8.4 Lake Champlain Dragon Boat Festival | • Event Type: Rowing and Paddling Boat Race<br>• Sponsor: Dragonheart Vermont<br>• Date: A one day event on the second Sunday of August.*<br>• Time (Approximate): 7:00 a.m. to 5:00 p.m.<br>• Location: The regulated area includes all waters of Burlington Bay within the following points (NAD 83):<br>44°28′51″ N 073°13′28″ W<br>44°28′40″ N 073°13′40″ W<br>44°28′37″ N 073°13′29″ W<br>44°28′40″ N 073°13′17″ W |
| 8.5 Merritt Brackett Lobster Boat Races | • Event Type: Power Boat Race<br>• Sponsor: Town of Bristol, Maine<br>• Date: A one day event on the second Sunday of August.*<br>• Time (Approximate): 10:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Pemaquid Harbor, Maine within the following points (NAD 83):<br>43°52′16″ N 069°32′10″ W<br>43°52′41″ N 069°31′43″ W<br>43°52′35″ N 069°31′29″ W<br>43°52′09″ N 069°31′56″ W |
| 8.6 Multiple Sclerosis Regatta | • Event Type: Regatta and Sailboat Race<br>• Sponsor: Maine Chapter, Multiple Sclerosis Society<br>• Date: A one day event on the third Saturday of August.*<br>• Time (Approximate): 10:00 a.m. to 4:00 p.m.<br>• Location: The regulated area for the start of the race includes all waters of Casco Bay, Maine in the vicinity of Peaks Island within the following points (NAD 83):<br>43°40′24″ N 070°14′20″ W<br>43°40′36″ N 070°13′56″ W<br>43°39′58″ N 070°13′21″ W<br>43°39′46″ N 070°13′51″ W |
| 8.7 Multiple Sclerosis Harborfest Lobster Boat/Tugboat Races. | • Event Type: Power Boat Race<br>• Sponsor: Maine Chapter, National Multiple Sclerosis Society |

TABLE TO § 100.120—Continued

| | |
|---|---|
| | • Date: A one day event on the third Sunday of August.*<br>• Time (Approximate): 10:00 a.m. to 3:00 p.m.<br>• Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Maine State Pier within the following points (NAD 83):<br>43°40′25″ N 070°14′21″ W<br>43°40′36″ N 070°13′56″ W<br>43°39′58″ N 070°13′21″ W<br>43°39′47″ N 070°13′51″ W |
| 9.0 | SEPTEMBER |
| 9.1 Pirates Festival Lobster Boat Races | • Event Type: Power Boat Race<br>• Sponsor: Eastport Pirates Festival<br>• Date: A one day event on the second Sunday of September.*<br>• Time (Approximate): 11:00 a.m. to 6:00 p.m.<br>• Location: The regulated area includes all waters in the vicinity of Eastport Harbor, Maine within the following points (NAD 83):<br>44°54′14″ N 066°58′52″ W<br>44°54′14″ N 068°58′56″ W<br>44°54′24″ N 066°58′52″ W<br>44°54′24″ N 066°58′56″ W |

* Date subject to change. Exact date will be posted in Notice of Enforcement and Local Notice to Mariners.

* * * * *

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

■ 3. 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; 33 CFR 1.05–1, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 4. Revise TABLE TO § 165.171 to read as follows:

**§ 165.171 Safety Zones for fireworks displays and swim events held in Coast Guard Sector Northern New England Captain of the Port Zone.**

* * * * *

TABLE TO § 165.171

| | |
|---|---|
| 5.0 | MAY |
| 5.1 Hawgs, Pies, & Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Gardiner Maine Street<br>• Date: One night event on a Saturday between the 15th of May and the 15th of June.*<br>• Time (Approximate): 8:00 p.m. to 10:00 p.m.<br>• Location: In the vicinity of the Gardiner Waterfront, Gardiner, Maine in approximate position: 44°13′52″ N, 069°46′08″ W (NAD 83) |
| 6.0 | JUNE |
| 6.1 Rotary Waterfront Days Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Gardiner Rotary<br>• Date: Two night event on Wednesday and Saturday during the third week of June.*<br>• Time (Approximate): 8:00 p.m. to 10:00 p.m.<br>• Location: In the vicinity of the Gardiner Waterfront, Gardiner, Maine in approximate position: 44°13′52″ N, 069°46′08″ W (NAD 83) |
| 6.2 Windjammer Days Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Boothbay Harbor Region Chamber of Commerce<br>• Date: One night event on the last Wednesday of June.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine in approximate position: 43°50′38″ N, 069°37′57″ W (NAD 83) |
| 7.0 | JULY |
| 7.1 Vinalhaven 4th of July Fireworks | • Event Type: Firework Display<br>• Sponsor: Vinalhaven 4th of July Committee<br>• Date: First Saturday in July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Grime's Park, Vinalhaven, Maine in approximate position: 44°02′34″ N, 068°50′26″ W (NAD 83) |
| 7.2 Burlington Independence Day Fireworks | • Event Type: Firework Display<br>• Sponsor: City of Burlington, Vermont<br>• Date: July 3rd.*<br>• Time (Approximate): 9:00 p.m. to 11:00 p.m. |

TABLE TO § 165.171—Continued

| | |
|---|---|
| | • Location: From a barge in the vicinity of Burlington Harbor, Burlington, Vermont in approximate position: 44°28′31″ N, 073°13′31″ W (NAD 83) |
| 7.3 Camden 3rd of July Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Camden, Rockport, Lincolnville Chamber of Commerce<br>• Date: July 3rd.*<br>• Time (Approximate): 8:00 p.m. to 10:00 p.m.<br>• Location: In the vicinity of Camden Harbor, Maine in approximate position: 44°12′32″ N, 069°02′58″ W (NAD 83) |
| 7.4 Bangor 4th of July Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Bangor 4th of July Fireworks<br>• Date: July 4th.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of the Bangor Waterfront, Bangor, Maine in approximate position: 44°47′27″ N, 068°46′31″ W (NAD 83) |
| 7.5 Bar Harbor 4th of July Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Bar Harbor Chamber of Commerce<br>• Date: July 4th.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Bar Harbor Town Pier, Bar Harbor, Maine in approximate position: 44°23′31″ N, 068°12′15″ W (NAD 83) |
| 7.6 Boothbay Harbor 4th of July Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Town of Boothbay Harbor<br>• Date: July 4th.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine in approximate position: 43°50′38″ N, 069°37′57″ W (NAD 83) |
| 7.7 Colchester 4th of July Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Town of Colchester, Recreation Department<br>• Date: July 4th.*<br>• Time (Approximate): 8:00 p.m. to 10:00 p.m.<br>• Location: In the vicinity of Bayside Beach and Mallets Bay in Colchester, Vermont in approximate position: 44°32′44″ N, 073°13′10″ W (NAD 83) |
| 7.8 Eastport 4th of July Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Eastport 4th of July Committee<br>• Date: July 4th.*<br>• Time (Approximate): 9:00 p.m. to 9:30 p.m.<br>• Location: From the Waterfront Public Pier in Eastport, Maine in approximate position: 44°54′25″ N, 066°58′55″ W (NAD 83) |
| 7.9 Ellis Short Sand Park Trustee Fireworks | • Event Type: Fireworks Display<br>• Sponsor: William Burnham<br>• Date: July 4th.*<br>• Time (Approximate): 8:30 p.m. to 11:00 p.m.<br>• Location: In the vicinity of York Beach, Maine in approximate position: 43°10′27″ N, 070°48′31″ W (NAD 83) |
| 7.10 Hampton Beach 4th of July Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Hampton Beach Village District<br>• Date: July 4th.*<br>• Time (Approximate): 8:30 p.m. to 11:00 p.m.<br>• Location: In the vicinity of Hampton Beach, New Hampshire in approximate position: 42°54′40″ N, 070°36′25″ W (NAD 83) |
| 7.11 Jonesport 4th of July Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Jonesport 4th of July Committee<br>• Date: July 4th.*<br>• Time (Approximate): 9:30 p.m. to 10:00 p.m.<br>• Location: In the vicinity of Beals Island, Jonesport, Maine in approximate position: 44°31′18″ N, 067°36′43″ W (NAD 83) |
| 7.12 Main Street Heritage Days 4th of July Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Main Street Inc.<br>• Date: July 4th.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Reed and Reed Boat Yard, Woolwich, Maine in approximate position: 43°54′56″ N, 069°48′16″ W (NAD 83) |
| 7.13 Portland Harbor 4th of July Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Department of Parks and Recreation, Portland, Maine<br>• Date: July 4th.*<br>• Time (Approximate): 8:30 p.m. to 10:30 p.m.<br>• Location: In the vicinity of East End Beach, Portland, Maine in approximate position: 43°40′16″ N, 070°14′44″ W (NAD 83) |
| 7.14 St. Albans Day Fireworks | • Event Type: Fireworks Display<br>• Sponsor: St. Albans Area Chamber of Commerce<br>• Date: July 4th.*<br>• Time (Approximate): 9:00 p.m. to 10:00 p.m. |

TABLE TO § 165.171—Continued

| | | |
|---|---|---|
| | | • Location: From the St. Albans Bay dock in St. Albans Bay, Vermont in approximate position: 44°48′25″ N, 073°08′23″ W (NAD 83) |
| 7.15 | Stonington 4th of July Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Deer Isle—Stonington Chamber of Commerce<br>• Date: July 4th.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Two Bush Island, Stonington, Maine in approximate position: 44°08′57″ N, 068°39′54″ W (NAD 83) |
| 7.16 | Shelburne Sprint Triathlon | • Event Type: Swim Event<br>• Sponsor: Race Vermont<br>• Date: A multiple day event throughout July and August.*<br>• Time (Approximate): 7:00 a.m. to 11:00 a.m.<br>• Location: The regulated area includes all waters of Lake Champlain in the vicinity of Shelburne Beach in Shelburne, Vermont within a 400 yard radius of the following point (NAD 83): 44°21′45″ N 075°15′58″ W |
| 7.17 | Urban/EPIC Triathlon | • Event Type: Swim Event<br>• Sponsor: Tri-Maine Productions<br>• Date: A one day event on Saturday during the second week of July.*<br>• Time (Approximate): 7:00 a.m. to 11:00 a.m.<br>• Location: The regulated area includes all waters of Portland Harbor in the vicinity of East End Beach in Portland, Maine within the following points (NAD 83):<br>43°40′00″ N 070°14′20″ W<br>43°40′00″ N 070°14′00″ W<br>43°40′15″ N 070°14′29″ W<br>43°40′17″ N 070°13′22″ W |
| 7.18 | St. George Days Fireworks | • Event Type: Fireworks<br>• Sponsor: Town of St. George<br>• Date: A one day event held on third Saturday in July.*<br>• Time (Approximate): 8:30 p.m. to 10:30 p.m.<br>• Location: The regulated area includes all waters of Inner Tenants Harbor, ME, in approximate position (NAD 83): 43°57′41.37″ N, 069°12′45″ W |
| 7.19 | Tri for a Cure Swim Clinics | • Event Type: Swim Event<br>• Sponsor: Maine Cancer Foundation<br>• Date: A multi-day training event held during July.*<br>• Time (Approximate): 8:30 a.m. to 11:30 a.m.<br>• Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Spring Point Light within the following points (NAD 83):<br>43°39′01″ N 070°13′32″ W<br>43°39′07″ N 070°13′29″ W<br>43°39′06″ N 070°13′41″ W<br>43°39′01″ N 070°13′36″ W |
| 7.20 | Tri for a Cure Triathlon | • Event Type: Swim Event<br>• Sponsor: Maine Cancer Foundation<br>• Date: A one day event on the second Sunday of August.*<br>• Time (Approximate): 12:30 p.m. to 4:30 p.m.<br>• Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Spring Point Light within the following points (NAD 83):<br>43°39′01″ N 070°13′32″ W<br>43°39′07″ N 070°13′29″ W<br>43°39′06″ N 070°13′41″ W<br>43°39′01″ N 070°13′36″ W |
| 7.21 | Richmond Days Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Town of Richmond, Maine<br>• Date: A one day event on the fourth Saturday of July.*<br>• Time (Approximate): 8:00 p.m. to 10:00 p.m.<br>• Location: From a barge in the vicinity of the inner harbor, Tenants Harbor, Maine in approximate position: 44°08′42″ N, 068°27′06″ W (NAD83) |
| 7.22 | Colchester Triathlon | • Event Type: Swim Event<br>• Sponsor: Colchester Parks and Recreation Department<br>• Date: A one day event on the last Wednesday of July.*<br>• Time (Approximate): 7:00 a.m. to 11:00 a.m.<br>• Location: The regulated area includes all waters of Malletts Bay on Lake Champlain, Vermont within the following points (NAD 83):<br>44°32′18″ N 073°12′35″ W<br>44°32′28″ N 073°12′56″ W<br>44°32′57″ N 073°12′38″ W |
| 7.23 | Peaks to Portland Swim | • Event Type: Swim Event<br>• Sponsor: Cumberland County YMCA |

TABLE TO § 165.171—Continued

| | |
|---|---|
| | • Date: A one day event on the last Saturday of July.*<br>• Time (Approximate): 5:00 a.m. to 1:00 p.m.<br>• Location: The regulated area includes all waters of Portland Harbor between Peaks Island and East End Beach in Portland, Maine within the following points (NAD 83):<br>43°39′20″ N 070°11′58″ W<br>43°39′45″ N 070°13′19″ W<br>43°40′11″ N 070°14′13″ W<br>43°40′08″ N 070°14′29″ W<br>43°40′00″ N 070°14′23″ W<br>43°39′34″ N 070°13′31″ W<br>43°39′13″ N 070°11′59″ W |
| 7.24 Friendship Days Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Town of Friendship<br>• Date: A one day event on the last Saturday of July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of the Town Pier, Friendship Harbor, Maine in approximate position: 43°58′23″ N, 069°20′12″ W (NAD83) |
| 7.25 Champ Chum Swim | • Event Type: Swim Event<br>• Sponsor: Against Malaria Foundation<br>• Date: A one day event on the last Saturday of July.*<br>• Time (Approximate): 8:00 a.m. to 12:00 p.m.<br>• Location: The regulated area includes all waters of Lake Champlain between Thompson's Point, Vermont and Spilt Rock in Adirondack Park, New York within the following points (NAD 83):<br>44°16′04″ N 073°18′19″ W<br>44°16′08″ N 073°19′17″ W |
| 7.26 Bucksport Festival and Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Bucksport Bay Area Chamber of Commerce<br>• Date: A one day event on the last Saturday of July.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of the Verona Island Boat Ramp, Verona, Maine, in approximate position: 44°34′9″ N, 068°47′28″ W (NAD83) |
| 8.0 | AUGUST |
| 8.1 Sprucewold Cabbage Island Swim | • Event Type: Swim Event<br>• Sponsor: Sprucewold Association<br>• Date: A one day event on the first Saturday of August.*<br>• Time (Approximate): 1:00 p.m. to 6:00 p.m.<br>• Location: The regulated area includes all waters of Linekin Bay between Cabbage Island and Sprucewold Beach in Boothbay Harbor, Maine within the following points (NAD 83):<br>43°50′37″ N 069°36′23″ W<br>43°50′37″ N 069°36′59″ W<br>43°50′16″ N 069°36′46″ W<br>43°50′22″ N 069°36′21″ W |
| 8.2 Westerlund's Landing Party Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Portside Marina<br>• Date: A one day event on the first Saturday of August.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Westerlund's Landing in South Gardiner, Maine in approximate position: 44°10′19″ N, 069°45′24″ W (NAD 83) |
| 8.3 Y-Tri Triathlon | • Event Type: Swim Event<br>• Sponsor: Plattsburgh YMCA<br>• Date: A one day event on the first Saturday of August.*<br>• Time (Approximate): 9:00 a.m. to 10:00 a.m.<br>• Location: The regulated area includes all waters of Treadwell Bay on Lake Champlain in the vicinity of Point Au Roche State Park, Plattsburgh, New York within the following points (NAD 83):<br>44°46′30″ N 073°23′26″ W<br>44°46′17″ N 073°23′26″ W<br>44°46′17″ N 073°23′46″ W<br>44°46′29″ N 073°23′46″ W |
| 8.4 York Beach Fire Department Fireworks | • Event Type: Fireworks Display<br>• Sponsor: York Beach Fire Department<br>• Date: A one day event on Sunday during the first week in August.*<br>• Time (Approximate): 8:30 p.m. to 11:30 p.m.<br>• Location: In the vicinity of Short Sand Cove in York, Maine in approximate position: 43°10′27″ N, 070°36′25″ W (NAD 83) |
| 8.5 Rockland Breakwater Swim | • Event Type: Swim Event<br>• Sponsor: Pen-Bay Masters<br>• Date: A one day event on the fourth Saturday of August.*<br>• Time (Approximate): 7:30 a.m. to 1:30 p.m. |

TABLE TO § 165.171—Continued

| | |
|---|---|
| | • Location: The regulated area includes all waters of Rockland Harbor, Maine in the vicinity of Jameson Point within the following points (NAD 83):<br>44°06′16″ N 069°04′39″ W<br>44°06′13″ N 069°04′36″ W<br>44°06′12″ N 069°04′43″ W<br>44°06′17″ N 069°04′44″ W<br>44°06′18″ N 069°04′40″ W |
| 8.6 Tri for Preservation | • Event Type: Swim Event<br>• Sponsor: Tri-Maine Productions<br>• Date: A one day event in August.*<br>• Time (Approximate): 7:30 a.m. to 9:00 a.m.<br>• Location: In the vicinity of Crescent Beach State Park in Cape Elizabeth, Maine in approximate position:<br>43°33′46″ N 070°13′48″ W<br>43°33′41″ N 070°13′46″ W<br>43°33′44″ N 070°13′40″ W<br>43°33′47″ N 070°13′46″ W |
| 9.0 | SEPTEMBER |
| 9.1 Windjammer Weekend Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Town of Camden, Maine<br>• Date: A one day event on the first Friday of September.*<br>• Time (Approximate): 8:00 p.m. to 9:30 p.m.<br>• Location: From a barge in the vicinity of Northeast Point, Camden Harbor, Maine in approximate position: 44°12′10″ N, 069°03′11″ W (NAD 83) |
| 9.2 Eastport Pirate Festival Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Eastport Pirate Festival<br>• Date: A one day event on the second Saturday of September.*<br>• Time (Approximate): 7:00 p.m. to 10:00 p.m.<br>• Location: From the Waterfront Public Pier in Eastport, Maine in approximate position: 44°54′17″ N, 066°58′58″ W (NAD 83) |
| 9.3 The Lobsterman Triathlon | • Event Type: Swim Event<br>• Sponsor: Tri-Maine Productions<br>• Date: A one day swim event on the second Saturday of September.*<br>• Time (Approximate): 8:00 a.m. to 11:00 a.m.<br>• Location: The regulated area includes all waters in the vicinity of Winslow Park in South Freeport, Maine within the following points (NAD 83):<br>43°47′59″ N 070°06′56″ W<br>43°47′44″ N 070°06′56″ W<br>43°47′44″ N 070°07′27″ W<br>43°47′57″ N 070°07′27″ W |
| 9.4 Burlington Triathlon | • Event Type: Swim Event<br>• Sponsor: Race Vermont<br>• Date: A one day swim event on the second Sunday of September.*<br>• Time (Approximate): 7:00 a.m. to 10:00 a.m.<br>• Location: The regulated area includes all waters in the vicinity of North Beach, Burlington, Vermont within the following points (NAD 83):<br>44°29′31″ N 073°14′22″ W<br>44°29′12″ N 073°14′14″ W<br>44°29′17″ N 073°14′34″ W |
| 9.5 Eliot Festival Day Fireworks | • Event Type: Fireworks Display<br>• Sponsor: Eliot Festival Day Committee<br>• Date: A one day event on the fourth Saturday of September.*<br>• Time (Approximate): 8:00 p.m. to 10:30 p.m.<br>• Location: In the vicinity of Eliot Town Boat Launch, Eliot, Maine in approximate position: 43°08′56″ N, 070°49′52″ W (NAD 83) |

* Date subject to change. Exact date will be posted in Notice of Enforcement and Local Notice to Mariners.

* * * * *

Dated: Feb 28, 2013.

**C.L. Roberge,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Northern New England.*

[FR Doc. 2013–06586 Filed 3–21–13; 8:45 am]

**BILLING CODE 9110–04–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket No. 10–90; DA 13–311]**

### Wireline Competition Bureau Adds New Discussion Topic To Connect America Cost Model Virtual Workshop

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Wireline Competition Bureau adds a new virtual workshop discussion topic, entitled ''Rate of Return for Connect America Cost Model,'' to seek public input on what cost of money should be utilized in the forward-looking cost model that will determine support levels that will be offered to price cap carriers in Phase II.

**DATES:** Comments are due on or before April 1, 2013.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 10–90, by any of the following methods:

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

▪ *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

▪ *Virtual Workshop:* In addition to the usual methods for filing electronic comments, the Commission is allowing comments, reply comments, and ex parte comments in this proceeding to be filed by posting comments at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.*

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Katie King, Wireline Competition Bureau at (202) 418–7491 or TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Wireline Competition Bureau's Public Notice in WC Docket No. 10–90; DA 13–311 released February 28, 2013, as well as information posted online in the Wireline Competition Bureau's Virtual Workshop. The complete text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. These documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* In addition, the Virtual Workshop may be accessed via the Internet at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.*

1. On Tuesday, October 9, 2012, the Wireline Competition Bureau (Bureau) announced the commencement of a virtual workshop to solicit input and facilitate discussion on topics related to the development and adoption of the forward-looking cost model for Connect America Phase II. To date, the Bureau has sought comment on 21 different topics in the virtual workshop.

2. Today, the Bureau adds a new virtual workshop discussion topic, entitled ''Rate of Return for Connect America Cost Model,'' to seek public input on what cost of money should be utilized in the forward-looking cost model that will determine support levels that will be offered to price cap carriers in Phase II. Responses should be submitted in the virtual workshop no later than April 1, 2013.

3. The Bureau may continue to add discussion topics or follow-up questions, which will be announced by Public Notice. Parties can participate in the virtual workshop by visiting the Connect America Fund Web page, *http://www.fcc.gov/encyclopedia/connecting-america,* and following the link to the virtual workshop.

4. Comments from the virtual workshop will be included in the official public record of this proceeding. The Bureau will not rely on anonymous comments posted during the workshop in reaching decisions regarding the model. Participants should be aware that identifying information from parties that post material in the virtual workshop will be publicly available for inspection upon request, even though such information may not be posted in the workshop forums.

## I. Procedural Matters

### *A. Initial Regulatory Flexibility Act Analysis*

5. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Bureau prepared an Initial Regulatory Flexibility Analysis (IRFA), included as part of the *Model Design PN,* 77 FR 38804, June 29, 2012, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in these Public Notices and the information posted online in the Virtual Workshops. We have reviewed the IRFA and have determined that is does not need to be supplemented.

### *B. Paperwork Reduction Act*

6. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

### *C. Filing Requirements*

7. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

▪ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All

filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

8. *Virtual Workshop.* In addition to the usual methods for filing electronic comments, the Commission is allowing comments in this proceeding to be filed by posting comments at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.* Persons wishing to examine the record in this proceeding are encouraged to examine the record on ECFS and the Virtual Workshop. Although Virtual Workshop commenters may choose to provide identifying information or may comment anonymously, anonymous comments will not be part of the record in this proceeding and accordingly will not be relied on by the Commission in reaching its conclusions in this rulemaking. The Commission will not rely on anonymous postings in reaching conclusions in this matter because of the difficulty in verifying the accuracy of information in anonymous postings. Should posters provide identifying information, they should be aware that although such information will not be posted on the blog, it will be publicly available for inspection upon request.

9. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

10. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

Federal Communications Commission.

**Kimberly A. Scardino,**

*Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.*

[FR Doc. 2013–06655 Filed 3–21–13; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 600 and 635

**RIN 0648–BC31**

### Atlantic Highly Migratory Species; 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan; Amendment 8

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

**ACTION:** Notice of public hearings; extension of comment period.

**SUMMARY:** On February 22, 2013, NMFS published a proposed rule for Draft Amendment 8 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) to address several new proposed North Atlantic swordfish commercial fishery management measures, including a new open access permit that would allow the retention and sale of swordfish caught with certain handgears. We announced the date and location for six public hearings and a comment period ending on April 23, 2013. In this notice, NMFS announces the dates and logistics for two additional public hearings, and an extension of the comment period from April 23, 2013, to May 8, 2013, to provide additional opportunities for the five Fishery Management Councils, the Atlantic and Gulf States Marine Fisheries Commissions, and other interested parties to comment on the swordfish management measures proposed in Draft Amendment 8.

**DATES:** The deadline for comments has been extended from April 23, 2013, to May 8, 2013. Two additional public hearings will be held, one on April 10, 2013 from 5:00 to 8:00 p.m., and the second on April 30, 2013 from 2:30 to 4:30 p.m., via public conference call and webinar.

**ADDRESSES:** Addresses for the two additional public hearings are: Stafford Branch Library, 129 North Main Street, Manahawkin, NJ 08050 and via public conference call and webinar. To participate in the conference call dial 1–800–779–0686 and enter the passcode 2132689.

As published on February 22, 2013 (78 FR 12273), written comments on this action may be submitted, identified by NOAA–NMFS–2013–0026, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0026,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to the Highly Migratory Species Management Division, NMFS Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. Please mark on the outside of the envelope ''Comments on Amendment 8 to the HMS FMP.''

• *Fax:* 301–713–1917; Attn: Jennifer Cudney.

*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 generally will be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. 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.

**FOR FURTHER INFORMATION CONTACT:** Rick Pearson at 727–824–5399 or Jennifer Cudney at 301–427–8503.

**SUPPLEMENTARY INFORMATION:** Atlantic tunas and swordfish are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Under the Magnuson-Stevens Act, the National Marine Fisheries Service (NMFS) must, consistent with the National Standards, prevent overfishing while achieving, on

a continuing basis, the optimum yield (OY) from each fishery and rebuild overfished fisheries. Under ATCA, the Secretary of Commerce (Secretary) shall promulgate regulations as may be necessary and appropriate to carry out recommendations by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). Atlantic HMS regulations are found at 50 CFR part 635.

Consistent with these legal obligations and based on the rebuilt status of North Atlantic swordfish, the renewed interest in commercial handgears, and the goal to more fully utilize the U.S. ICCAT-recommended swordfish quota allocation, NMFS proposed fishery management measures for Draft Amendment 8 to the 2006 Consolidated HMS FMP in a proposed rule published on February 22, 2013 (78 FR 12273). The proposed rule provides additional details.

The preferred alternatives in Amendment 8 would establish a new open-access commercial swordfish vessel permit to allow for the retention and sale of a limited number (zero to six fish) of swordfish caught on rod and reel, handline, harpoon, bandit gear, or green-stick. HMS Charter/Headboat vessel permit holders would also be authorized to fish with rod and reel and handline under open-access swordfish commercial retention limits when they are not on a for-hire trip. In addition, the preferred alternatives would establish swordfish management regions. We have proposed an initial one-fish retention limit for the Florida Swordfish Management Area, a two-fish retention limit for the Caribbean region (to be consistent with the newly created HMS Commercial Caribbean Handgear Permit), and a three-fish retention limit for the Northwest Atlantic and Gulf of Mexico regions.

**Dates and Locations of Public Meetings**

The two additional public meetings dates and locations are as follows:

- April 10, 2013, 5:00–8:00 p.m., Stafford Branch Library, 129 North Main Street, Manahawkin, NJ 08050
- April 30, 2013, 2:30–4:30 p.m., Conference Call and Webinar, To participate in conference call, call: (800) 779–0686, Passcode: 2132689

To participate in webinar, RSVP at: *https://www1.gotomeeting.com/register/656686320.*

A confirmation email with webinar log-in information will be sent after RSVP is registered.

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

Dated: March 18, 2013.

**Kara Meckley,**

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

[FR Doc. 2013–06541 Filed 3–21–13; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 78, No. 56
Friday, March 22, 2013

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

March 18, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 22, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Animal Plant and Health Inspection Service

*Title:* Importation of Live Swine, Pork, and Pork Products, and Swine Semen from the European Union.

*OMB Control Number:* 0579–0218.

*Summary of Collection:* The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The Law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Animal Plant and Health Inspection Service (APHIS) regulate the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in the country.

*Need and Use of the Information:* APHIS will collect information using VS form 17–129, Application for Import or in Transit Permit, concerning the origin and history of the items destined for importation into the United States. APHIS will also collect information to ensure that swine, pork and pork products, and swine semen pose a negligible risk of introducing exotic swine diseases into the United States. If the information is not collected it would cripple APHIS ability to ensure that swine, pork and pork products, and swine semen poses a minimal risk of introducing classical swine fever and other exotic animal disease into the United States.

*Description of Respondents:* Federal Government.

*Number of Respondents:* 16.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 7,504.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2013–06555 Filed 3–21–13; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

March 18, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 22, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Farm Service Agency

*Title:* Report of Acreage; Noninsured Crop Disaster Assistance Program.

*OMB Control Number:* 0560–0004.

*Summary of Collection:* 7 U.S.C. 7333(b)(3) specifically requires, for crops and commodities covered by the Noninsured Crop Disaster Assistance Program (NAP), annual reports of acreage planted and prevented from being planted must be reported, as required by the Secretary, by the designated acreage reporting data for the crop and location as established by the Secretary. The report of acreage is conducted on an annual basis and is used by the Farm Service Agency (FSA) county offices to determine eligibility for benefits that are available to producers on the farm. Respondents must provide the information each year because variables such as previous year experience, weather occurrences and projections, market demand, new farming techniques and personal preferences affect the amount of land being farmed, the mix of crops planted, and the projected harvest. Prior year information while useful is not sufficient on its own. Therefore, respondents must supply on a yearly basis current data on a program by the final reporting date established for their county to qualify for NAP assistance. The ''Modernize and Innovate the Delivery of Agricultural System'' (MIDAS) is FSA's initiative to improve the delivery of FSA farm program benefits and services through the reengineering of farm program business processes and the adoption of enhanced and modernized information technology.

*Need and Use of the Information:* FSA will collect information verbally from the producers during visits to the county offices. FSA will collect one or more of the following data elements, as required: crop planted, planting date, crop's intended use, type or variety, practice (irrigated or non-irrigated), acres, location of the crop (tract and field), and the producer's percent share in the crop along with the names of other producers having an interest in the crop. Once the information is collected and eligibility established, the information is used throughout the crop year to ensure the producer remains compliant with program provisions. NAP requires crop, commodity, and acreage information collection on a program year basis. Failure to collect the data on that basis would result in program overpayments through producer ineligibility, incorrect acres, or incorrect shares of the crop.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 291,500.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 510,125.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2013–06553 Filed 3–21–13; 8:45 am]

**BILLING CODE 3410–05–P**

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Child Nutrition Programs; Income Eligibility Guidelines

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

**ACTION:** Notice

**SUMMARY:** This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals and free milk for the period from July 1, 2013 through June 30, 2014. These guidelines are used by schools, institutions, and facilities participating in the National School Lunch Program (and Commodity School Program), School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program. The annual adjustments are required by section 9 of the Richard B. Russell National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

**DATES:** *Effective Date:* July 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** William Wagoner, Supervisory Program Analyst, School Programs Section, Child Nutrition Division, Food and Nutrition Service (FNS), USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2590.

**SUPPLEMENTARY INFORMATION:** This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice has been determined to be not significant and was not reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

The affected programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556, No. 10.558 and No. 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, Subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

### Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals for the National School Lunch Program (7 CFR Part 210), the Commodity School Program (7 CFR Part 210), School Breakfast Program (7 CFR Part 220), Summer Food Service Program (7 CFR Part 225) and Child and Adult Care Food Program (7 CFR Part 226) and the guidelines for free milk in the Special Milk Program for Children (7 CFR Part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size. The guidelines are used to determine eligibility for free and reduced price meals and free milk in accordance with applicable program rules.

### Definition of Income

In accordance with the Department's policy as provided in the Food and Nutrition Service publication *Eligibility Manual for School Meals,* ''income,'' as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other

resources that would be available to pay the price of a child's meal.

''Income,'' as the term is used in this Notice, does *not* include any income or benefits received under any Federal programs that are excluded from consideration as income by any statutory prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the Richard B. Russell National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

**The Income Eligibility Guidelines**

The following are the Income Eligibility Guidelines to be effective from July 1, 2013 through June 30, 2014. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the year 2013 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar. This Notice displays only the annual Federal poverty guidelines issued by the Department of Health and Human Services because the monthly and weekly Federal poverty guidelines are not used to determine the Income Eligibility Guidelines. The chart details the free and reduced price eligibility criteria for monthly income, income received twice monthly (24 payments per year), income received every two weeks (26 payments per year) and weekly income.

Income calculations are made based on the following formulas: Monthly income is calculated by dividing the annual income by 12; twice monthly income is computed by dividing annual income by 24; income received every two weeks is calculated by dividing annual income by 26; and weekly income is computed by dividing annual income by 52. All numbers are rounded upward to the next whole dollar. The numbers reflected in this notice for a family of four in the 48 contiguous states, the District of Columbia, Guam and the territories represent an increase of 2.2% over last year's level for a family of the same size.

**INCOME ELIGIBILITY GUIDELINES**

**(Effective from July 1, 2013 to June 30, 2014)**

| Household Size | Federal Poverty Guidelines- 100% | | | | | Reduced Price Meals - 185% | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Annual | Monthly | Twice-Monthly | Bi-Weekly | Weekly | Annual | Monthly | Twice-Monthly | Bi-Weekly | Weekly |
| **48 Contiguous States, D.C., Guam and Territories** | | | | | | | | | | |
| 1 | $11,490 | $958 | $479 | $442 | $221 | $21,257 | $1,772 | $886 | $818 | $409 |
| 2 | 15,510 | 1,293 | 647 | 597 | 299 | 28,694 | 2,392 | 1,196 | 1,104 | 552 |
| 3 | 19,530 | 1,628 | 814 | 752 | 376 | 36,131 | 3,011 | 1,506 | 1,390 | 695 |
| 4 | 23,550 | 1,963 | 982 | 906 | 453 | 43,568 | 3,631 | 1,816 | 1,676 | 838 |
| 5 | 27,570 | 2,298 | 1,149 | 1,061 | 531 | 51,005 | 4,251 | 2,126 | 1,962 | 981 |
| 6 | 31,590 | 2,633 | 1,317 | 1,215 | 608 | 58,442 | 4,871 | 2,436 | 2,248 | 1,124 |
| 7 | 35,610 | 2,968 | 1,484 | 1,370 | 685 | 65,879 | 5,490 | 2,745 | 2,534 | 1,267 |
| 8 | 39,630 | 3,303 | 1,652 | 1,525 | 763 | 73,316 | 6,110 | 3,055 | 2,820 | 1,410 |
| Each add'l family member add | + $4,020 | + $335 | + $168 | + $155 | + $78 | + $7,437 | + $620 | + $310 | + $287 | + $144 |
| **Alaska** | | | | | | | | | | |
| 1 | $14,350 | $1,196 | $598 | $552 | $276 | $26,548 | $2,213 | $1,107 | $1,022 | $511 |
| 2 | 19,380 | 1,615 | 808 | 746 | 373 | 35,853 | 2,988 | 1,494 | 1,379 | 690 |
| 3 | 24,410 | 2,035 | 1,018 | 939 | 470 | 45,159 | 3,764 | 1,882 | 1,737 | 869 |
| 4 | 29,440 | 2,454 | 1,227 | 1,133 | 567 | 54,464 | 4,539 | 2,270 | 2,095 | 1,048 |
| 5 | 34,470 | 2,873 | 1,437 | 1,326 | 663 | 63,770 | 5,315 | 2,658 | 2,453 | 1,227 |
| 6 | 39,500 | 3,292 | 1,646 | 1,520 | 760 | 73,075 | 6,090 | 3,045 | 2,811 | 1,406 |
| 7 | 44,530 | 3,711 | 1,856 | 1,713 | 857 | 82,381 | 6,866 | 3,433 | 3,169 | 1,585 |
| 8 | 49,560 | 4,130 | 2,065 | 1,907 | 954 | 91,686 | 7,641 | 3,821 | 3,527 | 1,764 |
| Each add'l family member add | + $5,030 | + $420 | + $210 | + $194 | + $97 | + $9,306 | + $776 | + $388 | + $358 | + $179 |
| **Hawaii** | | | | | | | | | | |
| 1 | $13,230 | $1,103 | $552 | $509 | $255 | $24,476 | $2,040 | $1,020 | $942 | $471 |
| 2 | 17,850 | 1,488 | 744 | 687 | 344 | 33,023 | 2,752 | 1,376 | 1,271 | 636 |
| 3 | 22,470 | 1,873 | 937 | 865 | 433 | 41,570 | 3,465 | 1,733 | 1,599 | 800 |
| 4 | 27,090 | 2,258 | 1,129 | 1,042 | 521 | 50,117 | 4,177 | 2,089 | 1,928 | 964 |
| 5 | 31,710 | 2,643 | 1,322 | 1,220 | 610 | 58,664 | 4,889 | 2,445 | 2,257 | 1,129 |
| 6 | 36,330 | 3,028 | 1,514 | 1,398 | 699 | 67,211 | 5,601 | 2,801 | 2,586 | 1,293 |
| 7 | 40,950 | 3,413 | 1,707 | 1,575 | 788 | 75,758 | 6,314 | 3,157 | 2,914 | 1,457 |
| 8 | 45,570 | 3,798 | 1,899 | 1,753 | 877 | 84,305 | 7,026 | 3,513 | 3,243 | 1,622 |
| Each add'l family member add | + $4,620 | + $385 | + $193 | + $178 | + $89 | + $8,547 | + $713 | + $357 | + $329 | + $165 |

**Authority:** 42 U.S.C. 1758(b)(1).

Dated: March 8, 2013.

**Audrey Rowe,**

*Administrator.*

[FR Doc. 2013–06544 Filed 3–20–13; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Income Eligibility Guidelines

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

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture (''Department'') announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children Program (WIC). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

**DATES:** *Effective Date:* July 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Donna Hines, Chief, Policy Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2746.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This notice has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

#### Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

#### Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

#### Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

*Description:* Section 17(d)(2)(A) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(d)(2)(A)), requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced-price school meals is 185 percent of the Federal poverty guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2013/2014 was published by the Department of Health and Human Services (HHS) at 78 FR 16, January 24, 2013. The guidelines published by HHS are referred to as the poverty guidelines.

Section 246.7(d)(1) of the WIC regulations (Title 7, Code of Federal Regulations) specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the Richard B. Russell National School Lunch Act for reduced-price school meals, or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced-price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar. At this time, the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period July 1, 2013, through June 30, 2014. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid Program established under Title XIX of the Social Security Act (42 U.S.C. 1396, et seq.). State agencies may coordinate implementation with the revised Medicaid guidelines, i.e., earlier in the year, but in no case may implementation take place later than July 1, 2013.

State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on July 1, 2013. The first table of this Notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all Territories, including Guam.

Effective from July 1, 2013 to June 30, 2014

| HOUSEHOLD SIZE | FEDERAL POVERTY GUIDELINES | REDUCED PRICE MEALS - 185 % | | | | | FREE MEALS - 130 % | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | ANNUAL | ANNUAL | MONTHLY | TWICE PER MONTH | EVERY TWO WEEKS | WEEKLY | ANNUAL | MONTHLY | TWICE PER MONTH | EVERY TWO WEEKS | WEEKLY |
| **48 CONTIGUOUS STATES, DISTRICT OF COLUMBIA, GUAM, AND TERRITORIES** | | | | | | | | | | | |
| 1 | 11,490 | 21,257 | 1,772 | 886 | 818 | 409 | 14,937 | 1,245 | 623 | 575 | 288 |
| 2 | 15,510 | 28,694 | 2,392 | 1,196 | 1,104 | 552 | 20,163 | 1,681 | 841 | 776 | 388 |
| 3 | 19,530 | 36,131 | 3,011 | 1,506 | 1,390 | 695 | 25,389 | 2,116 | 1,058 | 977 | 489 |
| 4 | 23,550 | 43,568 | 3,631 | 1,816 | 1,676 | 838 | 30,615 | 2,552 | 1,276 | 1,178 | 589 |
| 5 | 27,570 | 51,005 | 4,251 | 2,126 | 1,962 | 981 | 35,841 | 2,987 | 1,494 | 1,379 | 690 |
| 6 | 31,590 | 58,442 | 4,871 | 2,436 | 2,248 | 1,124 | 41,067 | 3,423 | 1,712 | 1,580 | 790 |
| 7 | 35,610 | 65,879 | 5,490 | 2,745 | 2,534 | 1,267 | 46,293 | 3,858 | 1,929 | 1,781 | 891 |
| 8 | 39,630 | 73,316 | 6,110 | 3,055 | 2,820 | 1,410 | 51,519 | 4,294 | 2,147 | 1,982 | 991 |
| For each add'l family member, add | 4,020 | 7,437 | 620 | 310 | 287 | 144 | 5,226 | 436 | 218 | 201 | 101 |
| **ALASKA** | | | | | | | | | | | |
| 1 | 14,350 | 26,548 | 2,213 | 1,107 | 1,022 | 511 | 18,655 | 1,555 | 778 | 718 | 359 |
| 2 | 19,380 | 35,853 | 2,988 | 1,494 | 1,379 | 690 | 25,194 | 2,100 | 1,050 | 969 | 485 |
| 3 | 24,410 | 45,159 | 3,764 | 1,882 | 1,737 | 869 | 31,733 | 2,645 | 1,323 | 1,221 | 611 |
| 4 | 29,440 | 54,464 | 4,539 | 2,270 | 2,095 | 1,048 | 38,272 | 3,190 | 1,595 | 1,472 | 736 |
| 5 | 34,470 | 63,770 | 5,315 | 2,658 | 2,453 | 1,227 | 44,811 | 3,735 | 1,868 | 1,724 | 862 |
| 6 | 39,500 | 73,075 | 6,090 | 3,045 | 2,811 | 1,406 | 51,350 | 4,280 | 2,140 | 1,975 | 988 |
| 7 | 44,530 | 82,381 | 6,866 | 3,433 | 3,169 | 1,585 | 57,889 | 4,825 | 2,413 | 2,227 | 1,114 |
| 8 | 49,560 | 91,686 | 7,641 | 3,821 | 3,527 | 1,764 | 64,428 | 5,369 | 2,685 | 2,478 | 1,239 |
| For each add'l family member, add | 5,030 | 9,306 | 776 | 388 | 358 | 179 | 6,539 | 545 | 273 | 252 | 126 |
| **HAWAII** | | | | | | | | | | | |
| 1 | 13,230 | 24,476 | 2,040 | 1,020 | 942 | 471 | 17,199 | 1,434 | 717 | 662 | 331 |
| 2 | 17,850 | 33,023 | 2,752 | 1,376 | 1,271 | 636 | 23,205 | 1,934 | 967 | 893 | 447 |
| 3 | 22,470 | 41,570 | 3,465 | 1,733 | 1,599 | 800 | 29,211 | 2,435 | 1,218 | 1,124 | 562 |
| 4 | 27,090 | 50,117 | 4,177 | 2,089 | 1,928 | 964 | 35,217 | 2,935 | 1,468 | 1,355 | 678 |
| 5 | 31,710 | 58,664 | 4,889 | 2,445 | 2,257 | 1,129 | 41,223 | 3,436 | 1,718 | 1,586 | 793 |
| 6 | 36,330 | 67,211 | 5,601 | 2,801 | 2,586 | 1,293 | 47,229 | 3,936 | 1,968 | 1,817 | 909 |
| 7 | 40,950 | 75,758 | 6,314 | 3,157 | 2,914 | 1,457 | 53,235 | 4,437 | 2,219 | 2,048 | 1,024 |
| 8 | 45,570 | 84,305 | 7,026 | 3,513 | 3,243 | 1,622 | 59,241 | 4,937 | 2,469 | 2,279 | 1,140 |
| For each add'l family member, add | 4,620 | 8,547 | 713 | 357 | 329 | 165 | 6,006 | 501 | 251 | 231 | 116 |

Because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

**Authority:** 42 U.S.C. 1786.

Dated: March 8, 2013.

**Audrey Rowe,**

*Administrator.*

[FR Doc. 2013–06547 Filed 3–21–13; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Caribou-Targhee National Forest; Idaho and Wyoming; Amendment to the Targhee Revised Forest Plan—Canada Lynx Habitat

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Caribou-Targhee National Forest proposes to amend the Targhee Revised Forest Plan (1997) to include a map identifying specific areas where the Northern Rockies Lynx Management Direction (NRLMD, 2007) applies.

*Pre-Decisional Administrative Review Process:* The decision on this proposed plan amendment will be subject to the objection process for the planning process (36 CFR part 219, subpart B). Only those individuals and entities who submit substantive formal comments related to this proposed plan amendment during the opportunities for public comment as provided in 36 CFR part 219, Subpart A may file an objection. The burden is on the objector to demonstrate compliance with requirements for objection (36 CFR 219.53).

*Public Participation:* The Agency invites interested parties to participate and collaborate on this proposal and analysis. Publication of this Notice initiates the 30-day scoping process. Comments received concerning this proposed plan amendment will be used to develop the proposal and the Draft Environmental Impact Statement (EIS).

Once the Draft EIS is prepared, publication of its Notice of Availability in the **Federal Register** will begin a formal 90-day opportunity to provide written comments. Comments on the Draft EIS will be used to prepare the Final EIS and Draft Record of Decision. Notice of Availability of the Final EIS and Draft Record of Decision will be made in the **Federal Register**. Public notice to begin the 60-day opportunity to file an objection will be published in the newspaper of record. Public notice of all objections will be published in the newspaper of record and begin the 10 day period for an interested person to request participation in meetings between the reviewing officer and objector(s) to discuss issues raised in the objection and potential resolution. All meetings are open to observation by the public. After the reviewing officer responds in writing to objections, the responsible official will issue the Final Record of Decision, consistent with responses to objections, and issue a public notice of the decision and, if applicable, the approved amendment.

The newspaper of record is the *Post Register.* The Draft EIS, Final EIS, Draft Record of Decision, responses to objections, Final Record of Decision, approved amendment, and all public notices and **Federal Register** notices will be made available online. Additional opportunities for public involvement will be offered prior to the Final EIS if determined necessary by the responsible official.

**DATES:** The Draft EIS for the Amendment is expected in July 2013. The Final EIS and Draft Record of Decision are expected in December 2013. The Final Record of Decision is expected in 2014.

**ADDRESSES:** Send written comments in response to this Notice to: Targhee Lynx Analysis, Caribou-Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, ID 83401. Comments may also be sent via email to *comments-intermtn-caribou-targhee@fs.fed.us* or via facsimile to 208/557–5826.

**FOR FURTHER INFORMATION CONTACT:** Megan Bogle, Forest Planner (208)354–6613 or *mbogle@fs.fed.us.* Additional information about this analysis will be posted at *http://www.fs.fed.us/nepa/fs-usda-pop.php/?project=40275.* 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 Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Canada lynx was listed as a Threatened species under the Endangered Species Act in 2000. The 1997 Targhee Revised Forest Plan did not identify lynx habitat. The NRLMD ROD established programmatic management direction for lynx habitat on the Targhee but did not make a decision about what lynx habitat is, where linkage area boundaries are, or how they are identified.

This analysis has been initiated in response to a June 6, 2012, District of Idaho Court Order. In that order, the Court determined that the Agency may not rely upon its 2005 Lynx Analysis Unit Map which delineates the areas subject to the NRLMD until it is analyzed in an EIS pursuant to the National Environmental Policy Act.

The project area is located in the Idaho counties of Bonneville, Butte, Clark, Fremont, Jefferson, Lemhi, Madison, Teton; and the Wyoming counties of Lincoln and Teton.

### Proposed Action

The proposed action is to amend the 1997 Targhee Revised Forest Plan to incorporate a map that will identify lynx habitat, lynx analysis units, and linkage areas. The map will incorporate the finest-scale vegetation information and best data available. The analysis will be completed in compliance with the National Environmental Policy Act, the NRLMD and other applicable laws, rules, regulations and policies. The effects of such an amendment will be analyzed and disclosed in the EIS. Consultation with the US Fish and Wildlife Service will occur to ensure compliance with the Endangered Species Act.

### Responsible Official

The Caribou-Targhee National Forest Supervisor is the responsible official and will make the decision.

### Nature of Decision to Be Made

In the decision, the responsible official will decide whether or not to amend the 1997 Targhee Revised Forest Plan.

### Preliminary Issues

1. Disagreement regarding the extent and distribution of lynx habitat across the Targhee portion of the Caribou-Targhee National Forest.

### Possible Alternatives

At a minimum, the proposed action and a no action alternative will be analyzed. The no action alternative would not incorporate the lynx habitat, LAU, and linkage area map as an amendment to the 1997 Targhee Revised Forest Plan.

### Scoping Process

This Notice initiates the public involvement process, which guides the development of the alternatives and the analysis. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the Draft EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns.

Comments received in response to this scoping notice, including names and addresses of those who comment, will become part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

Dated: March 15, 2013.

**Brent Larson,**

*Forest Supervisor.*

[FR Doc. 2013–06616 Filed 3–21–13; 8:45 am]

BILLING CODE 3410–11–P

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## DEPARTMENT OF AGRICULTURE

## Rural Housing Service

## Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of USDA Rural Development to request an extension for a currently approved information collection in support of compliance with the National Environmental Policy Act (NEPA) and other applicable environmental requirements.

**DATES:** Comments on this notice must be received by May 21, 2013 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Juliet Bochicchio, Environmental Protection Specialist, Program Support Staff, Housing and Community Facilities Programs, U.S. Department of Agriculture, Stop 0761, 1400 Independence Ave. SW., Washington, DC 20250–0761, Telephone (202) 205–

8242, email: *juliet.bochicchio@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* 7 CFR 1940 Subpart G, ''Environmental Program.''

*OMB Number:* 0575–0094.

*Expiration Date of Approval:* May 31, 2013.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The information collection under OMB Number 0575–0094 enables the Agencies to effectively administer the policies, methods, and responsibilities for compliance with the NEPA and other applicable environmental laws, executive orders, and regulations.

The NEPA requires Federal agencies to consider the potential environmental impacts of proposed major Federal actions on the quality of the human environment during agency planning and decision-making processes. For Rural Development to comply, it is necessary that they have information on the types of environmental resources on site or in the vicinity of an Applicant's proposed project that could be impacted by Rural Development Federal action. The Applicant is the logical source for providing this information. In fact, the vast majority of Federal Agencies that assist non-Federal Applicants in sponsoring projects require their Applicants to submit such environmental data to allow the agency to make an informed decision.

Both Rural Development provide forms and/or other guidance to assist in the collection and submission of necessary information. The information is usually submitted via email, U.S. Postal Service, or hand delivery to the appropriate Agency office.

The information is used by the Agency official who is processing the application for financial assistance or request for approval. Having environmental information on the Applicant's proposed project and the construction and operation activities enables the Agency official to determine the magnitude of any potential environmental impacts and to take such impacts into consideration during planning and decision-making as required by NEPA. The analysis of potential environmental impacts of an Applicant's proposed project and Rural Development decision is a full disclosure process, and therefore, can involve public information meetings and public notification.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 3.7 hours per response.

*Respondents:* Individuals, non-Federal agency governments, farmers, ranchers, business owners, for-profit or non-profit institutions, and organizations.

*Estimated Number of Respondents:* 1,684.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 3,344.

*Estimated Total Annual Burden on Respondents:* 12,470 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0035.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 5, 2013.

**Tammye Treviño,**

*Administrator, Rural Housing Service.*

[FR Doc. 2013–06592 Filed 3–21–13; 8:45 am]

**BILLING CODE 3410–XV–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meetings of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that an orientation meeting and a planning meeting of the Colorado Advisory Committee to the Commission will convene at 10:00 a.m. (MDT) on Thursday, April 11, 2013, at Denver Place, 999 18th Street, South Terrace 2nd Floor Conference Room, Denver, CO 80202. The meetings are to conduct an orientation and for project planning.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Monday, May 13, 2013. Comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 999–18th Street, Suite 1380 South, Denver, CO 80202, faxed to 303–866–1050, or emailed to *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at 303–866–1040.

Persons needing accessibility services should contact the Rocky Mountain Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, on March 18, 2013.

**David Mussatt,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 2013–06556 Filed 3–21–13; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[S–32–2013]**

### Foreign-Trade Zone 35—Philadelphia, Pennsylvania; Application for Subzone; Teva Pharmaceuticals USA, Inc.; North Wales, Chalfont, Kutztown and Sellersville, Pennsylvania

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Philadelphia Regional Port Authority, grantee of FTZ 35, requesting special-purpose subzone status for the facilities of Teva Pharmaceuticals USA, Inc., located in North Wales, Chalfont, Kutztown and Sellersville, Pennsylvania. The

application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on March 18, 2013.

The proposed subzone would consist of the following sites: *Site 1* (38 acres) 1070 and 1090 Horsham Road, North Wales, Montgomery County; *Site 2* (29 acres) 111 New Britain Boulevard, Chalfont, Bucks County; *Site 3* (7 acres) 9747 Commerce Circle, Kutztown, Lehigh County; and, *Site 4* (63 acres) 650 and 717 Cathill Road, Sellersville, Bucks County. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 35.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 1, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 16, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

*For Further Information Contact:* Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: March 18, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–06665 Filed 3–21–13; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–23–2013]**

### Foreign-Trade Zone 93—Raleigh-Durham, North Carolina; Notification of Proposed Production Activity; Southern Lithoplate, Inc. (Aluminum Printing Plates); Youngsville, North Carolina

The Triangle J Council of Governments grantee of FTZ 93, submitted a notification of proposed production activity on behalf of Southern Lithoplate, Inc. (SLP), located in Youngsville, North Carolina. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on March 18, 2013.

The SLP facility is located within Site 5 of FTZ 93. The facility is used for the production of aluminum offset printing plates for the printing industry. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt SLP from customs duty payments on the foreign status components used in export production. On its domestic sales, SLP would be able to choose the duty rates during customs entry procedures that apply to aluminum printing plates (duty-free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: aluminum coils (duty rate 3%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 1, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: March 18, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–06667 Filed 3–21–13; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–928]**

### Uncovered Innerspring Units From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On September 17, 2012, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the 2011–2012 administrative review of the antidumping duty order on uncovered innerspring units (''innersprings'') from the People's Republic of China (''PRC'') for the period February 1, 2011, through January 31, 2012.[1] The Department gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, the Department has made changes to its treatment of Tai Wa Hong and its affiliates for the final results. The final dumping margin for this administrative review is listed in the ''Final Results of Review'' section below.

**DATES:** *Effective Date:* March 22, 2013.

**FOR FURTHER INFORMATION CONTACT:** Steven Hampton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0116.

**SUPPLEMENTARY INFORMATION:**

### Background

On September 17, 2012, the Department published in the **Federal Register** the *Preliminary Results.*[2] Interested parties were provided an opportunity to comment on the

[1] *See Uncovered Innerspring Units from the People's Republic of China: Antidumping Duty Administrative Review; 2011–2012,* 77 FR 57072 (September 17, 2012) (''*Preliminary Results*'') and accompanying Decision Memorandum for Preliminary Results of 2011–2012 Antidumping Duty Administrative Review: Uncovered Innerspring Units from the People's Republic of China, dated September 10, 2012 (''Preliminary Decision Memorandum'').

[2] *See id.*

*Preliminary Results.*[3] On October 17, 2012, the Department received a case brief from Leggett and Platt, Inc. (''Petitioner'').[4] No other case or rebuttal briefs were filed by interested parties. On December 7, 2012, the Department partially extended the time limit for these final results by 30 days.[5] On February 6, 2013, the Department fully extended the time limit for these final results by an additional 30 days to March 18, 2013.[6]

## Scope of the Order

The merchandise subject to the order is uncovered innerspring units.[7] The product is currently classified under subheading 9404.29.9010 and has also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010, 7320.90.5010, or 7326.20.0071 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.[8]

## Analysis of Comments Received

All issues raised in the case brief by Petitioner are addressed in the Issues and Decision Memorandum, which is incorporated herein by reference. A list of the issues which parties raised, and to which we respond in the Issues and Decision Memorandum, is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

## Changes Since the Preliminary Results

The Department has made changes with respect to its treatment of Tai Wa Hong and its affiliates. Specifically, we determine as facts available that we should collapse Tai Wa Hong with two other companies, Tai Wa Commercial & Industrial (Macau) Co. Ltd. (''Tai Wa Commercial'') and Macau Commercial & Industrial Spring Mattress Manufacturer (''Macau Commercial''), and that we should treat this group of companies as a single entity (*i.e.,* the Tai Wa Hong Group).

## Use of Facts Available and Adverse Facts Available

As stated in the *Preliminary Results,* Tai Wa Hong failed to cooperate to the best of its ability in providing requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding.[9] Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Tariff Act of 1930, as amended (''Act'') we find it appropriate to assign total adverse facts available (''AFA'') to Tai Wa Hong.[10] Moreover, as facts available, the Department finds it appropriate to regard Tai Wa Hong as affiliated with Tai Wa Commercial and Macau Commercial, to collapse these three companies, and to treat these companies as a single entity, the Tai Wa Hong Group. Therefore, the Department has assigned the total AFA rate of 234.51% to the Tai Wa Hong Group. Because the Tai Wa Hong Group is located in Macau, it is a third country reseller. Accordingly, this rate only applies to the Tai Wa Hong Group's PRC-origin merchandise.[11]

## Final Results of Review

The dumping margin for the period of review (''POR'') is as follows:

| Exporter | Weighted-average dumping margin (percent) |
|---|---|
| Tai Wa Hong Group ..... | 234.51 |

## Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales.[12] In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or de minimis.

## 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 from the PRC 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 exporter listed above, the cash deposit rate will be 234.51 percent for its PRC-origin merchandise; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have a separate rate, the cash

[3] *See id.,* 77 FR at 57073.

[4] *See* Petitioner's Case Brief, dated October 17, 2012.

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations through James Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations, from Steven Hampton, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office 9, regarding Uncovered Innerspring Units from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, dated December 7, 2012.

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations through James Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations, from Steven Hampton, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office 9, regarding Uncovered Innerspring Units from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, dated February 6, 2012.

[7] *See* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled ''Uncovered Innerspring Units from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2011–2012 Administrative Review,'' which is dated concurrently with this notice (''Issues and Decision Memorandum'') for a complete description of the Scope of the Order.

[8] *See Notice of Antidumping Duty Order: Uncovered Innerspring Units from the People's Republic of China,* 74 FR 7661 (February 19, 2009).

[9] *See* Preliminary Decision Memorandum at 3–5.

[10] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review,* 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the non-market-economy-wide entity), unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review,* 72 FR 52052 (September 12, 2007).

[11] *See* Comment 1 of the Issues and Decision Memorandum for further discussion on this issue.

[12] In these final results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 234.51 percent; 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 exporters that supplied that non-PRC exporter. The deposit requirements, when imposed, shall remain in effect until further notice.

**Reimbursement of Duties**

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

**Administrative Protective Orders**

In accordance with 19 CFR 351.305(a)(3), this notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 18, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix I

Comment 1: Treatment of the Tai Wa Hong Group's Sales

Comment 2: Cash Deposit and Liquidation Instructions

[FR Doc. 2013–06682 Filed 3–21–13; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–805]**

### Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Notice of Amended Final Results of Antidumping Duty Administrative Review Pursuant to Settlement

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**DATES:** *Effective Date:* March 22, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 and (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 9, 2010, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico. The period of review (POR) is November 1, 2007, through October 31, 2008.[1]

In the *Final Results,* the Department assigned to Mueller Comercial de Mexico, S. de R.L. de C.V. (Mueller), an exporter of certain circular welded non-alloy steel pipe from Mexico to the United States, an adverse facts available (AFA) rate of 48.33 percent. The application of AFA was necessitated by Mueller's failure to cooperate with the Department and impeding this administrative review by ignoring multiple requests for information.

Following the publication of the final results, Mueller filed a lawsuit with the United States Court of International Trade (CIT) challenging the Department's final results of administrative review.[2] The Court remanded this matter to the Department ordering that the Department ''shall reconsider its determination not to apply the 'all others' rate to Mueller's entries.'' *See* the Opinion at 23. The Department complied with the Court order and reconsidered its determination not to apply the ''all others'' rate to a non-cooperating respondent. In the Final Results of Redetermination Pursuant to Court Remand, for the reasons set forth in the review, the Department found the ''all others'' rate was not sufficient to deter non-compliance by Mueller.[3]

The United States and Mueller have now entered into an agreement to settle this dispute. The Court issued its Order of Judgment by Stipulation on February 27, 2013. Pursuant to the Court's Order of Judgment by Stipulation, the Department will order liquidation of the unliquidated entries of certain circular welded non-alloy steel pipe from Mexico, produced and/or exported by Mueller Comercial de Mexico, S. de R.L. de C.V., and entered or withdrawn from warehouse, for consumption in the United States, from November 1, 2007 through October 31, 2008, at the rate of 40.475 percent agreed to by the parties.

We are issuing this determination and publishing these final results of antidumping duty administrative review pursuant to settlement and notice in accordance with 19 U.S.C. 1516a(e).

Dated: March 14, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2013–06678 Filed 3–21–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part,* 75 FR 20342 (April 19, 2010) (*Final Results*).

[2] *See Mueller Comercial de Mexico, S. de R.L. de C.V., and Southland Pipe Nipples Co., Inc.* v. *United States,* Court No. 10–00163, Slip Op. 11–159 (December 16, 2011) (the Opinion).

[3] *See Final Results of Redetermination Pursuant to Court Remand: Certain Circular Welded Non-Alloy Steel Pipe from Mexico, Mueller Comercial de Mexico, S. de R.L. de C.V., and Southland Pipe Nipples Co., Inc.* v. *United States,* Court No. 10–00163, Slip Op. 11–159 (CIT December 16, 2011), dated May 14, 2012.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–833]**

### Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyester staple fiber (PSF) from Taiwan. The period of review (POR) is May 1, 2011, through April 30, 2012. The review covers two producers/exporters of the subject merchandise, Far Eastern New Century Corporation (FENC) and Nan Ya Plastics Corporation (Nan Ya). We preliminarily find that FENC has not

sold subject merchandise at less than normal value and that Nan Ya had no shipments during the POR.

**DATES:** *Effective Date:* March 22, 2013.

**FOR FURTHER INFORMATION CONTACT:** Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3683, and (202) 482–1690, respectively.

**SUPPLEMENTARY INFORMATION:**

## Scope of the Order

The merchandise subject to the order is PSF. The PSF subject to the order is currently classifiable under subheadings 5503.20.00.40, 5503.20.00.45, 5503.20.00.60, and 5503.20.00.65 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Polyester Staple Fiber from Taiwan'' dated concurrently with this notice (''Preliminary Decision Memorandum''), which is hereby adopted by this notice. The written description is dispositive.

The Preliminary Decision Memorandum is a public document and is on file electronically *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

## Preliminary Determination of No Shipments

Nan Ya reported that it did not sell or export subject merchandise to the United States during the POR.[1] Based on record evidence, we preliminarily find that Nan Ya had no shipments during the POR.

## Methodology

The Department has conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. In accordance with section 773(b) of the Act, we disregarded certain sales by FENC in the home market which were made at below-cost prices and were outside of the ordinary course of trade. To determine the appropriate comparison method, the Department applied a ''differential pricing'' analysis and has preliminarily determined to use the average-to-average method in making comparisons of export price or constructed export price and normal value for FENC. For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum.

## Preliminary Results of Review

As a result of this review, we preliminarily determine that a weighted-average dumping margin of 0.00 percent exists for FENC for the period May 1, 2011, through April 30, 2012.

## Disclosure and Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not 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 not later than five days after the date for filing case briefs.[2] 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.[3]

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 Import Administration, filed electronically *via* IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. 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. 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, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

## Assessment Rates

Upon completion of the administrative review, the Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If FENC'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 FENC's weighted-average dumping margin continues to be zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.''[4]

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[5] This clarification will apply to entries of subject merchandise during the POR produced by FENC for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Consistent with the *Assessment Policy Notice,* if we continue to find that Nan Ya had no shipments of subject merchandise to the United States in the final results of this review, we intend to instruct CBP to liquidate any existing entries of merchandise produced by Nan

[1] *See* the no shipment letter filed by Nan Ya on August 31, 2012.

[2] *See* 19 CFR 351.309(d).

[3] *See* 19 CFR 351.309(d)(2) and (d)(2).

[4] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012).

[5] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

Ya and exported by other parties at the all-others rate.

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 administrative review for all shipments of PSF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for FENC will be the rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original 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 7.31 percent, the all-others rate established in the *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan,* 65 FR 33807 (May 25, 2000). These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice 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.

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

Dated: March 18, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

*Appendix I*

List of Topics Discussed in the Preliminary Decision Memorandum

Scope of the Order
Preliminary Determination of No Shipments
Verification
Comparisons to Normal Value
Product Comparisons
Date of Sale
Export Price
Normal Value
A. Home Market Viability as Comparison Market
B. Level of Trade
C. Cost of Production
D. Calculation of Normal Value Based on Comparison Market Prices
Currency Conversion

[FR Doc. 2013–06674 Filed 3–21–13; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Completion of Panel Review of the Department of Commerce's final determination of Stainless Steel Sheet and Strip in Coils from Mexico (Secretariat File No. USA–MEX–2011–1904–01).

**SUMMARY:** Pursuant to the Order of the Binational Panel dated February 15, 2013, the panel review was completed on March 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ellen Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** On February 15, 2013, the Binational Panel issued an Order granting a joint motion filed by the Investigating Authority (U.S. Department of Commerce) and the Complainant (ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc.) to dismiss the panel review concerning the Department of Commerce's final determination concerning Stainless Steel Sheet and Strip in Coils from Mexico. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge Committee was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules,* the Panel Review was completed and the panelists were discharged from their duties effective March 18, 2013.

Dated: March 18, 2013.

**Ellen M. Bohon,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 2013–06577 Filed 3–21–13; 8:45 am]

BILLING CODE 3510–GT–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC544**

### Marine Mammals; File No. 17941

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Brian Skerry, 285 High Street, Uxbridge, MA 01569, has applied in due form for a permit to conduct commercial or educational photography on bottlenose (*Tursiops truncatus*) and spinner (*Stenella longirostris*) dolphins.

**DATES:** Written, telefaxed, or email comments must be received on or before April 22, 2013.

**ADDRESSES:** These documents are available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Carrie Hubard or Kristy Beard, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216). The applicant is requesting authorization to conduct two photography/filming projects. The first would consist of helicopter flights over Florida Bay to capture bottlenose dolphins mud-ring feeding. A maximum of 400 dolphins may be harassed during the filming. The second project would focus on areas where spinner dolphins and humans interact in Hawaii. Locations would include the west side of Oahu and four bays on the Kona coast of Hawaii Island. Methods include both vessel-based and underwater photography. Up to 75 spinner dolphins may be approached within 50 yards during the filming. Four pantropical spotted dolphins (*Stenella attenuata*) may also be approached if they are associated with spinner dolphins. Images and video from both locations will be used for a feature story in *National Geographic Magazine* on dolphin cognition and intelligence. Dolphin researchers familiar to each filming location are working as scientific advisors with the applicant. Both projects are currently scheduled for two week timeframes in summer 2013. To allow for scheduling changes, the permit would be valid until March 2014.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 18, 2013.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–06593 Filed 3–21–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### National Climate Assessment and Development Advisory Committee

**AGENCY:** Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of charter renewal.

**SUMMARY:** The Department of Commerce's Chief Financial Officer and Assistant Secretary for Administration has renewed the charter for the National Climate Assessment and Development Advisory Committee (NCADAC) for a six-month period, through July 10, 2013. The NCADAC is a federal advisory committee under the Federal Advisory Committee Act (Pub. L. 92–463).

**DATES:** Renewed through July 10, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dr. Cynthia J. Decker, Designated Federal Officer, National Climate Assessment and Development Advisory Committee, NOAA, Rm. 11230, R/SAB, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Email: *Cynthia.decker@noaa.gov*); or visit the NOAA SAB Web site at *http://www.ncadac.noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The renewal of the Charter for six months is critical to the success of the national climate assessment.

One amendment was made to the charter. Under section 5. Authority to Which the Committee Reports, first sentence ''The committee shall report to the USGCRP through the Under Secretary of Commerce for Oceans and Atmosphere (''Under Secretary'') or her or his designee on the committee's activities and recommendations regarding the contents and process of the National Climate Assessment.'' The phrase ''the USGCRP through'' was removed. At the end of the section, this sentence was added—''The Under Secretary shall ensure that the National Climate Assessment is forwarded to the USGCRP.''

Dated: March 5, 2013.

**Jason Donaldson,**

*Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 2013–05469 Filed 3–21–13; 8:45 am]

**BILLING CODE 3510–KD–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC348**

### Endangered Species; File Nos. 17367 and 17364

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

**ACTION:** Issuance of permits.

**SUMMARY:** Notice is hereby given that the U.S. Fish and Wildlife Service (USFWS), Southeast Regional Office, Century Boulevard, Atlanta, GA 30602 [Thomas Sinclair: Responsible Party], has been issued a permit [File No. 17367] to take shortnose sturgeon (*Acipenser brevirostrum*) and Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) for purposes of scientific research; and also, that the USFWS, Northeast Fishery Center, PO Box 75, Lamar, PA 16848 [Michael Millard: Responsible Party], has been issued a permit [File No. 17364] to take Atlantic sturgeon for purposes of scientific research.

**ADDRESSES:** The permits and related documents are available for review upon written request or by appointment in the following offices:

- Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;
- Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309 [File No. 17367].
- Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394 [File No. 17364].

**FOR FURTHER INFORMATION CONTACT:** Malcolm Mohead or Colette Cairns, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** On November 13, 2012, notice was published in the **Federal Register** (77 FR 67631) that requests for scientific research permits to take shortnose sturgeon and/or Atlantic sturgeon had been submitted by the above-named applicants. The requested permits have been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

*File No. 17367:* The permit holder is issued a five year permit to study captive shortnose and Atlantic sturgeon to conduct scientific research facilitating the development of new methods needed for achieving species recovery in four facilities located in the Southeast Region of the USFWS. Research would include, but is not limited to, nutrition, physiology, propagation, contaminants, genetics, fish health, cryopreservation, tagging, refugia, as well as, collaborative research with other researchers. Additionally, work with captive animals would examine abiotic factors (e.g., pH, temperature, salinity dissolved oxygen, etc.) potentially influencing distribution and abundance in the wild.

*File No. 17364:* The permit holder is issued a five year permit to refine propagation and culture techniques of captive Atlantic sturgeon held in refugia at the USFWS's Northeast Fisheries Center, providing a source of research animals for studies related to tagging, tracking, behavior, physiology, genetics, health, cryopreservation, and other methods for population conservation, recovery, or enhancement of the species in the wild.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 18, 2013.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–06647 Filed 3–21–13; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Effective Date:* 4/22/2013.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clarke Street, Suite 10800, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email CMTEFedReg@AbilityOne.gov.

**SUPPLEMENTARY INFORMATION:**

### Additions

On 12/21/2012 (77 FR 75616) and 1/25/2013 (78 FR 5423), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

### End of Certification

Accordingly, the following products and service are added to the Procurement List:

*Products*

*NSN:* MR 1057—Butterfly Mop, Hybrid Sponge
*NSN:* MR 1058—Refill, Hybrid Sponge Head, Blue
*NPA:* L.C. Industries for the Blind, Inc., Durham, NC
*Contracting Activity:* Defense Commissary Agency, Fort Lee, VA
*COVERAGE:* C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Coveralls, Breathable, Particulate Resistant Design

*NSN:* 8415–LL–L10–0002—Medium
*NSN:* 8415–LL–L10–0003—Large
*NSN:* 8415–LL–L10–0004—X-Large
*NSN:* 8415–LL–L10–0005—2X-Large
*NSN:* 8415–LL–L10–0006—3X-Large
*NSN:* 8415–LL–L10–0007—4X-Large
*NPA:* Northeastern Association of the Blind at Albany, Inc., Albany, NY
*Contracting Activity:* Defense Logistics Agency Maritime—Norfolk, Portsmouth, VA
*COVERAGE:* C-List for 100% of the requirement of the U.S. Navy, as aggregated by the Defense Logistics Agency Maritime—Norfolk, Portsmouth, VA.

*Service*

*Service Type/Location:* Information Technology (IT) Service, Defense Manpower Data Center (DMDC), Defense Human Resources Activity, 4800 Mark Center Drive, Alexandria, VA.
*NPA:* Lakeview Center, Inc., Pensacola, FL
*Contracting Activity:* Defense Human Resources Activity, Hqs Defense Human Resources Acty, Arlington, VA.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2013–06606 Filed 3–21–13; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Addition and Deletion

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Addition to and Deletion from the Procurement List.

**SUMMARY:** The Committee is proposing to add a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities and, deletes a product previously furnished by such agency.

**DATES:** *Comments Must Be Received On or Before:* April 22, 2013.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clarke Street, Suite 10800, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons

an opportunity to submit comments on the proposed actions.

### Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following service is proposed for addition to the Procurement List for production by the nonprofit agency listed:

*Service*

*Service Type/Location:* Operations Support Service, Defense Health Headquarters, 7700 Arlington Blvd., Falls Church, VA.
*NPA:* Linden Resources, Inc., Arlington, VA
*Contracting Activity:* Washington Headquarters Services (WHS), Acquisition Directorate, Washington, DC

### Deletion

The following product is proposed for deletion from the Procurement List:

*Product*

Shape, Day Maritime

*NSN:* 8345–01–101–1101,
*NPA:* None assigned.
*Contracting Activity:* Defense Logistics Agency Troop Support, Philadelphia, PA

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2013–06605 Filed 3–21–13; 8:45 am]

**BILLING CODE 6353–01–P**

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR Agreement'')

**AGENCY:** The Committee for the Implementation of Textile Agreements.

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

**DATES:** *Effective Date:* March 22, 2013.

**SUMMARY:** The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain piece dyed three-thread fleece fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

*For Further Information On-Line: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf* under ''Approved Requests,'' Reference number: 178.2013.02.21.Fabric.SoriniSametforGaranMfg.

**SUPPLEMENTARY INFORMATION:**

*Authority:* The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA–DR Implementation Act''), Pub. L. 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

### Background

The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25(4)(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement,* 73 FR 53200) (''CITA's procedures'').

On February 21, 2013, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Sorini Samet & Associates LLC on behalf of Garan Manufacturing, Inc. for certain piece dyed three-thread fleece fabric, as specified below. On February 25, 2013, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by March 7, 2013, and any Rebuttal Comments to a Response must be submitted by March 13, 2013, in accordance with sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings.

**SPECIFICATIONS: Certain Piece Dyed Three-thread Fleece Fabric**

HTS: 6001.21
Overall fiber content: Cotton—57 to 63%; Polyester—37 to 43%.
Gauge: 21
Face Yarn:
Fiber content: 57–63% combed cotton; 37–43% polyester ring spun
Yarn size: 47.4/1–57.6/1 (metric); 28/1–34/1 (English)
Tie Yarn:
Fiber content: 100% polyester
Yarn size: 157.9–191.5/48 filament (metric); 47–57 denier 48 filament (English)
Fleece Yarn:
Fiber content: 72–78% carded cotton, 22–28% polyester
Yarn Size: 18.6/1–28.8/1(metric); 11/1–17/1 (English)
Weight: 233.9–267.8 g/square meter (6.9–7.8 oz./square yard)
Width: 152.4 cm cuttable or greater, open width (60″ cuttable or greater, open width)
Finish: Single fiber piece dyed with reactive dyestuff for cotton or disperse dye stuff for polyester.
Performance Criteria:
1. Torque must not exceed 4% (must meet AATCC 179)

2. Vertical and horizontal shrinkage must be under 5%

3. Must meet a class-1 flammability rating.

NOTE: The attributes listed for yarn size relate to the size of the yarn prior to knitting. The measurements for fabric construction and weight relate to the fabric prior to garment production. Some variations may occur in these measurements as a result of the manufacturing processes.

**Kim Glas,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 2013–06680 Filed 3–21–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF DEFENSE

### Department of the Army, U.S. Army Corps of Engineers

### Greater Mississippi River Basin Water Management Board; Engineer Regulation No. 15–2–13

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is revising its Engineer Regulation No. 15–2–13 dated 10 May 1989. This regulation establishes and prescribes the objectives, composition, responsibilities and authority of the Corps Greater Mississippi River Basin Water Management Board. It is applicable to all Corps offices involved with water management within the Greater Mississippi River Basin. The Board consists of the Deputy Commanding General for Civil and Emergency Operations, and Division Commanders of the Northwestern, Mississippi Valley, Great Lakes and Ohio River, and Southwestern Divisions. The Deputy Commanding General for Civil and Emergency Operations serves as permanent Board Chairperson. The Board provides oversight and guidance during significant regional drought or flood events that cross Division boundaries. The Board discusses water management issues among Corps Divisions within the Greater Mississippi River Basin.

**DATES:** *Effective date:* April 22, 2013.

**ADDRESSES:** U.S. Army Corps of Engineers, Attn: CECW–CE, 441 G Street NW., Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Bank at 202–761–5532 or by email at *Robert.Bank@usace.army.mil,*

**SUPPLEMENTARY INFORMATION:** Previous Engineer Regulation No. 15–2–13 titled ''Mississippi River Water Control Board'' was published on 10 May 1989 by the U.S. Army Corps of Engineers. Since its last revision, the Corps has reorganized its command and control structure. This regulation revision reflects the current organizational structure and is aligned with water management activities during recent flood and drought events in the United States.

This is published in **Federal Register** as a notice to concerned people and entities, and is not a request for comments.

Dated: March 18, 2013.

Approved by:

**Robert A. Bank,**

*Chief, Civil Works Branch Engineering & Construction, Headquarters, U.S. Army Corps of Engineers.*

For the reasons stated above, the Corps is revising Engineer Regulation No. 15–2–13 dated 10 May 1989 as follows:

DEPARTMENT OF THE ARMY
ER 15–2–13
U.S. Army Corps of Engineers
CECW–CE
Washington, DC 20314–1000

Engineer Regulation No. 15–2–13

Boards, Commission and Committees

GREATER MISSISSIPPI RIVER BASIN WATER MANAGEMENT BOARD

1. Purpose. This regulation establishes and prescribes the objectives, composition, responsibilities and authority of the U.S. Army Corps of Engineers (Corps) Greater Mississippi River Basin Water Management Board.

2. Applicability. The regulation is applicable to the Board members and to all field operating activities concerned with water management within the Greater Mississippi River Basin. The Greater Mississippi River Basin drains 41% of the 48 contiguous states of the United States and the drainage basin covers approximately 1.25 million square miles, including all or part of 31 states and two Canadian provinces. Its major tributaries are the Missouri, Ohio, Arkansas-White, and the Red Rivers. The Mississippi River is located within Mississippi Valley Division; however, the majority of its drainage area and its significant tributaries are located within the Northwestern Division, Great Lakes and Ohio River Division and Southwestern Division boundaries. The Board will be activated as deemed appropriate by the Deputy Commanding General for Civil and Emergency Operations, including during significant regional drought or flood events—considered as emergency conditions.

3. Objectives. The objectives of the Board are:

a. To provide oversight and guidance during significant regional drought or flood events that cross Division boundaries, and require coordination of basin-wide water management activities.

b. To serve as a forum for discussion of water management issues among Corps Divisions within the Greater Mississippi River Basin when agreement is otherwise unobtainable.

c. Provides a forum, when necessary, for division commanders to keep the Chief of Engineers informed of any unusual problems or activities associated with water control that impact his/her responsibilities.

4. Composition. The Greater Mississippi River Basin Water Management Board is a continuing board consisting of the Deputy Commanding General for Civil and Emergency Operations, and Division Commanders of the Northwestern, Mississippi Valley, Great Lakes and Ohio River, and Southwestern Divisions. The Deputy Commanding General for Civil and Emergency Operations serves as permanent Board Chairperson.

5. Responsibilities. The Board functions under the general direction of the Commanding General, USACE, and is responsible for:

a. Oversight of procedures for maintaining and improving inter-divisional coordination of water management activities within the Greater Mississippi River Basin.

b. Oversight of the development and use of facilities (physical and computer models, automated data processing equipment, and communications and information dissemination networks) needed to coordinate water management activities for the Greater Mississippi River Basin projects.

c. Oversight of basin-wide water management activities associated with Corps projects in the Greater Mississippi River Basin and, during certain significant emergency periods, may also include other agency projects located within the Basin (e.g., Tennessee Valley Authority, Bureau of Reclamation).

d. Periodic reports and/or briefings to the Commanding General, regarding the Board's activities and plans, during periods when Board is active.

6. Committees. The Greater Mississippi River Basin Water Management Board is authorized to establish continuing or ad hoc inter-divisional operating or study committees comprised of Corps personnel to facilitate the work of the Board. A standing Technical Committee comprised of the senior water control managers from the four Divisions within the Greater Mississippi River Basin, and the HQUSACE Principal Hydrologic and Hydraulic Engineer—who serves as Technical Committee Chairperson—is established to advise and assist the Board. The Technical Committee meets whenever a need is determined by the Chairperson or identified by the Board.

7. Procedures. The procedures used by the Board to carry out its responsibilities are as follows:

a. During the emergency period when the Board is active, the Board will meet to review recent past activities and current and future project operations, and to discuss new or revised water management activities for this period as appropriate.

b. The Board will provide instructions to committees under its jurisdiction and review their recommendations for improvements in water management for the above stated purpose.

c. Deviations or changes to a current water control plan may be made at the discretion of the respective division commander, unless

delegated authority has been withheld. Such deviations or changes may be discussed with the Board at the commander's request. However, any deviation or change must meet all legal and procedural requirements.

d. When major differences prevail among the Board members and cannot be resolved, the issue shall be raised on an expedient basis to the Commanding General, to allow for a decision in a timely manner.

e. When needed, convene routine meetings of the Technical Committee sufficient to: ensure inter-division coordination and situational awareness; coordinate with the HQUSACE Dam and Levee Safety Officer; and inform the Board of decisions requiring Command Authority.

f. Terms of Reference will be developed for operation of the Board and Technical Committee for approval by the Deputy Commanding General for Civil and Emergency Operations.

g. The Board and Technical Committee will collaborate with the Mississippi River Commission (MRC) and other impacted stakeholder groups to ensure effective synchronization between the missions of the Board and the MRC in the development of basin-wide management activities for projects within the Greater Mississippi River Basin System.

h. The records of all Board proceedings will be preserved and maintained pursuant to the Army recordkeeping requirements in the Army Records Information Management System regulation (ARIMS—AR25–1–400). The Board will designate an individual responsible for maintaining records of all board proceedings. The designated individual shall be copied on all electronic messages concerning Board proceedings. Records of the Board include, and the Board members shall retain, any emails or other electronic records which the Board members generate or receive concerning Board proceedings. The Board recognizes that recommendations made by the Board and the information generated therefore, are of critical importance to the Corps if litigation is brought against the Corps. Litigation holds will be issued when litigation is reasonably anticipated. When a litigation hold is issued, specific instructions will be provided on preservation of electronically stored information and paper documents.

8. Funding. Routine activities of the Greater Mississippi River Basin Water Management Board and its committees, such as travel and meeting expenses, are funded by the separate members' offices. Major expenses connected with special studies are funded through the normal budgetary process. Budget requests will be supported by appropriate justification material.

[FR Doc. 2013–06591 Filed 3–21–13; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability for the Final Environmental Impact Statement for the Proposed Modernization and Expansion of Townsend Bombing Range, Georgia

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and regulations implemented by the Council on Environmental Quality (40 Code of Federal Regulations [CFR] Parts 1500–1508), Department of the Navy (DoN) NEPA regulations (32 CFR part 775) and United States Marine Corps (USMC) NEPA directives (Marine Corps Order P5090.2A, changes 1 and 2), the USMC has prepared and filed with the United States Environmental Protection Agency (USEPA) a Final Environmental Impact Statement (Final EIS) that evaluated potential environmental impacts of acquiring additional property and constructing the necessary infrastructure to allow the use of precision-guided munitions (PGMs) at Townsend Bombing Range (TBR), Georgia. Through the use of PGMs at TBR, the USMC can more efficiently meet current training requirements for pilots by significantly increasing air-to-ground training capabilities at Marine Corps Air Station (MCAS) Beaufort, South Carolina.

**DATES AND ADDRESSES:** The USEPA's Notice of Availability (NOA) and Notice of Public Meeting for the Draft EIS was published in the **Federal Register** on July 13, 2012 (77 FR 41402). Federal, state, and local agencies, citizens groups and associations, and other interested parties provided oral and written comments to the USMC and identified specific issues or topics of environmental concern that should be addressed in the Final EIS. The USMC responded to all these comments and updated portions of the Final EIS, where appropriate.

The Final EIS has been distributed to federal, state, and local agencies, citizens groups and associations, and other interested parties. In addition, a copy of the Final EIS was distributed to the following libraries:

1. Ida Hilton Public Library, 1105 North Way, Darien, GA 31305.

2. Long County Public Library, 28 South Main Street, Ludowici, GA 31316.

3. Hog Hammock Public Library, 1023 Hillery Lane, Sapelo Island, GA 31327.

An electronic version of the Final EIS can be viewed or downloaded from the project Web site: *http://www.townsendbombingrangeeis.com.*

**FOR FURTHER ASSISTANCE CONTACT:** Capt. Cochran, 596 Geiger Blvd. MCAS Beaufort, SC 29904 at 843–228–6123.

**SUPPLEMENTARY INFORMATION:** Through the preparation of a Universal Need Statement (UNS), Marine Aircraft Group 31 (MAG–31) identified its requirement for an air-to-ground training range that allows aircrews to utilize PGMs in a realistic training environment. Following the preparation of the UNS, the USMC began the process to certify the requirement to establish an air-to-ground training range to support MAG–31's aviation training needs and develop the approach to accommodate this requirement. MAG–31's need for an air-to-ground range that can accommodate realistic PGM training allowed the USMC and the DoN to request the DoD's approval to study the land acquisition alternatives that could support the creation of a modernized air-to-ground training range. The USMC then initiated the preparation of the EIS to examine the potential impacts of the proposed land acquisition and airspace modification alternatives that could meet the training requirement.

The USMC conducted a multi-step screening process to identify candidate ranges and alternatives that meet the purpose and need. To achieve this, the USMC: (1) Developed range evaluation criteria by identifying key physical and operational attributes required to support training with PGMs; (2) identified existing candidate DoD ranges in the Southeastern United States; and (3) evaluated the candidate ranges against the range evaluation criteria. As a result of the evaluations, seven candidate ranges were identified and subjected to initial analysis; however, only TBR satisfied all of the screening criteria and was carried forward for full analysis in the EIS.

*Purpose and Need:* The purpose of the Proposed Action is to provide an air-to-ground training range capable of providing a wider variety of air-to-ground operations, including the use of PGMs, to meet current training requirements. The Proposed Action is needed to more efficiently meet current training requirements for USMC aviation assets by significantly increasing air-to-ground training capabilities in the Beaufort, South Carolina Region.

*Proposed Action:* The Proposed Action in the FEIS evaluated potential environmental impacts of acquiring additional property and constructing the

necessary infrastructure to allow the use of PGMs at TBR, Georgia.

The Proposed Action includes five interrelated components:

(1) Acquisition of land;

(2) Acquisition of a timber easement;

(3) Modification of existing airspace;

(4) Construction of infrastructure to support PGM training; and

(5) Improvement of training capabilities.

*Alternatives Evaluated in the FEIS:* The USMC analyzed four action alternatives and a No Action Alternative. All four action alternatives involved the acquisition and management of land and a timber easement, the modification of existing airspace, and the construction of infrastructure to support PGM training, and would result in the improvement of training capabilities. The land acquired under each action alternative involved different strategic combinations of three possible land acquisition areas (referred to as ''Acquisition Area 1A,'' ''Acquisition Area 1B,'' and ''Acquisition Area 3''). Similarly under all four action alternatives, the USMC proposed to modify the existing airspace based on the amount of land acquired. Any combination of the land proposed to be acquired would be under the current Restricted Area R–3007. All the action alternatives involved the installation of target scoring equipment, facility and/or tower construction, and roadway construction/improvement. The USMC identified Alternative 4 as the Preferred Alternative, which includes acquisition of Areas 1B and 3 (28,630 acres) and construction of six new target areas.

*Environmental Compliance:* The USMC prepared the Final EIS per the guidance provided in 40 CFR 1502.9, with the purpose of fully analyzing environmental impacts as a result of implementing the Proposed Action through selection of the Preferred Alternative. Impacts were assessed for the following resource areas: Land use; socioeconomics; recreation; wetlands; water resources; airspace; noise; biological resources; cultural resources; air quality; transportation; noise; topography, geology, and soils; utilities and infrastructure; and hazardous materials and waste. However, it was determined through the EIS analysis that only socioeconomics would be significantly impacted as a result of the Proposed Action.

*Schedule:* Publication of the USEPA's NOA signifies the beginning of a 30-day waiting period (No Action Period). In accordance with NEPA, the Assistant Secretary of the Navy (Installations and Environment) will publish the Record of Decision in the **Federal Register** after the 30-day waiting period has ended.

Dated: March 8, 2013.

**C.K. Chiappetta,**

*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2013–06588 Filed 3–21–13; 8:45 am]

**BILLING CODE 3810–FF–P**

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## DEPARTMENT OF EDUCATION

**[Docket No. ED–2012–ICCD–0070]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; School Attendance Boundary Survey (SABS) 2013–2015

**AGENCY:** Institute of Education Sciences (IES), National Center for Education Statistics (NCES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before April 22, 2013.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0070 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* School Attendance Boundary Survey (SABS) 2013–2015.

*OMB Control Number:* 1850—NEW.

*Type of Review:* New collection.

*Respondents/Affected Public:* State, Local, or Tribal Governments.

*Total Estimated Number of Annual Responses:* 13,600.

*Total Estimated Number of Annual Burden Hours:* 13,600.

*Abstract:* The National Center for Education Statistics (NCES), of the Institute of Education Sciences (IES), within the U.S. Department of Education, is requesting clearance to collect the boundaries for all public school service areas in the 50 states and the District of Columbia in 2013 and 2015. The School Attendance Boundary Survey (SABS), to be collected on a two year cycle, will assign geographic school attendance boundaries for the public elementary and secondary schools included in the Common Core of Data (CCD) universe. NCES will then disseminate data from sources such as the American Community Survey (e.g. demographics and poverty information) mapped against the school boundaries. The NCES mapping system is the only system in the United States to nationally visually link school exact geographic locations to their demographic and economic information.

Dated: March 18, 2013.

**Stephanie Valentine,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2013–06573 Filed 3–21–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2013–ICCD–0034]**

### Agency Information Collection Activities; eZ-Audit: Electronic Submission of Financial Statements and Compliance Audits

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of a previously approved information collection.

**DATES:** Interested persons are invited to submit comments on or before May 21, 2013.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0034 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* eZ-Audit: Electronic Submission of Financial Statements and Compliance Audits.

*OMB Control Number:* 1845–0072.

*Type of Review:* an extension of a previously approved information collection.

*Respondents/Affected Public:* Private Sector, State, Local, or Tribal Governments.

*Total Estimated Number of Annual Responses:* 6,100.

*Total Estimated Number of Annual Burden Hours:* 2,342.

*Abstract:* eZ-Audit is a web-based process designed to facilitate the submission of compliance and financial statement audits, expedite the review of those audits by the Department, and provide more timely and useful information to public, non-profit and proprietary institutions regarding the Department's review. eZ-Audit establishes a uniform process under which all institutions submit directly to the Department any audit required under the Title IV, HEA program regulations. eZ-Audit continues to have minimal number of financial template line items and general information questions.

Dated: March 18, 2013.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2013–06575 Filed 3–21–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2013–ICCD–0033]**

### Agency Information Collection Activities; Comment Request; Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report

**AGENCY:** The Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a previously approved information collection.

**DATES:** Interested persons are invited to submit comments on or before May 21, 2013.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0033 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report.

*OMB Control Number:* 1840–0640.

*Type of Review:* A revision of a previously approved information collection.

*Respondents/Affected Public:* Private Sector, State, Local, or Tribal Governments.

*Total Estimated Number of Annual Responses:* 158.

*Total Estimated Number of Annual Burden Hours:* 1,738.

*Abstract:* Ronald E. McNair Postbaccalaureate Achievement (McNair) Program Annual Performance Report Program grantees must submit the report annually. The reports are used to evaluate grantees' performance for substantial progress, GPRA, and to award prior experience points at the end of each project (budget) period. The Department also aggregates the data to provide descriptive information on the projects and to analyze the impact of the McNair Program on the academic progress of participating students.

Dated: March 18, 2013.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2013–06574 Filed 3–21–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Annual Notice of Interest Rates of Federal Student Loans Made Under the Federal Family Education Loan Program

**AGENCY:** Federal Student Aid, Department of Education.

**ACTION:** Notice; correction.

**SUMMARY:** On January 25, 2013, the Chief Operating Officer for Federal Student Aid in the U.S. Department of Education published in the **Federal Register** (78 FR 5433) a notice announcing the interest rates for the period July 1, 2012, through June 30, 2013, for certain loans made under the Federal Family Education Loan Program. We correct two of the charts in that notice.

**DATES:** Effective March 22, 2013.

**SUPPLEMENTARY INFORMATION:** On page 5434 we correct Chart 1 to read as follows:

CHART 1—"CONVERTED" VARIABLE-RATE FEDERAL SUBSIDIZED AND UNSUBSIDIZED STAFFORD LOANS

| Cohort | | Original fixed interest rate | Max. rate (percent) | 91-Day T-bill rate (percent) | Margin (percent) | Total rate (percent) |
|---|---|---|---|---|---|---|
| First disbursed on or after | First disbursed before | | | | | |
| 7/1/1988 | 7/23/1992 | 8.00%, increasing to 10.00% | 10.00 | 0.09 | 3.25 | 3.34 |
| 7/23/1992 | 10/1/1992 | 8.00%, increasing to 10.00% | 10.00 | 0.09 | 3.25 | 3.34 |
| 7/23/1992 | 7/1/1994 | 7.00% | 7.00 | 0.09 | 3.10 | 3.19 |
| 7/23/1992 | 7/1/1994 | 8.00% | 8.00 | 0.09 | 3.10 | 3.19 |
| 7/23/1992 | 7/1/1994 | 9.00% | 9.00 | 0.09 | 3.10 | 3.19 |
| 7/23/1992 | 7/1/1994 | 8.00%, increasing to 10.00% | 10.00 | 0.09 | 3.10 | 3.19 |

Immediately following the chart we add:

"*Note:* The FFEL Program loans represented by the second row of the chart were only made to "new borrowers" on or after July 23, 1992."

We corrected the margin column for what were the second, third, and fourth rows (now the third, fourth, and fifth rows) to read 3.10 percent, rather than 3.25 percent. The total rate column reflects the margin rate changes.

We added a sixth row, to differentiate between two cohorts of "converted" variable-rate loans that were originally fixed-rate loans with rates that began at 8 percent, but increased to 10 percent after 4 years of repayment.

We added a cohort column, consistent with other charts in the notice, to provide additional specificity as to when the FFEL Program loans represented in the chart were made.

On page 5434 we correct Chart 2 to read:

CHART 2—VARIABLE-RATE FEDERAL SUBSIDIZED AND UNSUBSIDIZED STAFFORD LOANS

| Cohort | | Max. rate (percent) | 91-Day T-bill rate (percent) | Margin | | Total rate | |
|---|---|---|---|---|---|---|---|
| First disbursed on or after | First disbursed before | | | In-school, grace, deferment (percent) | All other periods (percent) | In-school, grace, deferment (percent) | All other periods (percent) |
| 10/1/1992 | 7/1/1994 | 9.00 | 0.09 | 3.10 | 3.10 | 3.19 | 3.19 |
| 7/1/1994 | †7/1/1994 | 9.00 | 0.09 | 3.10 | 3.10 | 3.19 | 3.19 |
| 7/1/1994 | 7/1/1995 | 8.25 | 0.09 | 3.10 | 3.10 | 3.19 | 3.19 |
| 7/1/1995 | 7/1/1998 | 8.25 | 0.09 | 2.50 | 3.10 | 2.59 | 3.19 |
| 7/1/1998 | 7/1/2006 | 8.25 | 0.09 | 1.70 | 2.30 | 1.79 | 2.39 |

We corrected the maximum rate column for the second row from 8.25 percent to 9 percent.

The Note following Chart 2 in the interest rate notice is correct, and we do not republish it here.

As a reminder, a dagger following a date in the cohort fields indicates that the trigger for the rate to apply is a period of enrollment for which the loan was intended either "ending before" or "beginning on or after" the date in the cohort field.

**FOR FURTHER INFORMATION CONTACT:** Ian Foss, U.S. Department of Education, 830 First Street NE., Room 114I1, Washington, DC 20202–5354. Telephone: (202) 377–3681 or by email: *ian.foss@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 19, 2013.

**James W. Runcie,**

*Chief Operating Officer, Federal Student Aid.*

[FR Doc. 2013–06653 Filed 3–21–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, April 10, 2013, 6:00 p.m.

**ADDRESSES:** Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

**FOR FURTHER INFORMATION CONTACT:** Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

- Welcome and Announcements.
- Comments from the Deputy Designated Federal Officer.
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons.
- Public Comment Period.
- Presentation on EM Portfolio Plans.
- Additions/Approval of Agenda.
- Motions/Approval of March 13, 2013 Meeting Minutes.
- Status of Recommendations with DOE.
- Committee Reports.
- Federal Coordinator Report.
- Adjourn.

*Public Participation:* The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on March 15, 2013.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2013–06611 Filed 3–21–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice.

**SUMMARY:** In this notice, the U.S. Department of Energy (DOE) is forecasting the representative average unit costs of five residential energy sources for the year 2013 pursuant to the Energy Policy and Conservation Act. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene.

**DATES:** The representative average unit costs of energy contained in this notice will become effective April 22, 2013 and will remain in effect until further notice.

**FOR FURTHER INFORMATION CONTACT:**

John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy Forrestal Building, Mail Station EE–2J 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 287–1692, *Rep_Average_Unit_Costs@ee.doe.gov.*

Francine Pinto, Esq. U.S. Department of Energy, Office of General Counsel Forrestal Building, Mail Station GC–72, 1000 Independence Avenue SW., Washington, DC 20585–0103, (202) 586–7432, *Francine.Pinto@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** Section 323 of the Energy Policy and Conservation Act (Act) requires that DOE prescribe test procedures for the measurement of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act. (42 U.S.C. 6293(b)(3)) These test procedures are found in Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B.

Section 323(b)(3) of the Act requires that the estimated annual operating costs of a covered product be calculated from measurements of energy use in a representative average use cycle or period of use and from representative average unit costs of the energy needed to operate such product during such cycle. (42 U.S.C. 6293(b)(3)) The section further requires that DOE provide information to manufacturers regarding the representative average unit costs of energy. (42 U.S.C. 6293(b)(4)) This cost

information should be used by manufacturers to meet their obligations under section 323(c) of the Act. Most notably, these costs are used to comply with Federal Trade Commission (FTC) requirements for labeling. Manufacturers are required to use the revised DOE representative average unit costs when the FTC publishes new ranges of comparability for specific covered products, 16 CFR part 305. Interested parties can also find information covering the FTC labeling requirements at *http://www.ftc.gov/appliances.*

DOE last published representative average unit costs of residential energy in a **Federal Register** notice entitled, ''Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy'', dated April 26, 2012, 77 FR 24940.

On April 22, 2013, the cost figures published in today's notice will become effective and supersede those cost figures published on April 26, 2012. The cost figures set forth in today's notice will be effective until further notice.

DOE's Energy Information Administration (EIA) has developed the 2013 representative average unit after-tax residential costs found in this notice. These costs for electricity, natural gas, No. 2 heating oil, and propane are based on simulations used to produce the March 2013, EIA *Short-Term Energy Outlook* (EIA releases the *Outlook* monthly). The representative average unit after-tax cost for kerosene is derived from its price relative to that of heating oil, based on the 2008–2012 averages for these fuels. The source for these price data is the February 2013, *Monthly Energy Review* DOE/EIA–0035 (2013/02). The *Short-Term Energy Outlook* and the *Monthly Energy Review* are available on the EIA Web site at *http://www.eia.doe.gov.* Propane prices are econometric modeling projections based on historical Weekly Petroleum Status Report winter prices and Mont Belvieu (Texas) spot and futures prices. For more information on the data sources used in this Notice, contact the National Energy Information Center, Forrestal Building, EI–30, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8800, email: *infoctr@eia.doe.gov.*

The 2013 representative average unit costs under section 323(b)(4) of the Act are set forth in Table 1, and will become effective April 22, 2013. They will remain in effect until further notice.

Issued in Washington, DC, on March 12, 2013.

**David Danielson,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

TABLE 1—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2013)

| Type of energy | Per million Btu [1] | In commonly used terms | As required by test procedure |
|---|---|---|---|
| Electricity | $35.46 | 12.1¢/kWh [2 3] | $0.121/kWh |
| Natural Gas | 10.87 | $1.087/therm [4] or $11.12/MCF [5 6] | $0.00001087/Btu |
| No. 2 Heating Oil | 27.40 | $3.80/gallon [7] | $0.00002740/Btu |
| Propane | 26.39 | $2.41/gallon [8] | $0.00002639/Btu |
| Kerosene | 31.19 | $4.21/gallon [9] | $0.00003119/Btu |

Sources: U.S. Energy Information Administration, *Short-Term Energy Outlook* (March 12, 2013) and *Monthly Energy Review* (February 25, 2013).

Notes: Prices include taxes.

[1] Btu stands for British thermal units.

[2] kWh stands for kilowatt hour.

[3] 1 kWh = 3,412 Btu.

[4] 1 therm = 100,000 Btu.

[5] MCF stands for 1,000 cubic feet.

[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,023 Btu.

[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.

[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.

[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 2013–06618 Filed 3–21–13; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14491–000; Project No. 13579–002]**

### Western Minnesota Municipal Power Agency; FFP Qualified Hydro 14, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 1, 2013, Western Minnesota Municipal Power Agency and FFP Qualified Hydro 14, LLC filed preliminary permit applications pursuant to section 4(f) of the Federal Power Act proposing to study the feasibility of a hydropower project, to be located at the existing Saylorville Lock and Dam on the Des Moines River, in the city of Johnston in Polk County, Iowa. FFP Qualified Hydro 14, LLC's application is for a successive preliminary permit. Saylorville Lock and Dam is owned by the United States government and operated by the United States Army Corps of Engineers. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owner's express permission.

Western Minnesota Municipal Power Agency's proposed project would consist of: (1) A new 80-foot-long by 35-foot-wide by 95-foot-high concrete intake; (2) three new 14-foot-diameter by 740-foot long conduits; (3) a new 100-foot-long by 50-foot-wide concrete powerhouse with three 5-megawatt (MW) turbines, having a combined generating capacity of 15 MW; (4) three new 7.5–MW generator units; (5) a 100-foot-long by 75-foot-wide substation; (6) a new 3.73-mile-long, 69-kilovolt transmission line; and (7) appurtenant facilities. The project would have an estimated annual generation of 66 gigawatt-hours.

*Applicant Contact:* Mr. Raymond J. Wahle, 3724 W. Avera Drive, Sioux Falls, SD 57109; (605) 330–6963.

FFP Qualified Hydro 14, LLC's proposed project would consist of: (1) A new 400-foot-long by 300-foot-wide

forebay channel; (2) a new 75-foot-long by 50-foot-wide by 140-foot-high concrete intake; (3) a new 18-foot-diameter by 75-foot-long concrete lined headrace tunnel; (4) a new18-foot-diameter by 250-foot-long steel penstock; (5) three 10-foot-diameter, various-length pipelines that connects the penstock to the proposed turbines; (6) a new 120-foot-long by 70-foot-wide concrete powerhouse, containing three 4.8–MW Kaplan turbine-generators, with a combined nameplate capacity of 14.4 MW; (7) a new 275-foot-long by 190-foot-wide tailrace channel; (8) a new 60-foot-long by 50-foot-wide substation; (9) a new 4,950-foot-long, 69-kilovolt transmission line between the project substation to an interconnection point and a buried 1000-foot-long, 4.16-kV line from the powerhouse to the project substation; and (10) appurtenant facilities. The project would have an estimated annual generation of 45.3 gigawatt-hours.

*Applicant Contact:* Ms. Ramya Swaminathan, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 283–2822.

*FERC Contact:* Tyrone A. Williams, (202) 502–6331.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of either application can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14491 or P–13579) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 15, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–06601 Filed 3–21–13; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP12–955–000.
*Applicants:* CenterPoint Energy—Mississippi River T.
*Description:* MRT Test Period Update Filing.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5127.
*Comments Due:* 5 p.m. ET 3/27/13.

*Docket Numbers:* RP13–685–000.
*Applicants:* Alliance Pipeline L.P.
*Description:* March 19–31 2013 Auction to be effective 3/19/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5145.
*Comments Due:* 5 p.m. ET 3/27/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP13–529–002.
*Applicants:* Guardian Pipeline, L.L.C.
*Description:* NAESB 2.0 Modification II to be effective 4/1/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5046.
*Comments Due:* 5 p.m. ET 3/27/13.

*Docket Numbers:* RP13–530–002.
*Applicants:* Midwestern Gas Transmission Company.
*Description:* NAESB 2.0 Modification II to be effective 4/1/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5045.
*Comments Due:* 5 p.m. ET 3/27/13.

*Docket Numbers:* RP13–531–002.
*Applicants:* OkTex Pipeline Company, L.L.C.
*Description:* NAESB 2.0 Modification II to be effective 4/1/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5043.
*Comments Due:* 5 p.m. ET 3/27/13.

*Docket Numbers:* RP13–532–002.
*Applicants:* Viking Gas Transmission Company.
*Description:* NAESB 2.0 Modification II to be effective 4/1/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5033.
*Comments Due:* 5 p.m. ET 3/27/13.

Any person desiring to protest in any of the above proceedings must file in of accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service 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 March 18, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–06598 Filed 3–21–13; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2238–004; ER10–2239–004; ER10–2237–003; ER10–1821–005; ER11–4475–005.
*Applicants:* Indigo Generation LLC, Larkspur Energy LLC, Wildflower Energy LP, Goshen Phase II LLC, Rockland Wind Farm LLC.
*Description:* Notice of Non-Material Change in Status of the DGC Companies.
*Filed Date:* 3/14/13.
*Accession Number:* 20130314–5184.
*Comments Due:* 5 p.m. ET 4/4/13.

*Docket Numbers:* ER13–633–001.
*Applicants:* Public Service Company of Colorado.
*Description:* Public Service Company of Colorado submits 2013–03–15–NSP–BARRON-Tran-to Load-543 to be effective 1/1/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5070.
*Comments Due:* 5 p.m. ET 4/5/13.

*Docket Numbers:* ER13–656–001.
*Applicants:* Public Service Company of Colorado.
*Description:* 2013–03–14–NSP–TREMPLO-Tran-to Load-549 to be effective 1/1/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5003.
*Comments Due:* 5 p.m. ET 4/5/13.

*Docket Numbers:* ER13–672–001.
*Applicants:* Public Service Company of Colorado.
*Description:* Public Service Company of Colorado submits 2013–03–15–NSP–RCLK-Tran-to Load-547 to be effective 1/1/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5048.
*Comments Due:* 5 p.m. ET 4/5/13.

*Docket Numbers:* ER13–791–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits 03–15–2013 SA 2478 METC-Traverse IFA to be effective 3/24/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5074.
*Comments Due:* 5 p.m. ET 4/5/13.

*Docket Numbers:* ER13–1101–000.
*Applicants:* Spectrum Nevada Solar, LLC.
*Description:* Application and Initial Baseline Tariff Filing to be effective 4/24/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5000.
*Comments Due:* 5 p.m. ET 4/5/13.

*Docket Numbers:* ER13–1102–000.
*Applicants:* Southern California Edison Company.
*Description:* GIA and Distribution Service Agreement CA PV Energy, LLC at 1670 Champagne Ave to be effective 3/16/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5001.
*Comments Due:* 5 p.m. ET 4/5/13.

*Docket Numbers:* ER13–1103–000.
*Applicants:* Southern California Edison Company.
*Description:* GIA and Distribution Service Agreement CA PV Energy, LLC at 2825 Jurupa Ave to be effective 3/16/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5002.
*Comments Due:* 5 p.m. ET 4/5/13.

*Docket Numbers:* ER13–1104–000.
*Applicants:* Just Energy Illinois Corp.
*Description:* Just Energy Illinois Corp. submits Market-Based Rates application to be effective 5/14/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5047.
*Comments Due:* 5 p.m. ET 4/5/13.

*Docket Numbers:* ER13–1105–000.
*Applicants:* Florida Power Corporation, Duke Energy Carolinas, LLC.
*Description:* Florida Power Corporation submits Joint OATT Florida CWIP Filing to be effective 5/15/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5056.
*Comments Due:* 5 p.m. ET 4/5/13.

*Docket Numbers:* ER13–1106–000.
*Applicants:* Wisconsin Public Service Corporation.
*Description:* Wisconsin Public Service Corporation submits WPSC Annual PEB/PBOP Filing to be effective 4/1/2013 under ER13–1106 Filing Type: 10.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5076.
*Comments Due:* 5 p.m. ET 4/5/13.

*Docket Numbers:* ER13–1107–000.
*Applicants:* FM Energy Scheduling, LLC.
*Description:* FM Energy Scheduling, LLC submits FMES MBRA Application to be effective 6/1/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5079.
*Comments Due:* 5 p.m. ET 4/5/13.

*Docket Numbers:* ER13–1108–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits Original Service Agreement No. 3515 Queues V4–006, V4–007, V4–030, V4–031 to be effective 2/13/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5080.
*Comments Due:* 5 p.m. ET 4/5/13.

*Docket Numbers:* ER13–1109–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits 03–15–2013 to be effective 5/14/2013.
*Filed Date:* 3/15/13.
*Accession Number:* 20130315–5089.
*Comments Due:* 5 p.m. ET 4/5/13.

Take notice that the Commission received the following electric securities filings:
*Docket Numbers:* ES13–18–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Section 204 Application of Midwest Independent Transmission System Operator, Inc.
*Filed Date:* 3/14/13.
*Accession Number:* 20130314–5187.
*Comments Due:* 5 p.m. ET 4/4/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 15, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–06600 Filed 3–21–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12–30–002; ER11–41–002; ER11–46–005; ER11–47–002; ER10–2975–005; ER10–2981–002.
*Applicants:* BlueStar Energy Services Inc., Appalachian Power Company, AEP Energy Partners, Inc., CSW Energy Services, Inc., AEP Texas Central Company, AEP Retail Energy Partners.
*Description:* Supplement to June 29, 2012 Triennial update for market based rate authority for AEP West by BlueStar Energy Services Inc., *et al.*
*Filed Date:* 3/14/13.
*Accession Number:* 20130314–5180.
*Comments Due:* 5 p.m. ET 4/4/13.

*Docket Numbers:* ER12–953–002.
*Applicants:* ISO New England Inc.
*Description:* FCM Compliance Filing to be effective 5/13/2013.
*Filed Date:* 3/14/13.
*Accession Number:* 20130314–5102.
*Comments Due:* 5 p.m. ET 4/4/13.

*Docket Numbers:* ER13–962–001.
*Applicants:* Wisconsin Power and Light Company.
*Description:* Wisconsin Power and Light Company submits WPL's Changes in Depreciation Rates for Wholesale Production Service Supplement to be effective 1/1/2013.
*Filed Date:* 3/14/13.
*Accession Number:* 20130314–5156.
*Comments Due:* 5 p.m. ET 4/4/13.

*Docket Numbers:* ER13–1080–000.
*Applicants:* Arizona Public Service Company.

*Description:* Arizona Public Service Stipulation and Agreement re: Wholesale Transmission Rate to be effective 4/12/2013.

*Filed Date:* 3/13/13.

*Accession Number:* 20130313–5147.

*Comments Due:* 5 p.m. ET 4/3/13.

*Docket Numbers:* ER13–1080–001.

*Applicants:* Arizona Public Service Company.

*Description:* Arizona Public Service Company submits APS-Amendment to Stipulation and Agreement re: Wholesale Transmission Rate to be effective 4/12/2013.

*Filed Date:* 3/14/13.

*Accession Number:* 20130314–5163.

*Comments Due:* 5 p.m. ET 4/3/13.

*Docket Numbers:* ER13–1095–000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2013–03–14 Same-Bus FTR Filing to be effective 3/15/2013.

*Filed Date:* 3/14/13.

*Accession Number:* 20130314–5123.

*Comments Due:* 5 p.m. ET 4/4/13.

*Docket Numbers:* ER13–1096–000.

*Applicants:* BE Louisiana LLC.

*Description:* BE Louisiana LLC submits tariff filing per 35.13(a)(2)(iii: Revisions to market-based rate tariff to be effective 3/15/2013.

*Filed Date:* 3/14/13.

*Accession Number:* 20130314–5149.

*Comments Due:* 5 p.m. ET 4/4/13.

*Docket Numbers:* ER13–1097–000.

*Applicants:* Central Power & Lime LLC.

*Description:* Central Power & Lime LLC submits tariff filing per 35.13(a)(2)(iii: Revisions to market-based rate tariff to be effective 3/15/2013.

*Filed Date:* 3/14/13.

*Accession Number:* 20130314–5150.

*Comments Due:* 5 p.m. ET 4/4/13.

*Docket Numbers:* ER13–1098–000.

*Applicants:* BE Rayle LLC.

*Description:* BE Rayle LLC submits tariff filing per 35.13(a)(2)(iii: Revisions to market-based rate tariff to be effective 3/15/2013.

*Filed Date:* 3/14/13.

*Accession Number:* 20130314–5151.

*Comments Due:* 5 p.m. ET 4/4/13.

*Docket Numbers:* ER13–1099–000.

*Applicants:* Triton Power Michigan LLC.

*Description:* Triton Power Michigan LLC submits tariff filing per 35.13(a)(2)(iii: Revisions to market-based rate tariff to be effective 3/15/2013.

*Filed Date:* 3/14/13.

*Accession Number:* 20130314–5158.

*Comments Due:* 5 p.m. ET 4/4/13.

*Docket Numbers:* ER13–1100–000.

*Applicants:* Energy Technology Savings LLC.

*Description:* Energy Technology Savings LLC submits tariff filing per 35.12: MBR Application to be effective 5/13/2013.

*Filed Date:* 3/14/13.

*Accession Number:* 20130314–5161.

*Comments Due:* 5 p.m. ET 4/4/13.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF13–355–000.

*Applicants:* IPS Power Engineering.

*Description:* Form 556—Notice of self-certification of qualifying cogeneration facility status of IPS Power Engineering [Mt Pleasant].

*Filed Date:* 3/14/13.

*Accession Number:* 20130314–5077.

*Comments Due:* None Applicable.

*Docket Numbers:* QF13–356–000.

*Applicants:* IPS Power Engineering.

*Description:* Form 556—Notice of self-certification of qualifying cogeneration facility status of IPS Power Engineering [Live Oaks].

*Filed Date:* 3/14/13.

*Accession Number:* 20130314–5079.

*Comments Due:* None Applicable.

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: March 15, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–06599 Filed 3–21–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL13–53–000]**

### Tri-State Generation and Transmission Association, Inc. v. Public Service Company of New Mexico; Notice of Complaint

Take notice that on March 13, 2013, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e (2006) and Rules 206 and 212 of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 and 18 CFR 385.212, Tri-State Generation and Transmission Association, Inc. (Complainant), filed a complaint against the Public Service Company of New Mexico (Respondent or PNM) alleging that, PNM's current transmission rates are unjust and unreasonable. The Complainant requests that the Commission set this matter for hearing, establish a refund effective date as of the date of the complaint, and consolidate the proceeding with Docket Nos. ER13–685–000, ER13–687–000, and ER13–690–000.

The Complainant certifies that copies of the Complaint were serviced on the contacts for the Respondent as listed on the Commission's list of Corporate Officials and parties the Complainant reasonably expects to be affected by this Complaint, including all of the parties that have intervened in Docket Nos. ER13–685–000, ER13–687–000, and ER13–690–000.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on April 2, 2013.

Dated: March 15, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–06602 Filed 3–21–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ID–7103–000]**

### Wright, Laura H.; Notice of Filing

Take notice that on March 14, 2013, Laura H. Wright filed an application to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2008) and Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR part 45 (2012).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on April 4, 2013.

Dated: March 15, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–06604 Filed 3–21–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EL13–54–000; QF11–141–002]**

### Gadwall Wind LLC; Notice of Petition for Enforcement

Take notice that on March 18, 2013, pursuant to section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3(h), Gadwall Wind LLC (Petitioner) filed a Petition for Enforcement, requesting the Federal Energy Regulatory Commission (Commission) to initiate enforcement action against the Minnesota Public Utilities Commission to remedy the State of Minnesota's improper implementation of PURPA by establishing an avoided cost rule that does not provide for the payment of a utility's full avoided costs to a new renewable energy qualifying facility (QF). In the alternative, Petitioner requests that the Commission make specific findings with respect to Minn. Stat. 216B.164, as would allow Petitioner to pursue enforcement action in a US Federal District Court.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on April 8, 2013.

Dated: March 18, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–06603 Filed 3–21–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Western Area Power Administration

## DEPARTMENT OF THE INTERIOR

### U.S. Fish and Wildlife Service

### Upper Great Plains Wind Energy Draft Programmatic Environmental Impact Statement (DOE/EIS–0408)

**AGENCIES:** Western Area Power Administration, U.S. Department of Energy, and U.S. Fish and Wildlife Service, U.S. Department of the Interior.

**ACTION:** Notice of Availability of Draft Environmental Impact Statement and Notice of Public Hearings.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Council on Environmental Quality (CEQ) regulations, the U.S. Department of Energy, Western Area Power Administration (Western) and the U.S. Department of the Interior, Fish and Wildlife Service (Service), have, as joint lead agencies, prepared the Upper Great Plains Wind Energy Draft Programmatic Environmental Impact Statement (Draft

PEIS).[1] The Draft PEIS evaluates issues associated with wind energy development within Western's Upper Great Plains Customer Service Region (UGP Region), which encompasses all or parts of the states of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota, and upon the Service's landscape-level grassland and wetland easements in the same area. The U.S. Department of the Interior, Bureau of Reclamation (Reclamation) and Bureau of Indian Affairs (BIA), and the U.S. Department of Agriculture, Rural Utility Services (RUS) have participated as cooperating agencies. Public hearings will be held during the public comment period on the Draft PEIS. The Draft PEIS is available on the project Web site at: *http://plainswindeis.anl.gov http://www.energy.ca.gov/sitingcases/ricesolar/index.html.*

**DATES:** The public hearings will be held April 30 and May 1 and 2, 2013. The agencies will also announce the public hearings through the local media, the project Web site (*http://plainswindeis.anl.gov*), and an interested party mailing list. The public comment period on the Draft PEIS starts with the publication of this notice in the **Federal Register** and will continue until May 21, 2013. Western and the Service will consider all electronic and written comments on the Draft PEIS received or postmarked by that date. Agencies, interested parties, and the public are invited to submit comments on this Draft PEIS at any time during the public comment period.

**ADDRESSES:** Western and the Service will hold public hearings to obtain comments on the Draft PEIS at the following locations:

1. April 30, 2013, Crowne Plaza Hotel, 27 North 27th Street, Billings, MT.
2. May 1, 2013, Ramada Bismarck Hotel & Conference Center, 1400 East Interchange Avenue, Bismarck, ND.
3. May 2, 2013, Best Western Plus Ramkota, 3200 West Maple Street, Sioux Falls, SD.

Public hearings will begin at 5 p.m. and will include a pre-hearing informal open house; introductory presentations on the proposed action by Western and the Service; the formal hearing beginning at 6 p.m. where oral comments from interested parties and the public will be heard; and an informal period after the close of the hearing.

You may submit comments electronically, using the online comment form available on the project Web site (*http://plainswindeis.anl.gov/index.cfm*), orally or written at the hearings, or by letter to WESTERN/FWS Draft Wind Energy PEIS Comments, c/o John Hayse, Argonne National Laboratory, 9700 S. Cass Avenue—EVS/240, Argonne, IL 60439.

**FOR FURTHER INFORMATION CONTACT:** For information on Western's proposed programmatic environmental evaluation procedures for wind energy project interconnections, and general information about interconnections with Western's transmission system, contact Nicholas Stas, Regional Environmental Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, telephone (406) 255–2810, facsimile (406) 255–2900, email *stas@wapa.gov.* For information on the PEIS process, or to receive a copy of the Draft PEIS, contact Mark Wieringa, NEPA Document Manager, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, telephone (800) 336–7288, facsimile (720) 962–7263, email *wieringa@wapa.gov.*

For information on the Service's participation in the PEIS, contact Lloyd Jones, U.S. Fish and Wildlife Service, Audubon National Wildlife Refuge Complex, 3275 11th Street, Coleharbor, ND 58531–9419, telephone (701) 442–5474 ext. 111, facsimile (701) 442–5546, email *Lloyd_Jones@fws.gov.*

For general information on the DOE NEPA process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** In response to an increase in wind energy development Western and the Service have interests in streamlining their procedures for conducting environmental reviews of wind energy applications by implementing standardized evaluation procedures and identifying measures to address potential environmental impacts associated with wind energy projects in the UGP Region. As joint lead agencies, Western and the Service have cooperatively prepared this PEIS to (1) assess the potential environmental impacts associated with wind energy projects within the UGP Region that may interconnect to Western's transmission system, or that may propose placement of project elements on grassland or wetland easements managed by the Service; and (2) evaluate how environmental impacts would differ under alternative sets of environmental evaluation procedures, best management practices, and mitigation measures that the agencies would request project developers to implement (as appropriate for specific wind energy projects).

The objective of the PEIS is to support the environmental review process by having already addressed general environmental concerns. The Draft PEIS analyzes, to the extent practicable, the impacts resulting from development of wind energy projects and the effectiveness of best management practices and mitigation measures in reducing potential impacts. Impacts and mitigation have been analyzed for each environmental resource, and all aspects of wind energy projects have been addressed, including turbine, transformer, collector line, access road, substation installations, and operational and maintenance activities. The environmental procedures and mitigation strategies have been structured to complement Western's Open Access Transmission Service Tariff.

Many of the impacts resulting from wind energy infrastructure development, including siting wind turbines, access roads, underground collector lines, overhead lines, and substations, are well known. Similarly, effective best management practices and mitigation measures have been developed to reduce the environmental impacts of constructing and operating wind energy projects. The Draft PEIS collected and analyzed this information as it applies to wind energy development in the six states included in the UGP Region. Specifically, the Draft PEIS has:

1. Defined areas with a high potential for wind energy development near the UGP Region's transmission system in anticipation of future wind-generation interconnection requests.
2. Defined natural and human environment resources in areas with high wind energy development potential, including Native American lands, to support analyses of the environmental impacts and development of wind energy projects.
3. Identified standardized environmental evaluation procedures, best management practices, and mitigation measures to be used by interconnection applicants for identifying and reducing wind energy development impacts of their projects on the natural and human environment.
4. Initiated a programmatic Endangered Species Act (ESA) Section 7 consultation for federally listed and

[1] On November 16, 2011, DOE's Acting General Counsel delegated to Western's Administrator all the authorities of the General Counsel respecting environmental impact statements.

proposed threatened and endangered species within the study area boundaries established for the PEIS.

5. Provided guidance for interconnection applicants that includes information about natural resources within areas with a high potential for wind development, requirements for subsequent site-specific environmental reviews, and appropriate best management practices and mitigation measures to address adverse environmental impacts related to wind projects and associated transmission system enhancements.

The Service maintains a grassland and wetland easement program to support and enhance waterfowl populations in the Prairie Pothole Region. The Service has developed a plan that will, in some circumstances, allow partial release of an easement for wind generation purposes, only with defined conditions and on a specified area, in exchange for additional easement acreage being conveyed to the Service. A streamlined approach for compliance (NEPA, National Historic Properties Act [NHPA], and ESA) for subsequent site-specific wind development projects in the future would result from this PEIS.

In accordance with the NEPA (42 U.S.C. 4321), and CEQ regulations (40 CFR parts 1500–1508), 1501.5(b), Western and the Service have served as joint lead agencies in the preparation of the Draft PEIS. Western and the Service are engaged in informal consultation under Section 7 of the ESA in support of the PEIS process. A Programmatic Biological Assessment has been prepared for listed and candidate species occurring in the UGP Region, and it is expected that the Ecological Services Field Office will issue a letter of concurrence as a result of this consultation.

CEQ regulations require that Western and the Service invite any Federal, State, or local agency or tribal government with jurisdiction by law or special expertise in wind energy development and/or electricity transmission operation to be a cooperating agency. Reclamation, BIA, and RUS have participated as cooperating agencies in the preparation of the Draft PEIS. Other agencies or state or tribal governments could become cooperating agencies at their request.

**Public Hearings**

Public hearings will begin at 5 p.m. and will include a pre-hearing informal open house; introductory presentations on the proposed action by Western and the Service; the formal hearing beginning at 6 p.m. where oral comments from interested parties and the public will be heard; and an informal period after the close of the hearing. Oral comments from the public will commence immediately after the presentations. Equal consideration will be given to electronic, oral, and written comments. Western and the Service encourage electronic submissions if possible. All meeting locations will be handicapped-accessible. Anyone needing special accommodations should contact Western or the Service to make arrangements.

**Public Involvement and Comments**

Interested parties are invited to review the Draft PEIS and provide comments. The comment process is intended to involve all interested agencies (Federal, State, county, and local), public interest groups, businesses, and members of the public.

The outcome of this PEIS may affect or apply to tribal resources. Therefore, Western and the Service have consulted with potentially affected tribes throughout the development of the Draft PEIS to jointly evaluate and address the potential effects, if any, of the proposed action. No specific concerns have been identified, mainly because specific projects and locations have not yet been developed. Once individual projects are proposed, project-specific consultations with tribes would be conducted in accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249), the President's memorandum of November 5, 2009, ''Tribal Consultation'' (*http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president*), agency-specific guidance on tribal interactions, and applicable natural and cultural resource laws and regulations (e.g., NEPA, ESA, NHPA, and Migratory Bird Treaty Act).

Public hearing locations and times as described above under **DATES** and **ADDRESSES** will also be announced through the local media, the project Web site (*http://plainswindeis.anl.gov*), and an interested party mailing list. A presiding officer will establish only those procedures needed to ensure that everyone who wishes to speak has a chance to do so and that the agencies understand all issues and comments. Speakers will be asked to provide brief comments to allow adequate time to hear all comments. Depending upon the number of persons wishing to speak, the presiding officer may allow longer speaking times. Persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Meetings will begin at the times specified and will continue until all those present who wish to participate have had an opportunity to do so. Should any speaker desire to provide further information for the record that cannot be presented within the designated time, such additional information may be submitted at the hearing, electronically, or by letter by April 13, 2013. Speakers are encouraged to provide a written version of their oral comments at the hearings to ensure the agencies capture all comments completely and accurately. A transcript of all comments offered during the public hearings will be prepared and made available.

The public is encouraged to communicate information and comments on issues it believes Western and the Service should address in the Final PEIS. The Agencies request that reviewers provide specific information and comments on factual errors, missing information, or additional considerations that should be corrected or included in the Final PEIS. Individual respondents may request confidentiality. The names, street addresses, and city or town information of those providing comments will be part of the administrative record, and will be subject to public disclosure unless confidentiality is requested. Such a request must be stated prominently at the beginning of the comment. We will honor requests to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety, consistent with applicable law.

After gathering public comments on what issues should be addressed in the Final PEIS, Western and the Service will identify and provide rationale in the Final PEIS on those issues addressed and those issues beyond the scope of the PEIS. Depending on the extent and nature of the comments received, the agencies may republish the entire PEIS incorporating responses to comments, or publish an abbreviated Final version that, together with the Draft PEIS, would constitute the Final PEIS.

**Final PEIS Schedule and Availability**

Western and the Service anticipate that comments will be incorporated and the Final PEIS to be available to the public in October, 2013. Separate Records of Decision addressing each agency's Federal actions will be issued by Western and the Service not sooner than 30 days following distribution of the Final PEIS, or about October, 2013.

Dated: March 15, 2013.

**Anita J. Decker,**

*Acting Administrator, Western Area Power Administration.*

Dated: March 15, 2013.

**Noreen Walsh,**

*Regional Director, Mountain-Prairie Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2013–06614 Filed 3–21–13; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2013–0127; FRL–9380–1]**

## Certain New Chemicals; Receipt and Status Information

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

**ACTION:** Notice.

**SUMMARY:** The Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. In addition under TSCA, EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from January 14, 2013 to February 8, 2013, and provides the required notice and status report, consists of the PMNs and TMEs, both pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the specific PMN number or TME number, must be received on or before April 22, 2013.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2013–[insert Docket ID no.], and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *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:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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

*Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Bernice Mudd, Information Management Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *Mudd.Bernice@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.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action.

*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 or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from January 14, 2013 to February 8, 2013, consists of the PMNs and TMEs, both pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—33 PMNS RECEIVED FROM 1/14/13 TO 2/08/13

| Case No. | Received date | Projected notice end date | Manufacturer/importer | Use | Chemical |
|---|---|---|---|---|---|
| P–13–0216 | 1/14/2013 | 4/13/2013 | CBI | (G) Electrographic toner | (G) Polycarboxylic acids, polymer with polyols. |
| P–13–0217 | 1/14/2013 | 4/13/2013 | CBI | (S) Extreme pressure, anti-wear additive for greases and oils. | (G) Antimony tris(dialkyldithiocarbamate). |
| P–13–0218 | 1/15/2013 | 4/14/2013 | Mitsui Chemicals America, Inc. | (G) Substance for molding automotive components. | (G) Alkenyl substituted carbopolycycle, polymer with alkene, alkylidene substituted carbopolycycle and alkene. |
| P–13–0220 | 1/15/2013 | 4/14/2013 | Teknor Apex | (S) Plasticizer for pvc resin | (G) Aliphatic polyester. |
| P–13–0221 | 1/15/2013 | 4/14/2013 | CBI | (G) Manufacturing process aid | (S) Copper, chloro[tris(2-chloroethyl) phosphite-*P*]-. |
| P–13–0222 | 1/15/2013 | 4/14/2013 | CBI | (S) Refinery feedstock | (G) Synthetic crude oil. |
| P–13–0223 | 1/16/2013 | 4/15/2013 | CBI | (G) Photoinitiator for coatings and inks. | (G) Acetophenone derivative. |
| P–13–0224 | 1/16/2013 | 4/15/2013 | CBI | (G) Stabilizer for thermoplastics | (G) Organo barium salts. |
| P–13–0225 | 1/16/2013 | 4/15/2013 | CBI | (G) Stabilizer for thermoplastics | (G) Organo zinc salts. |
| P–13–0226 | 1/16/2013 | 4/15/2013 | CBI | (G) Destructive use | (G) Oranometallic polymerization catalyst intermediate. |
| P–13–0227 | 1/16/2013 | 4/15/2013 | International Flavors & Fragrances, Inc. | (S) Fragrance ingredient for use in fragrances for soaps, detergent, cleaners and other household products. | (S) 2-butenoic acid, 1-ethyl-2-methylpropyl ester, (2*E*)-. |
| P–13–0228 | 1/17/2013 | 4/16/2013 | CBI | (G) Open, non-dispersive | (G) Modified brominated isobutylene-isoprene copolymer. |
| P–13–0229 | 1/17/2013 | 4/16/2013 | Kimberly-Clark Corporation. | (G) Binder for fiber (open, non-dispersive use). | (G) Acrylic copolymer. |
| P–13–0230 | 1/17/2013 | 4/16/2013 | CBI | (G) Resin for waterborne inks | (G) Alkylmethacrylate polymer, with alkyl acrylate, aromatic vinyl monomer and alkyl acrylate—ammonium persulfate initiated. |
| P–13–0231 | 1/17/2013 | 4/16/2013 | CBI | (G) Resin for waterborne inks | (G) Alkylmethacrylate polymer, with alkyl acrylate, aromatic vinyl monomer and alkyl acrylate. |

TABLE I—33 PMNS RECEIVED FROM 1/14/13 TO 2/08/13—Continued

| Case No. | Received date | Projected notice end date | Manufacturer/importer | Use | Chemical |
|---|---|---|---|---|---|
| P–13–0232 | 1/18/2013 | 4/17/2013 | H.B. Fuller Company. | (G) Industrial adhesive | (G) Benzenedicarboxylic acid, polymer with substituted alkanediol, dodecanedioic acid, 1,2-ethanediol, alkanediol acid, alkanediol,.alpha.-hydro-.omega.-hydroxypoly[oxyalkanediyl], 1,3-isobenzofurandione, methylene diphneyl diisocyanate, 2-oxepanone, 2,2'-oxybis[ethanol] and polymethylene polyphenylene isocyanate. |
| P–13–0233 | 1/18/2013 | 4/17/2013 | Henkel Corporation. | (S) Site limited initator in polymerization reactions. | (S) Hexanedioicacid, 2,5-dibromo-, diethyl ester (6ci, 7ci, 8ci, 9ci). |
| P–13–0234 | 1/18/2013 | 4/17/2013 | CBI | (G) Polymer additive | (G) Substituted hexitol. |
| P–13–0235 | 1/18/2013 | 4/17/2013 | Georgia-Pacific Chemicals LLC. | (G) Emulsifier | (S) Fatty acids, tall-oil, reaction products with diethylenetriamine, maleic anhydride and soybean oil. |
| P–13–0236 | 1/22/2013 | 4/21/2013 | CBI | (G) Pigment dispersant | (G) Vegetable-oil fatty acids, conjucted, anhydride ester, reaction products with substituted amine, tall-oil acids anhydride ester and substituted amine. |
| P–13–0237 | 1/22/2013 | 4/21/2013 | Tire Recycling & Processing LLC. | (S) Raw feed stock for refineries | (S) Tires, wastes, pyrolyzed, $C_{2-14}$ oil fraction. |
| P–13–0238 | 1/23/2013 | 4/22/2013 | CBI | (G) Catalyst | (G) Tertiary amine catalyst. |
| P–13–0239 | 1/24/2013 | 4/23/2013 | Sika Corporation | (G) Roof membrane hardener | (G) Amine adduct. |
| P–13–0240 | 1/25/2013 | 4/24/2013 | Carboline Company. | (G) Coating component | (G) Alkyl ketimine; alpha-hydroxyamine; alkyl ketimine. |
| P–13–0241 | 1/24/2013 | 4/23/2013 | Marshallton Research Laboratories, Inc. | (G) Waste remediation | (G) Alkyl guanidine hydrochloride. |
| P–13–0242 | 1/29/2013 | 4/28/2013 | Hi-tech Color, Inc. | (S) Pigment dispersant for water base inks. | (S) 2-propenoic acid, 2-methyl-, polymer with cyclohexyl 2-methyl-2-propenoate, methyl 2-methyl-2-propenoate and phenylmethyl 2-methyl-2-propenoate, 2,2'-(1,2-diazenediyl)bis[4-methoxy-2,4-dimethylpentanenitrile]-initiated. |
| P–13–0243 | 1/29/2013 | 4/28/2013 | Hi-tech Color, Inc. | (G) Back coating agent | (G) Siloxanes and silicones, di-alkyl, 3-aminopropyl group-terminated, polymer with 1,3-alkanediol, substituted diisocyanates. |
| P–13–0244 | 1/30/2013 | 4/29/2013 | CBI | (S) Polymeric binder for coatings | (G) Aliphatic polyurethane. |
| P–13–0245 | 1/30/2013 | 4/29/2013 | Cytec Industries Inc.. | (S) Coating resin | (G) Substituted alkanoic acid, polymers with substituted alkylamide, substituted carbomonocycle, substituted alkanoates. |
| P–13–0246 | 1/31/2013 | 4/30/2013 | Umicore USA Inc. | (G) Additive/reactant | (G) Cobalt based polymer with fatty acids, and polyol. |
| P–13–0247 | 2/1/2013 | 5/1/2013 | CBI | (G) Component of footwear | (G) Dicarboxylic acid, polymer with dicarboxylic acid, substituted carbomonocycle and alkanediol. |
| P–13–0248 | 2/1/2013 | 5/1/2013 | CBI | (G) Electrolyte | (G) Lithium salt of substituted imide. |
| P–13–0249 | 2/1/2013 | 5/1/2013 | The Lewis Chemical Company. | (S) Corrosion inhibitor for oilfield applications. | (G) Dihydroxypropyl PEG linoleamonium chloride. |

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA during this period: The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of the TME, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE II—2 TMES RECEIVED FROM 1/14/13 TO 2/08/13

| Case No. | Received date | Projected notice end date | Manufacturer/importer | Use | Chemical |
|---|---|---|---|---|---|
| T–13–0006 .... | 1/30/2013 | 3/15/2013 | Cytec Industries Inc. ... | (S) Coating resin ..... | (G) Substituted alkanoic acid, polymer with substituted alkylamide, substituted carbomonocycle, substituted alkanoates. |
| T–13–0007 .... | 1/31/2013 | 3/16/2013 | H.B. Fuller Company ... | (G) Industrial adhesive | (G) Fatty acids, c18-unsaturated dimers, polymers with alkane acid, 1,6-hexanediol, 1,1′-methylenebis[4-isocyanatobenzene] and neopentyl glycol. |

In Table III. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III—29 NOCS RECEIVED FROM 1/14/13 TO 2/08/13

| Case No. | Received date | Commencement notice end date | Chemical |
|---|---|---|---|
| P–07–0122 ..... | 1/25/2013 | 12/27/2012 | (G) Glycerol fatty acid ester. |
| P–08–0304 ..... | 1/15/2013 | 12/17/2012 | (G) Substituted carbocycle, [(*N*-carbocycleamino)-heterocycle-yl]-bis-. |
| P–10–0181 ..... | 1/16/2013 | 1/10/2013 | (G) Phenyl glycidyl ether derivative. |
| P–11–0060 ..... | 1/29/2013 | 1/16/2013 | (G) Methylenebis, polymer with alkanedioic acid, alkylene glycols, alkoxylated alkanepolyol and substituted trialkoxysilane. |
| P–11–0232 ..... | 1/30/2013 | 1/17/2013 | (G) Acryloxy functional siloxane. |
| P–12–0028 ..... | 1/21/2013 | 1/17/2013 | (S) *D*-glucopyranose, oligomeric, $C_{10-16}$-alkyl glycosides, 2,3-dihydroxypropyl ethers, hydrogen succinates, sodium salts, polymers with 1,3-dichloro-2-propanol. |
| P–12–0062 ..... | 1/30/2013 | 1/17/2013 | (G) Dimethylalkoxylated polydimethylsiloxane and methoxy functional silica. |
| P–12–0224 ..... | 1/30/2013 | 1/25/2013 | (G) Ester. |
| P–12–0240 ..... | 1/11/2013 | 12/17/2012 | (G) Ammonium molybdenum tungsten nickel hydroxide maleate. |
| P–12–0257 ..... | 1/16/2013 | 1/1/2013 | (G) Brominated by-product stream. |
| P–12–0260 ..... | 1/30/2013 | 1/20/2013 | (G) Brominated aliphatic alcohol. |
| P–12–0312 ..... | 1/21/2013 | 1/3/2013 | (S) Aluminoxanes, me. |
| P–12–0332 ..... | 1/30/2013 | 1/17/2013 | (G) Brominated distillation bottoms. |
| P–12–0448 ..... | 1/22/2013 | 1/7/2013 | (S) Zirconium, dichloro[[(1,2,3,4,5-.eta.)-3-(1,1-dimethylethyl)-2,4-cyclopentadien-1-ylidene] (1-methylethylidene) [(1,2,3,3a,7a-.eta.)-2-methyl-1*H*-inden-1-ylidene]]-. |
| P–12–0464 ..... | 1/14/2013 | 12/22/2012 | (S) Iodonium, diphenyl-, 4,4′-di-$C_{10-13}$ alkyl derivates., (oc-6-11)-hexafluoroantimonates(1-). |
| P–12–0475 ..... | 1/31/2013 | 1/30/2013 | (S) Butanoic acid, 2-methyl-5-(1-methylethyl)cyclopentyl ester. |
| P–12–0492 ..... | 1/21/2013 | 12/22/2012 | (G) Alkylphenol. |
| P–12–0559 ..... | 1/22/2013 | 1/17/2013 | (G) Acrylic silane polymer. |
| P–12–0560 ..... | 1/11/2013 | 12/19/2012 | (S) Slimes and sludges, aluminum and iron casting, wastewater treatment, solid waste. |
| P–12–0567 ..... | 1/31/2013 | 1/29/2013 | (G) Polyethylene glycol, polymer with diisocyanate, alkanol-blocked. |
| P–12–0571 ..... | 1/16/2013 | 1/14/2013 | (G) Halogenated diketopyrrolopyrrol derivative. |
| P–13–0001 ..... | 2/1/2013 | 1/29/2013 | (G) Vegetable-oil fatty acids, conjugated, polymers with substituted propanoic acid, polyol, anhydride, polyethylene glycol, propylene glycol and trimethylolpropane. |
| P–13–0003 ..... | 1/15/2013 | 1/14/2013 | (G) Castor oil, polymer with glycol and phthalic anhydride. |
| P–13–0014 ..... | 2/1/2013 | 1/29/2013 | (G) Substituted carboxylic acid, compound with hetermonocyclic polymer with substituted carboxylic acid, substituted heteromonocycle and heteromonocycle. |
| P–13–0016 ..... | 1/21/2013 | 1/10/2013 | (S) 1,4-butanediol, polymer with 1,4-diisocyanatobenzene and -hydro-hydroxypoly(oxy-1,4-butanediyl). |
| P–13–0025 ..... | 1/30/2013 | 1/9/2013 | (G) Acid modified petroleum residuum. |
| P–13–0026 ..... | 1/30/2013 | 1/9/2013 | (G) Acid modified petroleum residuum. |
| P–13–0027 ..... | 1/30/2013 | 1/9/2013 | (G) Acid modified petroleum residuum. |
| P–13–0029 ..... | 1/21/2013 | 1/10/2013 | (S) Automotive metal recovery. |

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

**List of Subjects**

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: March 4, 2013.

**Chandler Sirmons,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2013–06684 Filed 3–21–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9792–9]**

## Draft Guidance for E85 Flexible Fuel Vehicle Weighting Factor for Model Years 2016–2019 Vehicles Under the Light-Duty Greenhouse Gas Emissions Program

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

**ACTION:** Notice.

**SUMMARY:** EPA is requesting comment on draft EPA guidance to auto manufacturers for weighting the greenhouse gas (GHG) emissions of a flexible fuel vehicle operating on E85 with the GHG emissions of the vehicle operating on conventional gasoline, when calculating the compliance value to use for EPA's GHG emissions standards. EPA also invites comment on the analysis used by EPA to determine the weighting factor.

**DATES:** Comments must be received on or before April 22, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0120, by one of the following methods:

- *On-Line at http://www.regulations.gov:* Follow the On-Line Instructions for Submitting Comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2013–0120, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*On-Line Instructions for Submitting Comments:* Direct your comments to Docket ID No. EPA–HQ–OAR–2013–0120. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email.

The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA–HQ–OAR–2013–0120. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter EPA–HQ–OAR–2013–0120 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Roberts French, Environmental Protection Specialist, Office of Transportation and Air Quality, Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. Telephone: (734) 214–4380. Fax: (734) 214–4869. Email address: *french.roberts@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under EPA's greenhouse gas (GHG) program for passenger automobiles and light trucks, starting with the 2016 model year, the regulations describe two pathways for determining the GHG value for flexible fuel vehicles (FFVs) that run either on gasoline or on E85 (a fuel mixture of 85 percent ethanol and 15 percent gasoline). The default approach is to use the GHG emissions of the vehicle operated solely on gasoline (see 40 CFR 600.510–12). The alternative is to combine the gasoline and E85 GHG values together in a way that accounts for real-world use of E85 by using a weighting factor.[1] When the weighting factor is used, the emissions value used for the vehicle model in the fleet average calculations would be determined by weighting the gasoline and E85 values of the model together using the specified factor (see 40 CFR 600.510–12(k)).

EPA's regulations establish two different approaches that may be used to determine the value of the weighting factor. Manufacturers may request that EPA determine and publish by guidance an appropriate value for the E85 weighting factor based on EPA's assessment of the real-world use of E85. Alternatively, a manufacturer may

[1] The tailpipe GHG emissions used for compliance with the $CO_2$ standards described in 40 CFR 86.1818 are the carbon-containing emissions (generally, $CO_2$, hydrocarbons, and carbon monoxide), which are summed based on the carbon weight fraction of each component into a value described in the regulations as the ''carbon-related exhaust emissions'' (CREE). For simplicity, however, in this notice we are using the term $CO_2$ instead of CREE, as $CO_2$ is more broadly understood and makes up the vast majority of the total carbon emissions from vehicles.

submit data demonstrating the actual real-world use of E85 by its vehicles. EPA would determine whether the data is adequate and what an appropriate weighting factor should be for the manufacturer.

In mid-2012, manufacturers requested that EPA provide a weighting factor to use for 2016 and later model year vehicles. EPA has assessed the weighting factor that would be appropriate to use and intends to issue guidance to vehicle manufacturers regarding the E85 weighting factor (called the F factor) that may be used by manufacturers for weighting the $CO_2$ of FFVs using E85 and conventional gasoline. EPA intends to establish the weighting factor for the 2016 model year. The weighting factor may also be used for the 2017–2019 model years unless EPA takes action to revise the factor for the later model years based on new information or data.

EPA seeks input by the public prior to our issuing final F factor guidance, and requests comment on the value that we have determined and on the methodology used to derive this value. We have placed a draft guidance letter, including a support document attachment that provides additional background and describes the methodology used by EPA to determine the weighting factor, in the EPA Air Docket EPA–HQ–OAR–2013–0120 and available at *http://www.epa.gov/otaq/regs/ld-hwy/greenhouse/ld-ghg.htm*. The draft guidance letter provides for use of a weighting factor of 0.2.

Interested parties should submit comments according to the guidelines described in this notice. After fully considering the comments we receive, we will issue a final guidance document.

## II. Procedures for Public Participation

EPA will keep the record open until April 22, 2013. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2013–0120. Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as ''Confidential Business Information'' (''CBI''). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: March 15, 2013.

**Christopher Grundler,**

*Director, Office of Transportation and Air Quality, Office of Air and Radiation.*

[FR Doc. 2013–06657 Filed 3–21–13; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9792–7]**

## Proposed Reissuance of a General NPDES Permit for Oil and Gas Exploration Facilities in the Federal Waters of Cook Inlet—Permit Number AKG–28–5100

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

**ACTION:** Notice. Proposed reissuance of a general permit.

**SUMMARY:** The EPA proposes to reissue the National Pollutant Discharge Elimination System (NPDES) for Oil and Gas Exploration Facilities in Federal Waters of Cook Inlet (AKG 31–5000). As proposed, the permit would authorize certain discharges of pollutants into Cook Inlet Federal Waters from oil and gas exploration facilities subject to limits and requirements designed to minimize pollution and protect water quality.

**DATES:** *Comments.* Interested persons may submit comments on the proposed reissuance of the general permit to EPA, Region 10 at the address below. Comments must be postmarked by May 21, 2013.

*Public Hearings.* Public Hearings are scheduled for the following dates, and locations:

(1) Kenai, AK on April 29, 2013, 6:00 to 9:00 p at the Kenai Chamber of Commerce and Visitors Center, 11471 Kenai Spur Hwy, Kenai, AK 99611

(2) Homer, AK on April 30, 2013 at the Alaska Maritime National Wildlife Refuge Island & Ocean Visitor Center Auditorium, 95 Sterling Highway, Suite 1, Homer, AK 99603

(3) Anchorage, AK on May 2, 2013 at the University of Alaska Gorsuch Commons Building, Conference Room 106, 3700 Sharon Gagnon Lane, Anchorage, AK 98508

All hearings will begin at 6:00 p.m. and will continue until all testimony is heard or until 9:00 p.m., whichever is earlier. Hearing statements may be provided orally or in written format. Commenters providing oral testimony are encouraged to provide written statements to ensure accuracy of the record.

**ADDRESSES:** Comments on the proposed general permit reissuance should be sent to the attention of the Director, Office of Water & Watersheds, EPA—Region 10, 1200 Sixth Avenue Suite 900 OWW–130, Seattle, WA 98101. Comments may also be submitted electronically to *godsey.cindi@epa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Copies of the proposed general permit, Fact Sheet and Ocean Discharge Criteria Evaluation are available upon request. Requests may be made to Audrey Washington at (206) 553–0523 or to Cindi Godsey at (907) 271–6561. Requests may also be electronically mailed to: *washington.audrey@epa.gov* or *godsey.cindi@epa.gov*. These documents may also be found on the EPA Region 10 Web site at *http://yosemite.epa.gov/r10/WATER.NSF/NPDES+Permits/DraftPermitsAK*.

**SUPPLEMENTARY INFORMATION:** The existing NPDES General Permit for Oil and Gas Exploration, Development and Production Facilities Located in State and Federal Waters in Cook Inlet, NPDES Permit No. AKG–31–5000 (2007 Permit) expired on July 2, 2012. The 2007 Permit authorized discharges from 19 facilities, all located in State Waters, and continues in effect for facilities that applied in a timely manner. The 2007 Permit for discharge to State Waters was transferred to Alaska Department of Environmental Conservation (ADEC) in 2013 following resolution of a permit appeal pursuant to the Memorandum of Agreement between EPA and ADEC. Once ADEC reissues permits that cover the discharges to State Waters, coverage under the 2007 permit will end. As proposed, the EPA's Permit AKG 28–5100 would reissue the exploration component of the 2007 Permit in Federal Waters. Concurrently, ADEC is taking action to reissue the exploration permit in State Waters.

*Executive Order 12866:* The Office of Management and Budget exempts this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

*Regulatory Flexibility Act:* Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* a Federal agency must prepare an initial regulatory flexibility analysis ''for any proposed rule'' for which the agency ''is required

by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking.'' The RFA exempts from this requirement any rule that the issuing agency certifies ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the RFA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that this GP, as issued, will not have a significant economic impact on a substantial number of small entities.

Dated: March 14, 2013.

**Daniel D. Opalski,**

*Director, Office of Water & Watersheds, Region 10.*

[FR Doc. 2013–06669 Filed 3–21–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–9008–3]**

### Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 03/11/2013 Through 03/15/2013

Pursuant to 40 CFR 1506.9.

**Notice**

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20130064, Final Supplement, USFS, AK, Bell Island Geothermal Leases, Review Period Ends: 04/22/2013, Contact: Sarah Samuelson 907–789–6274.

*EIS No. 20130065, Draft EIS, BLM, MT,* HiLine District Draft Resource Management Plan, Comment Period Ends: 06/20/2013, Contact: Brian Hockett (406) 262–2837.

*EIS No. 20130066, Final EIS, USN, GA,* Proposed Modernization and Expansion of Townsend Bombing Range, Review Period Ends: 04/22/2013, Contact: Veronda Johnson 571–256–2783.

*EIS No. 20130067, Draft EIS, WAPA, ND,* Wilton IV Wind Energy Center, Comment Period Ends: 05/06/2013, Contact: Rod O'Sullivan 720–962–7260.

*EIS No. 20130068, Draft EIS, USACE, CA,* Berryesssa Creek Project, Comment Period Ends: 05/06/2013, Contact: Tyler Stalker 916–557–5107 EIS No. 20130069, Final Supplement, FHWA, WA, I–90 Snoqualmie Pass East, Avalanche Structures, Contact: Liana Liu 360–753–9553.

*EIS No. 20130070, Draft EIS, WAPA, USFWS, 00,* PROGRAMMATIC—Upper Great Plains Wind Energy, Comment Period Ends: 05/21/2013, Contact: Mark Wieringa 720–962–7448. The U.S. Department of Energy's Western Area Power Administration and the U.S. Department of the Interior's Fish and Wildlife Service are Joint Lead Agencies for this project.

*EIS No. 20130071, Draft EIS, BLM, NV,* Pan Mine Project, Comment Period Ends: 05/07/2013, Contact: Miles Kreidler 775–289–1893.

**Amended Notices**

*EIS No. 20130015, Draft Supplement, FHWA, CA,* Mid County Parkway, a new Freeway from the City of Perris to the City of San Jacinto, Riverside County, CA, Comment Period Ends: 04/10/2013, Contact: Larry Vinzant 916–498–5040. Revision to FR Notice Published 01/25/2013 and 03/08/2013; Extending Comment Period to 04/10/2013.

Dated: March 19, 2013.

**Cliff Rader,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2013–06645 Filed 3–21–13; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK

**[Public Notice 2013–0113]**

### Agency Information Collection Activities: Final Collection; Comment Request

**AGENCY:** Export-Import Bank of the U.S.

**ACTION:** Submission for OMB Review and Comments Request.

*Form Title:* Application for Long Term Loan or Guarantee (EIB 95–10).

**SUMMARY:** Export-Import (Ex-Im) Bank is requesting an emergency approval for form EIB 95–10 Application for Long Term Loan or Guarantee, OMB 3048–0013, because the Export Import Bank Reauthorization Act of 2012 has placed additional reporting requirements on the Bank.

By neutralizing the effect of export credit insurance and guarantees offered by foreign governments and by absorbing credit risks that the private section will not accept, Ex-Im Bank enables U.S. exporters to compete fairly in foreign markets on the basis of price and product. This collection of information is necessary, pursuant to 12 U.S.C. 635(a)(1), to determine eligibility of the applicant for Ex-Im Bank Assistance.

The collection will provide information needed to determine compliance and creditworthiness for transaction requests submitted to Ex-Im Bank under its long-term guarantee and direct loan programs. The form is currently used to make a credit decision on approximately 85 export transactions per year in divisions dealing with aircraft, structured finance, and trade finance.

The application can be viewed at *www.exim.gov/pub/pending/eib95–10.pdf.*

**DATES:** Comments should be received on or before April 22, 2013 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on *www.regulations.gov* or by mail to Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 attn: OMB–3048–0013.

**SUPPLEMENTARY INFORMATION:**

*Titles and Form Number:* EIB 95–10 Application for Long Term Loan or Guarantee.

*OMB Number:* 3048–0013.

*Type of Review:* Regular.

*Need and Use:* The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its long term guarantee and direct loan programs.

*Affected Public:* This form affects entities involved in the export of U.S. goods and services.

*Annual Number of Respondents:* 84.

*Estimated Time per Respondent:* 1.5 hours.

*Government Annual Burden Hours:* 2,100.

*Frequency of Reporting or Use:* Yearly.

*Total Cost to the Government:* $81,312.

**Sharon A. Whitt,**

*Agency Clearance Officer.*

[FR Doc. 2013–06560 Filed 3–21–13; 8:45 am]

**BILLING CODE 6690–01–P**

## EXPORT-IMPORT BANK

**[Public Notice 2013–1111]**

### Agency Information Collection Activities: Comment Request

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Submission for OMB Review and Comments Request.

*Form Title:* EIB 92–32 Notification by Insured of Amounts Payable Under Single-Buyer Export Credit Insurance Policy.

**SUMMARY:** The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This form represents the exporter's directive to Ex-Im Bank to whom and where the insurance proceeds should be sent. The forms are typically part of the documentation required by financial institution lenders in order to provide financing of an exporter's foreign accounts receivable. Foreign accounts receivable insured by Ex-Im Bank represent stronger collateral to secure the financing. By recording which policyholders have completed this form, Ex-Im Bank is able to determine how many of its exporter policyholders require Ex-Im Bank insurance policies to support lender financing.

The application can be reviewed at: *www.exim.gov/pub/pending/eib92-32.pdf.*

Single Buyer Export Credit Insurance Policy.

**DATES:** Comments should be received on or before April 22, 2013 to be assured of consideration.

**ADDRESSES:** Comments maybe submitted electronically on *www.regulations.gov* or by mail to Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 attn: OMB–3048–XXXX (EIB 92–32).

**SUPPLEMENTARY INFORMATION:**

*Titles and Form Number:* EIB 92–32 Single Buyer Export Credit Insurance Policy.

*OMB Number:* 3048–XXXX.

*Type of Review:* New.

*Need and Use:* The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

*Annual Number of Respondents:* 150.

*Estimated Time per Respondent:* 15 minutes.

*Frequency of Reporting or Use:* Annually.

*Government Review Time:* 1 hour.

*Total Hours:* 150 hours.

*Cost to the Government:* $16,320.

**Sharon A. Whitt,**

*Agency Clearance Officer.*

[FR Doc. 2013–06558 Filed 3–21–13; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under; Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before May 21, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0649.

*Title:* Sections 76.1601, Deletion or Repositioning of Broadcast Signals; Section 76.1617, Initial Must-Carry Notice; 76.1607 and 76.1708 Principal Headend.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents and Responses:* 3,300 respondents and 4,100 responses.

*Estimated Hours per Response:* 0.5 to 1 hour.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

*Total Annual Burden:* 2,200 hours.

*Total Annual Costs:* None.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 4(i) and 614(b)(9) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality required with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* 47 CFR 76.1601 requires that effective April 2, 1993, a cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. Such notification shall also be provided to subscribers of the cable system.

47 CFR 76.1607 states that cable operators shall provide written notice by certified mail to all stations carried on its system pursuant to the must-carry rules at least 60 days prior to any change in the designation of its principal headend.

47 CFR 76.1617(a) states within 60 days of activation of a cable system, a cable operator must notify all qualified NCE stations of its designated principal headend by certified mail.

47 CFR 76.1617(b) within 60 days of activation of a cable system, a cable operator must notify all local commercial and NCE stations that may not be entitled to carriage because they either:

(1) Fail to meet the standards for delivery of a good quality signal to the cable system's principal headend, or

(2) May cause an increased copyright liability to the cable system.

47 CFR 76.1617(c) states within 60 days of activation of a cable system, a cable operator must send by certified mail a copy of a list of all broadcast television stations carried by its system and their channel positions to all local commercial and noncommercial television stations, including those not designated as must-carry stations and those not carried on the system.

47 CFR 76.1708(a) states that the operator of every cable television system shall maintain for public inspection the designation and location of its principal headend. If an operator changes the designation of its principal headend, that new designation must be included in its public file.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–06641 Filed 3–21–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden(s) and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501—3520), the Federal Communications Commission (FCC) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate(s); ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and further ways to reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 21, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at: (202) 395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by email, send them to: *PRA@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Leslie F. Smith, Office of Managing Director (OMD), Federal Communications Commission (FCC), (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0951.

*Title:* Sections 1.1204(b) Note and 1.1206(a) Note 1, Service of Petitions for Preemption.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities; Individuals or households; Not-for-profit institutions; and State, local, or Tribal Government.

*Number of Respondents and Responses:* 125 respondents; 125 responses.

*Estimated Time per Response:* 0.28 hours (17 minutes).

*Frequency of Response:* Occasion reporting requirements; Third party disclosure.

*Obligation to Respond:* Required to obtain or retain benefits; Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, and 303.

*Total Annual Burden:* 35 hours.

*Total Annual Costs:* N/A.

*Privacy Impact Assessment:* Yes.

*Nature and Extent of Confidentiality:* The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

The FCC has a system of records, FCC/OGC–5, ''Pending Civil Cases,'' to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individuals may submit with their petitions for preemption that they file with the Commission.

*Needs and Uses:* These provisions supplement the procedures for filing petitions seeking Commission preemption of state and local government regulation of telecommunications services. They require that such petitions, whether in the form of a petition for rulemaking or a petition for declaratory ruling, be served on all state and local governments. The actions for which are cited as a basis for requesting preemption. Thus, in accordance with these provisions, persons seeking preemption must serve their petitions not only on the state or local governments whose authority would be preempted, but also on other state or local governments whose actions are cited in the petition.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–06663 Filed 3–21–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as

required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before May 21, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov <mailto:PRA@fcc.gov>* and to *Cathy.Williams@fcc.gov <mailto: Cathy.Williams@fcc.gov>*.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0422.

*Title:* Section 68.5, Waivers (Application for Waivers of Hearing Aid Compatibility Requirements).

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 2 respondents; 2 responses.

*Estimated Time per Response:* 3 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 610.

*Total Annual Burden:* 6 hours.

*Total Annual Cost:* None.

*Nature and Extent of Confidentiality:* An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Telephone manufacturers seeking a waiver of 47 CFR 68.4(a)(1), which requires that certain telephones be hearing aid compatible, must demonstrate that compliance with the rule is technologically infeasible or too costly. Information is used by FCC staff to determine whether to grant or dismiss the request.

*OMB Control Number:* 3060–0188.

*Title:* Call Sign Reservation and Authorization System, FCC Form 380.

*Form Number:* FCC Form 380.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit, Not-for-profit institutions; and State, local, or tribal government.

*Number of Respondents and Responses:* 1,600 respondents; 1,600 responses.

*Estimated Hours per Response:* 0.166–0.25 hours.

*Frequency of Response:* On occasion reporting requirements.

*Total Annual Burden:* 333 hours.

*Total Annual Cost:* $162,000.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

*Nature and Extend of Confidentiality:* There is need for confidentiality with this collection of information.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* 47 CFR 73.3550 provides that all requests for new or modified call signs be made via the on-line call sign reservation and authorization. The Commission uses an on-line system, FCC Form 380, for the electronic preparation and submission of requests for the reservation and authorization of new and modified call signs. Access to the call sign reservation and authorization system is made by broadcast licensees and permittees, or by persons acting on their behalf, via the Internet's World Wide Web. This on-line, electronic call sign system enables users to determine the availability and licensing status of call signs; to request an initial, or change an existing, call sign; and to determine and submit more easily the appropriate fee, if any. Because all elements necessary to make a valid call sign reservation are encompassed within the on-line system, this system prevents users from filing defective or incomplete call sign requests. The electronic system also provides greater certitude, as a selected call sign is effectively reserved as soon as the user has submitted its call sign request. This electronic call sign reservation and authorization system has significantly improved service to all radio and television broadcast station licensees and permittees.

*OMB Control Number:* 3060–0170.

*Title:* Section 73.1030, Notifications Concerning Interference to Radio Astronomy, Research and Receiving Installations.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities.

*Number of Respondents and Responses:* 57 respondents; 57 responses.

*Estimated Hours per Response:* 0.5 hours.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure requirement.

*Total Annual Cost:* $14,250.

*Total Annual Burden:* 29 hours.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is need for confidentiality required with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* 47 CFR 73.1030 states in order to minimize harmful interference at the National Radio Astronomy Observatory site located at Green, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory at Sugar Grove, Pendleton County, West Virginia, a licensee proposing to operate a short-term broadcast auxiliary station pursuant to § 74.24, and any applicant for authority to construct a new broadcast station, or for authority to make changes in the frequency, power, antenna height, or antenna directivity of an existing station within the area bounded by 39°15′ N on the north, 78°30′ W on the east, 37°30′ N on the south, and 80°30′ W on the west, shall notify the Interference Office, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, West Virginia 24944. Telephone: (304) 456–2011. The notification shall be in writing and set

forth the particulars of the proposed station, including the geographical coordinates of the antenna, antenna height, antenna directivity if any, proposed frequency, type of emission and power. The notification shall be made prior to, or simultaneously with, the filing of the application with the Commission. After receipt of such applications, the FCC will allow a period of 20 days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself, or on behalf of the Naval Radio Research Observatory, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate.

(2) Any applicant for a new permanent base or fixed station authorization to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should email to: *prcz@naic.edu.*

(i) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, and effective radiated power.

(ii) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a modification application, as appropriate. The Commission shall determine whether an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference.

*OMB Number:* 3060–0171.

*Title:* Section 73.1125, Station Main Studio Location.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 72 respondents; 72 responses.

*Estimated Hours per Response:* 0.5 to 2 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 135 hours.

*Annual Burden Cost:* $111,870.

*Privacy Impact Assessment:* No impact(s).

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information 154(i) and 307(b) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* 47 CFR 73.1125(d)(1) requires AM, FM or TV licensees to notify the Commission when the main studio is relocated and from a point outside the locations specified in Section 73.1125(a) or (c) to one within those locations.

47 CFR 73.1125(d)(2) requires licensees to receive written authority to locate a main studio outside the locations specified in paragraph (a) or (c) of this section for the first time must be obtained from the Audio Division, Media Bureau for AM and FM stations, or the Video Division for TV and Class A television stations before the studio may be moved to that location. Where the main studio is already authorized at a location outside those specified in paragraph (a) or (c) of this section, and the licensee or permittee desires to specify a new location also located outside those locations, written authority must also be received from the Commission prior to the relocation of the main studio. Authority for these changes may be requested by filing a letter with an explanation of the proposed changes with the appropriate division. Licensees or permittees should also be aware that the filing of such a letter request does not imply approval of the relocation request, because each request is addressed on a case-by-case basis. A filing fee is required for commercial AM, FM, TV or Class A TV licensees or permittees filing a letter request under the section (see Sec. 1.1104 of this chapter).

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–06565 Filed 3–21–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before May 21, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to the Federal Communications

Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0688.

*Title:* Abbreviated Cost-of-Service Filing for Cable Network Upgrades, FCC Form 1235.

*Form Number:* FCC Form 1235.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit entities; State, local or tribal governments.

*Number of Respondents and Responses:* 50 respondents; 25 responses.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure requirement.

*Estimated Hours per Response:* 10–20 hours.

*Total Annual Burden:* 750 hours.

*Total Annual Costs:* None.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Assessment:* No impact(s).

*Needs and Uses:* FCC Form 1235 is an abbreviated cost of service filing for significant network upgrades that allows cable operators to justify rate increases related to capital expenditures used to improve rate-regulated cable services. FCC Form 1235 is filed following the end of the month in which upgraded cable services become available and are providing benefits to subscribers. In addition, FCC Form 1235 can be filed for pre-approval any time prior to the upgrade services becoming available to subscribers using projected upgrade costs. If the pre-approval option is exercised, the operator must file the form again following the end of the month in which upgraded cable services become available and are providing benefits to customers of regulated services, using actual costs where applicable.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–06564 Filed 3–21–13; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0094; Docket 2012–0076; Sequence 21]**

## Federal Acquisition Regulation; Submission for OMB Review; Debarment and Suspension

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning debarment and suspension. A notice was published in the **Federal Register** at 77 FR 43079, on July 23, 2012. One comment was received.

**DATES:** Submit comments on or before April 22, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0094, Debarment and Suspension, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0094, Debarment and Suspension''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0094, Debarment and Suspension'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0094, Debarment and Suspension.

*Instructions:* Please submit comments only and cite Information Collection 9000–0094, Debarment and Suspension, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia Corrigan, Procurement Analyst, Office of Acquisition Policy, at (202) 208–1963 or via email at *Patricia.Corrigan@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The FAR requires contracts to be awarded to only those contractors determined to be responsible. Instances where a firm, its principals, or subcontractors, have been indicted, convicted, suspended, proposed for debarment, debarred, or had a contract terminated for default are critical factors to be considered by a Government contracting officer in making a responsibility determination. FAR 52.209–5 and 52.212–3(h), Certification Regarding Responsibility Matters, and FAR 52.209–6, Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, require the disclosure of this information.

### B. Analysis of Public Comments

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

*Comment:* The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

*Response:* In accordance with the Paperwork Required Act (PRA), agencies can request an OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to Debarment, Suspension, and Other Responsibility Matters, FAR Subpart 9.1, Subpart 9.4, 52.209–5, 52.212–3(h) and 52.209–6. This information collection, in compliance with Executive Order 12549, Debarment and Suspension, is necessary to determine the responsibility of prospective contractors, to ensure that contractors protect the interests of the Government when issuing subcontracts under Government contracts, and ensure business integrity in contract performance. Not granting this extension would consequently eliminate a key process for assessing contractor

responsibility and protecting the Government's interests.

*Comment:* The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. The respondent stated that the ''estimate of four responses per contractor per year is unrealistically low because almost all solicitations will include FAR 52.209–5 and 52.212–3(h) * * * we believe, based on the experience of our members, that most companies will be required to meet this requirement from 20 to more than 100 times per year.'' Further, the respondent commented that the estimate of 0.083 hours of burden per response was low when considering the time and effort necessary for a company to gather responsibility data. For this reason, the respondent provided that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate. The same respondent also provided that the burden of compliance with the information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

*Response:* Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business.

Careful consideration went into assessing the estimated burden hours for this collection, and it is determined that an upward adjustment is not required at this time related to the responses per respondent. The estimate of four responses per respondent is based upon contractor use of the Online Representation and Certifications Application (ORCA) function in the System for Award Management (SAM) rather than the completion of representations and certifications for each solicitation/contract for which a vendor submits an offer. The ORCA function was developed to eliminate the administrative burden for contractors of submitting the same information to various contracting offices, and to establish a common source for this information to procurement offices across the Government. Prior to the ORCA function's implementation, prospective contractors were required to submit representations and certifications in paper form for each individual contract award. Under these conditions, a response rate of 20 to more than 100 times per year per contractor as suggested by the respondent may have been necessary. However, using the ORCA function in SAM, a contractor can enter their representations and certification information once for use on all Federal contracts and solicitations. FAR 4.1201(a) requires prospective contractors to complete electronic annual representations and certifications at the SAM Internet site in conjunction with required registration in the Central Contractor Registration (CCR) function in SAM. The representations and certifications are effective until one year from the date of submission or update to the ORCA function in SAM. For purposes of this information collection, initial data entry plus three updates per year was considered reasonable and was used to estimate the number of responses per respondent per year, i.e., 4 responses per respondent.

We have reassessed the hours of burden per response based on the respondent's comment, and have determined that an upward estimate of thirty minutes or approximately six times the original estimate of 0.083 would provide a more accurate measure of the time required to complete and review each response.

However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

**C. Annual Reporting Burden**

*Respondents:* 162,000.
*Responses per Respondent:* 4.
*Annual Responses:* 648,000.
*Hours per Response:* 0.50.
*Total Burden Hours:* 324,000.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0094, Debarment and Suspension, in all correspondence.

Dated: March 18, 2013.

**William Clark,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2013–06626 Filed 3–21–13; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0006; Docket 2012–0076; Sequence 57]**

## Federal Acquisition Regulation; Submission for OMB Review; Subcontracting Plans/Individual Subcontract Report (SF–294)

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning subcontracting plans/individual subcontract report (SF–294). A notice was published in the **Federal Register** at 77 FR 69627, on November 20, 2012. One respondent submitted comments.

**DATES:** Submit comments on or before April 22, 2013.

**ADDRESSES:** Submit comments identified by Information Collection

9000–0006, Subcontracting Plans/Individual Subcontract Report (SF–294), by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0006, Subcontracting Plans/Individual Subcontract Report (SF–294).'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0006, Subcontracting Plans/Individual Subcontract Report (SF–294)'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0006, Subcontracting Plans/Individual Subcontract Report (SF–294).

*Instructions:* Please submit comments only and cite Information Collection 9000–0006, Subcontracting Plans/Individual Subcontract Report (SF–294), in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Karlos Morgan, Procurement Analyst, Office of Acquisition Policy, GSA (202) 501–2364 or email *karlos.morgan@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

## A. Purpose

In accordance with Federal Acquisition Regulation 19.702, which implements the statutory requirements of Section 8(d) of the Small Business Act (15 U.S.C. 637(d)), contractors receiving a contract for more than the simplified acquisition threshold agree to have small business, small disadvantaged business, women-owned small business, historically underutilized business zone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $650,000 ($1,500,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for the above named concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and implemented in FAR subpart 19.7.

In conjunction with the subcontracting plan requirements, contractors must submit semi-annual reports of their small business subcontracting progress to the government. With the exception of those contracts noted in FAR 4.606(c)(5) which states ''Actions that, pursuant to other authority, will not be entered in FPDS (e.g., reporting of the information would compromise national security)'', contractors must use the electronic Individual Subcontract Report (ISR) in the Electronic Subcontracting Reporting System (eSRS) in lieu of the Standard Form 294, Subcontracting Report for Individual Contracts. The ISR is the electronic equivalent of the Standard Form 294. The eSRS streamlines the small business subcontracting program reporting process and provides the data to agencies in a manner that enables them to more effectively manage the program. Those contract actions noted in FAR 4.606(c)(5) will continue to use the Standard Form 294.

## B. Analysis of Public Comments

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

*Comment:* The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act.

*Response:* In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval an existing information collection. PRA requires that agencies use the **Federal Register** notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to the use of the ISR to collect subcontract award data from prime or subcontractors that: (a) Hold one or more contracts over $650,000 (over $1,500,000 for construction); and (b) are required to report subcontracts awarded to small business, small disadvantaged business, women-owned small business, historically underutilized business zone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns. The ISR is also used to collect subcontract award data from Alaskan Native Corporations and Indian Tribe concerns under a subcontracting plan with the Federal government. For the Department of Defense, the National Aeronautics and Space Administration, and the United States Coast Guard, the ISR collects subcontract awards for Historically Black Colleges and Universities and Minority Institutions. Absent this information the suitability of the contractor to report subcontract award data could not be ascertained. Further, the contracting officer could not examine the subcontract award data to assess contractors' compliance with their subcontracting plans, the Small Business Act, and the FAR.

*Comment:* The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. The respondent indicated that the upward adjustment made to the number of respondents from 103,908 to 129,009 was reasonable. However, the decrease in the estimated hours per response from 11.90 to 8.5 hours per responses is understated, and that the average burden on companies is somewhere in the range of 10 to 100 time greater than the estimate put forth in the **Federal Register** Notice. For this reason, the respondent provided that agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006.

*Response:* Serious consideration given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company prior to release to the Government. The burden is prepared taking into consideration the necessary criteria OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a

very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business.

Careful consideration went into assessing the estimated burden hours for this collection. Given that many of the key data elements are pre-populated in eSRS from the Federal Procurement Data System and the System for Award Management (e.g. basic contractual information and contractor information), combined with the system improvements to streamline user experience, the amount of training provided, the user guides and webinars available, and the sample reports provided, the length of time necessary for reporting subcontracting achievements into eSRS has been shortened.

As a result, the estimate burden hours published in the **Federal Register** at 77 FR 69627, on November 20, 2012 remains a valid estimate and an upward adjustment is not required at this time. However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

*Comment:* The respondent commented that the collective burden of compliance with the information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

*Response:* The Paperwork Reduction Act (PRA) was designed to improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in government and society. Central to this process is the solicitation of comments from the public. This process incorporates and enumerated specification of targeted information and provides interested parties a meaningful opportunity for comment on the relevant compliance cost. This process has led to decreases in the overall collection requirement in regards to the public. Based on OMB estimates, in FY 2010, the public spent 8.8 billion hours responding to information collections. This was a decrease of one billion hours, or ten percent from the previous fiscal year. In effect, the collective burden of compliance for the public is going down as the Government publishes rule that make the process less complex, more transparent, and reduces the cost of federal regulations to both the Contractor community and Government.

**C. Annual Reporting Burden**

Based on information from eSRS and an estimate of the use of eSRS, an upward adjustment is being made to the number of respondents, but a downward adjustment is being made to the average burden hours for reporting and recordkeeping per response. As a result, a downward adjustment is being made to the estimated annual reporting burden since the notice regarding an extension to this clearance published in the **Federal Register** at 75 FR 9604, on March 3, 2010.

*Respondents:* 129,009.

*Responses per Respondent:* 3.

*Total Responses:* 387,027.

*Average Burden Hours per Response:* 8.50.

*Total Burden Hours:* 3,289,729.50.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0006, Subcontracting Plans/Individual Subcontract Report (SF–294), in all correspondence.

Dated: March 18, 2013.

**William Clark,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2013–06581 Filed 3–21–13; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0114; Docket 2012–0076; Sequence 60]**

## Federal Acquisition Regulation; Information Collection; Right of First Refusal of Employment

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection.

**DATES:** Submit comments on or before May 21, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0114, Right of First Refusal of Employment, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0114, Right of First Refusal of Employment''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0114, Right of First Refusal of Employment'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0114, Right of First Refusal of Employment.

*Instructions:* Please submit comments only and cite Information Collection 9000–0114, Right of First Refusal of Employment, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy GSA, at (202) 208–4949 or via email at *michaelo.jackson@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

As prescribed in FAR 7.305(c), the clause at FAR 52.207–3, Right of First Refusal of Employment, deals with adversely affected or separated Government employees resulting from the conversion from in-house performance to performance by contract. The clause requires the contractor to give these employees an opportunity to work for the contractor who is awarded the contract.

The information gathered will be used by the Government to gain knowledge of which employees, adversely affected or separated as a result of the contract award, have gained employment with the contractor within 90 days after contract performance begins.

**B. Annual Reporting Burden**

The total annual burden has increased from 912 hours to 30,327 hours. This is based on an analysis of the Federal Procurement Data System—Next Generation (FPDS–NG) which shows that for Fiscal Years 2011 and 2012 there were 9,198 and 11,020, respectively, new A–76 awards. An average of the number of the A–76 awards for these two years equates to 10,109.

*Number of Respondents:* 10,109.

*Responses per Respondent:* 1.

*Total Responses:* 10,109.

*Average Burden Hours per Response:* 3.

*Total Burden Hours:* 30,327.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0114, Right of First Refusal of Employment, in all correspondence.

Dated: March 18, 2013.

**William Clark,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2013–06580 Filed 3–21–13; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0007; Docket 2012–0076; Sequence 59]**

## Federal Acquisition Regulation; Submission for OMB Review; Summary Subcontract Report

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning summary subcontract reports (SF–295). A notice was published in the **Federal Register** at 77 FR 69483, on November 19, 2012. One comment was received.

**DATES:** Submit comments on or before April 22, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0007, Summary Subcontract Report, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0007, Summary Subcontract Report''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0007, Summary Subcontract Report'', on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0007, Summary Subcontract Report.

*Instructions:* Please submit comments only and cite Information Collection 9000–0007, Summary Subcontract Report, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Karlos Morgan, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, (202) 501–2364 or via email at *karlos.morgan@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

In accordance with Federal Acquisition Regulation 19.702, any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, small disadvantaged business, historically underutilized business zone (HUBZone) small business, veteran-owned small business, service-disabled veteran-owned small business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. Further, contractors receiving a contract or a modification to a contract expected to exceed $650,000 ($1,500,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for the above named concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR Subpart 19.7.

In conjunction with the subcontracting plan requirements, contractors must submit an annual summary (semi-annual for DOD and NASA) of subcontracts awarded by prime and subcontractors for a specific Federal Government agency that required an Individual Subcontracting plan for the previous fiscal year. This is accomplished through the use of the Standard Form 295, Summary Subcontract Report, or the Summary Subcontract Report (SSR), the electronic equivalent of the of the Standard Form 295, submitted through the Electronic Subcontracting Reporting System (eSRS). The Electronic Subcontracting Reporting System streamlines the small business subcontracting program reporting process and provides the data to agencies in a manner that enables them to more effectively manage the program.

Contractors must use the SSR in lieu of the SF 295, with the exception of those contracts noted in FAR 4.606(c)(5) which requires that actions, pursuant to other authority, will not be entered in Federal Procurement Data System (e.g., reporting of the information would compromise national security). Those contract actions noted in FAR 4.606(c)(5) will continue to use the Standard Form 295.

**B. Discussion and Analysis**

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

*Comment:* The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

*Response:* In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval an existing information collection. PRA requires that agencies use the **Federal Register** notice and comment process, to extend OMB's approval, least every three years. This extension, to a previously approved information collection, pertains to the use of the SSR to collect subcontract award data from prime or subcontractors that: (a) Hold

one or more contracts over $650,000 (over $1,500,000 for construction); and (b) are required to report subcontracts awarded to small business, small disadvantaged business, women-owned small business, historically underutilized business zone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns. The SSR is also used to collect subcontract award data from Alaskan Native Corporations and Indian Tribe concerns under a subcontracting plan with the Federal government. For the Department of Defense, the National Aeronautics and Space Administration, and the United States Coast Guard, the SSR collects subcontract awards for Historically Black Colleges and Universities and Minority Institutions. Absent this information the suitability of the contractor to report subcontract award data could not be ascertained. Further, the contracting officer could not examine the subcontract award data to assess contractors' compliance with their subcontracting plans, the Small Business Act, and the FAR.

*Comment:* The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. The respondent stated that the upward adjustment made to the number of respondents from 103,908 to 129,009 was reasonable. However, the decrease in the average burden hours for reporting and recordkeeping per response from 12 hours in 2010 to 9 hours is understated, and that the average burden on companies is somewhere in the range of 10 to 100 time greater that the estimate put forth in the **Federal Register** Notice. For this reason, the respondent provided that agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006.

*Response:* Serious consideration given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where adjustment was made from the total preparation hours from three to sixty. This change was made considering particularly the hours that would be required for review within the company prior to release to the Government. The burden is prepared taking into consideration the necessary criteria OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business.

Careful consideration went into assessing the estimated burden hours for this collection. Given that many of the key data elements are pre-populated in eSRS from FPDS and SAM (e.g. basic contractual information and contractor information), combined with the system improvements to streamline user experience, the amount of training provided, the user guides and webinars available, and the sample reports provided, the length of time necessary for reporting subcontracting achievements into eSRS has been shortened. As a result, the estimate burden hours published in the **Federal Register** at 77 FR 69483 on November 19, 2012 remains a valid estimate and an upward adjustment is not required at this time. However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

*Comment:* The respondent commented that the collective burden of compliance with the information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

*Response:* The Paperwork Reduction Act (PRA) was designed to improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in government and society. Central to this process is the solicitation of comments from the public. This process incorporates and enumerated specification of targeted information and provides interested parties a meaningful opportunity for comment on the relevant compliance cost. This process has led to decreases in the overall collection requirement in regards to the public. Based on OMB estimates, in FY 2010, the public spent 8.8 billion hours responding to information collections. This was a decrease of one billion hours, or ten percent from the previous fiscal year. In effect, the collective burden of compliance for the public is going down as the Government publishes rule that make the process less complex, more transparent, and reduces the cost of federal regulations to both the Contractor community and Government.

**C. Annual Reporting Burden**

Based on information from eSRS and an estimate of the use of eSRS, an upward adjustment is being made to the number of respondents, but a downward adjustment is being made to the average burden hours for reporting and recordkeeping per response. As a result, a downward adjustment is being made to the estimated annual reporting burden since the notice regarding an extension to this clearance published in the **Federal Register** at 75 FR 9603, on March 3, 2010.

*Respondents:* 129,009.

*Responses per Respondent:* 1.

*Total Responses:* 129,009.

*Average Burden Hours per Response:* 9.0

*Total Burden Hours:* 1,161,081.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control Number 9000–0007, Summary Subcontract Report, in all correspondence.

Dated: March 18, 2013.

**William Clark,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2013–06584 Filed 3–21–13; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**[OMB Control No. 9000–0132; Docket 2012–0076; Sequence 61]**

## Federal Acquisition Regulation; Submission for OMB Review; Contractors' Purchasing Systems Reviews

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning contractors' purchasing systems reviews. A notice was published in the **Federal Register** at 77 FR 51783, on October 27, 2012. One comment was received.

**DATES:** Submit comments on or before April 22, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0132, Contractors' Purchasing Systems Reviews, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0132, Contractors' Purchasing Systems Reviews''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0132, Contractors' Purchasing Systems Reviews'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0132, Contractors' Purchasing Systems Reviews.

*Instructions:* Please submit comments only and cite Information Collection 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia Corrigan, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, (202) 208–1963 or email at *patricia.corrigan@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The objective of a contractor purchasing system review (CPSR), as discussed in Part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer (ACO) a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

### B. Analysis of Public Comments

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

*Comment:* The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

*Response:* In accordance with the Paperwork Reduction Act (PRA), agencies can request an OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to information collections associated with contractor purchasing system reviews (CPSR), as discussed in Part 44 of the FAR. The objective of CPSRs is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system. An approved purchasing system allows the contractor more autonomy in subcontracting actions. Without an approved purchasing system more Government oversight is necessary, and Government consent to subcontract is required.

*Comment:* The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. The respondent stated that ''the Agencies estimate that only 1,580 respondents will be subject to this requirement annually * * * is greatly understated.'' The respondent also found the estimate of 25 hours per response to be too low. For these reasons, the same respondent provided that the burden of compliance with the information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

*Response:* Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business.

Careful consideration, including consultation with Subject Matter Experts, went into assessing the burden hours for this collection, and it is determined that an upward adjustment is not required.

The respondent expressed concern that the estimate of 1,580 respondents is ''greatly understated'' because ''the

requirements apply regardless of whether or not the Government conducts a review. In other words, *all* contractors are required to be prepared when and if the Government ultimately conducts the purchasing system review.'' In response, we wish to clarify the circumstances under which CPSRs are actually conducted. If a contractor's sales to the Government (excluding competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items in accordance with FAR part 12) are expected to exceed $25 million during the next 12 months, an ACO *may* determine that a CPSR is necessary. The ACO's determination as to whether a CPSR is necessary is based on, but not limited to, the past performance of the contractor, and the volume, complexity and dollar value of subcontracts. Once an initial determination has been made regarding a CPSR, at least every three years, the ACO shall determine whether a CPSR is necessary. If necessary, the cognizant contract administration office will conduct the CPSR. Generally, a CPSR is not performed for a specific contract, as the respondent appears to imply. Rather, CPSRs are conducted on contractors based on the factors identified above. For example, the Defense Contract Management Agency (DCMA) Contractor Purchasing System Review Group is a group dedicated to conducting CPSRs for the Department of Defense. As of April 2012 the group's review workload included more than 400 contractors worldwide. The estimate of 1,580 respondents is therefore determined to be reasonable. In addition, the respondent is reminded that estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. The primary purpose of CSPRs is to evaluate a portion of the normal course of a contractor's business, i.e., to evaluate the contractor's purchasing processes to ensure the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. We submit that fundamental preparation for a review is part of a contractor's normal course of business.

The respondent also took issue with the estimate of 25 hours per response. As indicated above, Subject Matter Experts were consulted in developing the estimate. Based on their assessment, the time required for reading and preparing information was adjusted upwards from 17 hours (as estimated in the currently approved information collection) to 25 hours per completion, in order to provide a more accurate accounting of the contractors' time expenditure needed to prepare for a CPSR and respond to any contracting officer recommendations related to withholding or withdrawing of contractor purchasing system approval resulting from an CSPR.

**C. Annual Reporting Burden**

There is no single data collection process or system, e.g., Federal Procurement Data System (FPDS), that identifies the number of CPSRs conducted governmentwide. However, for purposes of this clearance, the estimated Average Burden Per Response is estimated at 25 hours per completion. Based on coordination with a Government agency that conducts CPSRs, the estimate has been adjusted upwards from the current 17 hours to 25 hours, in order to provide a more accurate accounting of the contractors' time necessary for reading information and preparing for a CSPR.

*Number of Respondents:* 1,580.

*Responses per Respondent:* 1.

*Total Responses:* 1,580.

*Average Burden per Response:* 25.

*Total Burden Hours:* 39,500.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: March 18, 2013.

**William Clark,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2013–06578 Filed 3–21–13; 8:45 am]

**BILLING CODE 6820–EP–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: HHS–OS–19116–60D]**

### Agency Information Collection Activities; Proposed Collection; Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on the ICR must be received on or before May 21, 2013.

**ADDRESSES:** Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the document identifier HHS–OS–19116–60D for reference.

*Information Collection Request Title:* Out, Proud, and Healthy Fitness Project.

*Abstract:* The Office of Women's Health (OWH) and the Department of Health and Human Services (HHS) Coordinating Committee on Lesbian, Gay, Bi-sexual and Transgender (LGBT) Issues have prioritized the collection of health data on LGBT populations. In response, OWH funded an initiative to identify and test effective and innovative ways of reducing obesity in lesbian and bisexual women. The planned intervention developed in St. Louis Missouri is called the ''Out, Proud, and Health Fitness Project'' has been developed to address what is currently known about local LB women's community norms, common barriers to health, patterns of physical and mental health access, and preferences for health services and health outcomes. The interventions will offer randomized controlled trial intervention-fitness education classes, evidence-based personalized exercise routines, a gym membership, a smart pedometer to motivate users to increase physical activity and health education classes focused on increasing healthy lifestyle choices. The project is scheduled for one year.

*Need and Proposed Use of the Information:* Addresses barriers to health for the LB community, and promotes overall health and wellbeing. The intervention will incorporate community-identified weight loss/risk reduction needs of this population. Following the completion of the surveys and interventions, collected data will be used to develop a ''Toolkit'' that other organizations can use to promote healthy weight in older LB women.

*Likely Respondents:* Lesbian and bi-sexual women forty years of age and older.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN-HOURS

| Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| Enrollment Survey | 160 | 1 | 37/60 | 99 |
| Baseline Survey | 150 | 1 | 60/60 | 150 |
| 4-month Follow-up Assessment Survey | 140 | 1 | 46/60 | 107 |
| Post Intervention Focus Group | 20 | 1 | 90/60 | 30 |
| 12-month Follow-up Assessment Survey | 120 | 1 | 42/60 | 84 |
| Total | | | | 470 |

OS specifically requests comments on (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Keith A. Tucker,**

*Information Collection Clearance Officer.*

[FR Doc. 2013–06552 Filed 3–21–13; 8:45 am]

BILLING CODE 4150–33–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier HHS–OS–19133–60D]**

### Agency Information Collection Activities; Proposed Collection; Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary(OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on the ICR must be received on or before May 21, 2013.

**ADDRESSES:** Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the document identifier HHS–OS–19133–60D for reference.

Information Collection Request Title: MOVE: Making Our Vitality Evident.

Abstract: The Office of Women's Health (OWH) and the Department of Health and Human Services (HHS) Coordinating Committee on Lesbian, Gay, Bi-sexual and Transgender (LGBT) Issues have prioritized the collection of health data on LGBT populations. In response, OWH funded an initiative to identify and test effective and innovative ways of reducing obesity in lesbian and bisexual women. The Healthy Weight in Lesbian and Bisexual Women Program was established in Washington, DC The purpose of the program is to evaluate interventions that promote healthy weight in LB women through a 16-week group support program, including physical activity and nutrition, tailored to sexual minority women. Both doctors and nurses will be recruited and trained to assist with evaluation the outcomes of the program.

Need and Proposed Use of the Information: Addresses barriers to health for the LB community, and promotes overall health and wellbeing. The intervention will incorporate community-identified weight loss/risk reduction needs of this population. Following the completion of the surveys and interventions, collected data will be used to develop, deliver and evaluate a curriculum for medical professionals, which will emphasize working with LB women's particular needs and expectations. And emphasize skills in motivational interviewing for helping patients to undertake new and difficult lifestyle adjustments.

Likely Respondents: Lesbian and bi-sexual women forty years of age and older.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN-HOURS

| Form name | Number of respondents | Number of responses per respondent | Average Burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| Pre-Test Women's Survey | 40 | 1 | 23/60 | 15 |
| Post-Test Women's Survey | 40 | 1 | 23/60 | 15 |
| Pre-Test Physician's Survey | 150 | 1 | 5/60 | 13 |
| Post-Test Physician's Survey | 150 | 1 | 5/60 | 13 |
| Total | | | | 56 |

OS specifically requests comments on (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Keith A. Tucker,**

*Information Collection Clearance Officer.*

[FR Doc. 2013–06551 Filed 3–21–13; 8:45 am]

**BILLING CODE 4150–33–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting Notice for the President's Advisory Council on Faith-Based and Neighborhood Partnerships

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the President's Advisory Council on Faith-based and Neighborhood Partnerships announces the following meeting:

*Name:* President's Advisory Council on Faith-based and Neighborhood Partnerships Council Meeting.

*Time and Date:* Wednesday, April 10th, 2013 9:30 a.m.–11:30 a.m. (EDT).

*Place:* Meeting will be held at a location to be determined in the White House complex, 1600 Pennsylvania Ave NW., Washington, DC. Space is extremely limited. Photo ID and RSVP are required to attend the event. Please RSVP to Ben O'Dell at *partnerships@hhs.gov*.

The meeting will be available to the public through a conference call line. The call-in line is: 1–866–823–5144; Passcode: 1375705.

*Status:* Open to the public, limited only by space available. Conference call limited only by lines available.

*Purpose:* The Council brings together leaders and experts in fields related to the work of faith-based and neighborhood organizations in order to: Identify best practices and successful modes of delivering social services; evaluate the need for improvements in the implementation and coordination of public policies relating to faith-based and other neighborhood organizations; and make recommendations for changes in policies, programs, and practices.

*Contact Person for Additional Information:* Please contact Ben O'Dell for any additional information about the President's Advisory Council meeting at *partnerships@hhs.gov*.

*Agenda:* Please visit *http://www.whitehouse.gov/partnerships* for further updates on the Agenda for the meeting.

*Public Comment:* There will be an opportunity for public comment at the end of the meeting. Comments and questions can be sent in advance to *partnerships@hhs.gov*.

Dated: March 19, 2013.

**Ben O'Dell,**

*Designated Federal Officer and Associate Director, HHS Center for Faith-based and Neighborhood Partnerships.*

[FR Doc. 2013–06666 Filed 3–21–13; 8:45 am]

**BILLING CODE 4154–07–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10450, CMS–10078]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title:* Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey for Physician Quality Reporting; *Use:* The Physician Quality Reporting System (PQRS) was established in 2006 as a voluntary ''pay-for-reporting'' program that allows physicians and other eligible healthcare professionals to report information to Medicare about the quality of care provided to beneficiaries who have certain medical conditions. The PQRS provides incentive payments to physicians who report quality data. Since the program's inception, these results have not been publicly available for use by consumers.

The Physician Compare Web site was launched December 30, 2010, to meet requirements set forth by Section 10331 of the Affordable Care Act (ACA). The ACA requires CMS to establish a Physician Compare Web site by January 1, 2011, containing information on physicians enrolled in the Medicare program and other eligible professionals who participate in the Physician Quality Reporting Initiative. By no later than January 1, 2013 (and for reporting periods beginning no earlier than January 1, 2012), CMS is required to implement a plan to make information on physician performance publicly available through Physician Compare. A key component of the reporting requirements under the ACA is public reporting on physician performance that includes patient experience measures. The collection and reporting of a Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey for Physician Quality Reporting will fulfill this requirement.

The U.S. Department of Health and Human Services (HHS) has developed the National Quality Strategy that was called for under the ACA to create national aims and priorities to guide local, state, and national efforts to

improve the quality of health care. This strategy has established six priorities that support the three-part aim. The three-part aim focuses on better care, better health, and lower costs through improvement. The six priorities include: Making care safer by reducing harm caused by the delivery of care; ensuring that each person and family are engaged as partners in their care; promoting effective communication and coordination of care; promoting the most effective prevention and treatment practices for the leading causes of mortality, starting with cardiovascular disease; working with communities to promote wide use of best practices to enable healthy living; and making quality care more affordable for individuals, families, employers, and governments by developing and spreading new health care delivery models. The CAHPS Survey for Physician Quality Reporting focuses on patient experience. Implementation of the survey supports the six national priorities for improving care, particularly engaging patients and families in care and promoting effective communication and coordination.

This survey supports the administration of the Quality Improvement Organizations Program (QIO). The Social Security Act, as set forth in Part B of Title XI—Section 1862(g), established the Utilization and Quality Control Peer Review Organization Program, now known as the QIO Program. The statutory mission of the QIO Program is to improve the effectiveness, efficiency, economy, and quality of services delivered to Medicare beneficiaries. This survey will provide patient experience of care data that is an essential component of assessing the quality of services delivered to Medicare beneficiaries. It also would permit beneficiaries to have this information to help them choose health care providers that provide services that meet their needs and preferences, thus encouraging providers to improve quality of care that Medicare beneficiaries receive. *Form Number:* CMS–10450 (OCN: 0938–New); *Frequency:* Annual; *Affected Public:* Individuals and Households; *Number of Respondents:* 234,600 *Total Annual Responses:* 117,300; *Total Annual Hours:* 39,530. (For policy questions regarding this collection contact Regina Chell at 410–786–6551. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title:* Program for Matching Grants to States for the Operation of High Risk Pools; *Use:* The Centers for Medicare and Medicaid Services (CMS) is requiring the information in this information collection request as a condition of eligibility for grants that were authorized in the Trade Act of 2002, the Deficit Reduction Act of 2005 and the State High Risk Pool Funding Extension Act of 2006. The information is necessary to determine if a State applicant meets the necessary eligibility criteria for a grant as required by law. The respondents will be States that have a high risk pool as defined in sections 2741, 2744, or 2745 of the Public Health Service Act. The grants will provide funds to States that incur losses in the operation of high risk pools. High risk pools are set up by States to provide health insurance to individuals that cannot obtain health insurance in the private market because of a history of illness; *Form Number:* CMS–10078 (OCN: 0938–0887); *Frequency:* Occasionally; *Affected Public:* State, Local and Tribal Governments; *Number of Respondents:* 31; *Total Annual Responses:* 31; *Total Annual Hours:* 1,240. (For policy questions regarding this collection contact Paul Scholz at (410) 786–6178. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on April 22, 2013.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: *March 19, 2013.*

**Martique Jones,**

*Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2013–06632 Filed 3–21–13; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–3281–PN]**

### Medicare and Medicaid Programs: Application From the American Osteopathic Association/Healthcare Facilities Accreditation Program for Continued CMS-Approval of Its Hospital Accreditation Program

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

**ACTION:** Proposed notice.

**SUMMARY:** This proposed notice with comment period acknowledges the receipt of an application from the American Osteopathic Association/Healthcare Facilities Accreditation Program (AOA/HFAP) for continued recognition as a national accrediting organization for hospitals that wish to participate in the Medicare or Medicaid programs.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 22, 2013.

**ADDRESSES:** In commenting, please refer to file code CMS–3281–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways:

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov* . Follow the ''submit a comment'' instructions.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3281–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

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

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3281–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments to the following addresses:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

**SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:**

Cindy Melanson, (410) 786–0310.

Patricia Chmielewski, (410) 786–6899.

Valarie Lazerowich, (410) 786–4750.

**SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

## I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospital provided certain requirements are met by the hospital. Section 1861(e) of the Social Security Act (the Act), establishes distinct criteria for facilities seeking designation as a hospital. Regulations concerning provider agreements are located at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are located at 42 CFR part 488. The regulations at 42 CFR part 482, specify the conditions that a hospital must meet to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for hospitals.

Generally, to enter into an agreement, a hospital must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 482 of our regulations. Thereafter, the hospital is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require an accrediting organization to reapply for continued approval of its accreditation program every 6 years or as determined by CMS. The American Osteopathic Association/Healthcare Facilities Accreditation Program (AOA/HFAP's) current term of approval for its hospital accreditation program expires September 25, 2013.

## II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of AOA/HFAP's request for continued CMS-approval of its hospital accreditation program. This notice also solicits public comment on whether AOA/HFAP's requirements meet or exceed the Medicare conditions of participation for hospitals.

## III. Evaluation of Deeming Authority Request

AOA/HFAP submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its hospital accreditation program. This application was determined to be complete on January 25, 2013. Under section 1865(a)(2) of the Act and our regulations at § 488.8 (Federal review of accrediting organizations), our review and evaluation of AOA/HFAP will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of AOA/HFAP's standards for hospitals as compared with CMS' hospital conditions of participation.
- AOA/HFAP's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of AOA/HFAP's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ AOA/HFAP's processes and procedures for monitoring a hospital that is out of compliance with AOA/HFAP's program requirements. These monitoring procedures are used only when AOA/HFAP identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the state survey agency monitors corrections as specified at § 488.7(d).

++ AOA/HFAP's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ AOA/HFAP's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of AOA/HFAP's staff and other resources, and its financial viability.

++ AOA/HFAP's capacity to adequately fund required surveys.

++ AOA/HFAP's policies with respect to whether surveys are announced or unannounced.

++ AOA/HFAP's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans).

### IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

### V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 5, 2013.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2013–06640 Filed 3–21–13; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Implementation of the Updated American Veterinary Medical Association Guidelines for the Euthanasia of Animals: 2013 Edition

**SUMMARY:** The National Institutes of Health (NIH) is providing guidance to Public Health Service (PHS) awardee institutions on implementation of the *American Veterinary Medical Association (AVMA) Guidelines for the Euthanasia of Animals: 2013 Edition* (*Guidelines*). The NIH is seeking input from the public on any concerns they may have regarding the updated *Guidelines.*

**DATES:** Public concerns regarding the updated *AVMA Guidelines for the Euthanasia of Animals: 2013 Edition* must be submitted electronically at *http://grants.nih.gov/grants/olaw/2013avmaguidelines_comments/add.cfm?ID=32* by May 31, 2013, in order to be considered.

**FOR FURTHER INFORMATION CONTACT:** Office of Laboratory Animal Welfare, Office of Extramural Research, NIH, RKL1, Suite 360, 6705 Rockledge Drive, Bethesda, MD 20892–7982; phone 301–496–7163; email *olaw@od.nih.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The NIH Office of Laboratory Animal Welfare (OLAW) oversees PHS-funded animal activities by the authority of the Health Research Extension Act of 1985 (*http://grants.nih.gov/grants/olaw/references/hrea1985.htm*) and the PHS Policy on Humane Care and Use of Laboratory Animals (PHS Policy; *http://grants.nih.gov/grants/olaw/references/phspol.htm*). The PHS Policy IV.C.1.G. (*http://grants.nih.gov/grants/olaw/references/phspol.htm#ReviewofPHS-ConductedorSupportedResearchProjects*) requires that Institutional Animal Care and Use Committees (IACUCs) reviewing PHS-conducted or -supported research projects, determine if methods of euthanasia used in projects will be consistent with the recommendations of the AVMA Panel on Euthanasia, unless a deviation is justified for scientific reasons in writing by the investigator.

PHS-Assured institutions are encouraged to begin using the *2013 Guidelines* as soon as possible when reviewing research projects, and full implementation is expected after September 1, 2013. Previously approved projects undergoing continuing review according to PHS Policy IV.C.5. (*http://grants.nih.gov/grants/olaw/references/phspol.htm#ReviewofPHS-ConductedorSupportedResearchProjects*), which requires a complete de novo review at least once every 3 years, must be reviewed using the *2013 Guidelines* after September 1, 2013.

### II. Electronic Access

The AVMA has issued and posted an update to the *2007 Guidelines on Euthanasia* with a new title, *AVMA Guidelines for the Euthanasia of Animals: 2013 Edition,* available at *https://www.avma.org/KB/Policies/Documents/euthanasia.pdf* (PDF).

Dated: March 14, 2013.

**Francis S. Collins,**

*Director, National Institutes of Health.*

[FR Doc. 2013–06661 Filed 3–21–13; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS Clinical Trial Outcome Development.

*Date:* March 29, 2013.

*Time:* 8:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Xincheng Zheng, Ph.D., M.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–594–4953, *xincheng.zheng@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 18, 2013.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06571 Filed 3–21–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism, Special Emphasis Panel, NIAAA Member Conflict Applications.

*Date:* April 4, 2013.

*Time:* 11:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 5635 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852 (301) 451–2067 *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: March 18, 2013.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–06572 Filed 3–21–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2012–0061]**

### Information Collection Request; Chemical Facility Anti-Terrorism Standards Personnel Surety Program

**AGENCY:** National Protection and Programs Directorate, DHS.

**ACTION:** 60-Day notice and request for comments; New Information Collection Request: 1670—NEW.

**SUMMARY:** The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (ISCD) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This is a new information collection and follows the withdrawal of a previous ICR on the same topic.[1] The purpose of this notice is to solicit comments during a 60-day public comment period prior to the submission of this ICR to OMB. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (in hours), and the estimated burden cost necessary to implement the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program pursuant to 6 CFR 27.230(a)(12)(iv).

**DATES:** Comments are encouraged and will be accepted until May 21, 2013. This process is conducted in accordance with 5 CFR 1320.8.

**ADDRESSES:** Interested persons are invited to submit comments on the proposed information collection through the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions received must include the words ''Department of Homeland Security'' and the docket number DHS–2012–0061. Except as provided below, comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),[2] Sensitive Security Information (SSI),[3] or Protected Critical Infrastructure Information (PCII)[4] should not be submitted to the public regulatory docket. Please submit such comments separately from other comments in response to this notice. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and packaged in accordance with applicable requirements and submitted by mail to the DHS/NPPD/IP/ISCD CFATS Program Manager at the Department of Homeland Security, 245 Murray Lane, SW., Mail Stop 0610, Arlington, VA 20528–0610. Comments must be identified by docket number DHS–2012–0061.

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[1] A 60-day public notice for comments was published in the **Federal Register** on June 10, 2009. *See* 74 FR 27555. Comments submitted by the public may be found on *http://www.regulations.gov* under Docket ID DHS–2009–0026. The Department's responses were included in a Paperwork Reduction Act (PRA) 30-day **Federal Register** notice. The 30-day public notice for comments was published in the **Federal Register** on April 13, 2010. *See* 75 FR 18850. Comments submitted by the public may be found on *http://www.regulations.gov* under Docket ID DHS–2009–0026. The Department's responses were published in a separate **Federal Register** notice on June 14, 2011. *See* 76 FR 34720. Concurrently with publication of the June 14, 2011 **Federal Register** notice, the Department submitted an Information Collection Request about the CFATS Personnel Surety Program to OMB. *See http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201105-1670-002.* In July 2012, the Department withdrew that ICR.

[2] For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at *http://www.dhs.gov/xlibrary/assets/chemsec_cvi_proceduresmanual.pdf.*

[3] For more information about SSI see 49 CFR part 1520 and the SSI Program Web page at *http://www.tsa.gov/ssi.*

[4] For more information about PCII see 6 CFR part 29 and the PCII Program Web page at *http://ww.dhs.gov/pcii.*

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## I. Supplementary Information

Section 550 of the Department of Homeland Security Appropriations Act of 2007, Public Law 109–295 (2006) (''Section 550''), provides the Department with the authority to identify and regulate the security of high-risk chemical facilities using a risk-based approach. On April 9, 2007, the Department issued the CFATS Interim Final Rule (IFR) implementing this statutory mandate. *See* 72 FR 17688.

Section 550 requires that the Department establish risk-based performance standards (RBPS) for high-risk chemical facilities and under CFATS the Department promulgated 18 RBPS. Each chemical facility that has been finally determined by the Department to be high-risk must submit a Site Security Plan (SSP), or an Alternative Security Program (ASP) if the facility so chooses, for Department approval that satisfies each applicable RBPS. RBPS 12—Personnel Surety—requires high-risk chemical facilities to:

Perform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets, including, (i) Measures designed to verify and validate identity; (ii) Measures designed to check criminal history; (iii) Measures designed to verify and validate legal authorization to work; and (iv) Measures designed to identify people with terrorist ties[.]

*See* 6 CFR 27.230(a)(12).

As explained by the Department in the preamble to the CFATS IFR, the ability to identify affected individuals (i.e., facility personnel or unescorted visitors with access to restricted areas or critical assets at high-risk chemical facilities) who have terrorist ties is an inherently governmental function and necessarily requires the use of information held in government-maintained databases that are unavailable to high-risk chemical facilities. *See* 72 FR 17709 (April 9, 2007). Thus, under RBPS 12(iv), the Department and high-risk chemical facilities must work together to satisfy the ''terrorist ties'' aspect of the Personnel Surety performance standard. As a result, the CFATS Personnel Surety Program will identify individuals with terrorist ties that have or are seeking access to the restricted areas and/or critical assets at the nation's high-risk chemical facilities. Accordingly, in the preamble to the CFATS IFR, the Department outlined two potential approaches to help high-risk chemical facilities satisfy that particular standard, both of which would involve high-risk chemical facilities submitting certain information to the Department. *See id.*

The first approach would involve facilities submitting certain information about affected individuals to the Department, which the Department would use to vet those individuals for terrorist ties. Specifically, identifying information about affected individuals would be compared against identifying information of known or suspected terrorists contained in the Federal Government's consolidated and integrated terrorist watchlist, the Terrorist Screening Database (TSDB), which is maintained on behalf of the federal government by the Department of Justice (DOJ) Federal Bureau of Investigation (FBI) in the Terrorist Screening Center (TSC).[5]

In order to avoid unnecessary duplication of terrorist screening, the Department also described an additional approach under which high-risk chemical facilities would submit information about affected individuals possessing certain credentials that rely on Security Threat Assessments conducted by the Department. *See* 72 FR 17709 (April 9, 2007).

The Department has now developed a CFATS Personnel Surety Program that will provide high-risk chemical facilities additional options to comply with RBPS 12(iv) while continuing to make available the two alternatives outlined in the preamble to the CFATS IFR. In addition to the alternatives expressly described in this document, the Department also intends to permit high-risk chemical facilities to propose other alternative measures for terrorist ties identification in their SSPs or ASPs, which the Department will consider on a case-by-case basis in evaluating high-risk chemical facilities' SSPs or ASPs.

As a result of the CFATS Personnel Surety Program, regardless of the option, the Department will identify individuals with terrorist ties that have or are seeking access to the restricted areas and/or critical assets at the nation's high-risk chemical facilities.

The first option is consistent with the primary approach described in the CFATS IFR preamble, as discussed above. Under Option 1—Direct Vetting, high-risk chemical facilities (or others acting on their behalf) would submit certain information about affected individuals to the Department through a Personnel Surety application in an online technology system developed under CFATS called the Chemical Security Assessment Tool (CSAT). Access to and the use of CSAT is provided free of charge to high-risk chemical facilities (or others acting on their behalf).

Under this option, information about affected individuals submitted by, or on behalf of, high-risk chemical facilities would be vetted against information contained in the Federal Government's consolidated and integrated terrorist watchlist.

The second option is also consistent with the second approach described in the CFATS IFR preamble. Under Option 2—Use Of Vetting Conducted Under Other DHS Programs, high-risk chemical facilities (or others acting on their behalf) would also submit certain information about affected individuals to the Department through the CSAT Personnel Surety application.

Option 2 would, however, allow high-risk chemical facilities and the Department to take advantage of the vetting for terrorist ties already being conducted on affected individuals enrolled in the Transportation Worker Identification Credential (TWIC) Program, Hazardous Materials Endorsement (HME) Program, as well as the NEXUS, Secure Electronic Network

[5] For more information about the TSDB, see DOJ/FBI—019 Terrorist Screening Records System, 72 FR 47073 (August 22, 2007).

for Travelers Rapid Inspection (SENTRI), Free and Secure Trade (FAST), and Global Entry Trusted Traveler Programs.[6] All of these programs conduct terrorist ties vetting equivalent to the terrorist ties vetting that would be conducted under Option 1.[7] Under Option 2, high-risk chemical facilities, or their designees (e.g., third parties), could submit information to the Department about affected individuals possessing the appropriate credentials to enable the Department to electronically verify the affected individuals' enrollments in these other programs. The Department would subsequently notify the designee of the high-risk chemical facility (e.g., the Submitter) whether or not an affected individual's enrollment in one of these other DHS programs was electronically verified. The Department would also periodically re-verify each affected individual's continued enrollment in one of these other programs, and notify the appropriate designee of the high-risk chemical facility of significant changes in the status of an affected individual's enrollment (e.g., if an affected individual who has been enrolled in the HME Program ceases to be enrolled, the Department would change the status of the affected individual in the CSAT Personnel Surety application and notify the Submitter). Electronic verification and re-verification would enable the Department and the high-risk chemical facility to ensure that an affected individual's credential or endorsement is appropriate to rely on (i.e., an indicator that the affected individual is being recurrently vetted for terrorist ties) in compliance with RBPS 12(iv).

In addition to Option 1 and Option 2, the Department has considered other potential options to help high-risk chemical facilities satisfy RBPS 12(iv). In particular, the Department has investigated the feasibility of options that would not involve the submission of information about an affected individual if the affected individual participated in one of the programs identified under Option 2. The Department believes that, for the purpose of compliance with RBPS 12(iv), simply relying on a visual inspection of a credential or endorsement is inadequate because the credential or endorsement could be expired, revoked, or fraudulent. However, the Department has concluded that information about an affected individual, enrolled in a DHS program that conducts vetting for terrorist ties equivalent to the vetting that would be conducted under Option 1, would not need to be submitted to the Department if the credential in the possession of the affected individual is electronically verified and validated.

Accordingly, the Department plans to offer high-risk chemical facilities a third option. Under Option 3—Electronic Verification of TWIC, a high-risk chemical facility (or others acting on their behalf) would not submit information about affected individuals in possession of TWICs to the Department if the high-risk chemical facility (or others acting on their behalf) electronically verify and validate the affected individuals' TWICs through the use of TWIC readers (or other technology that is periodically updated using the Canceled Card List).[8] Any high-risk chemical facilities that choose this option would need to describe in their SSPs or ASPs the procedures they will follow if they choose to use TWIC readers for compliance with RBPS 12(iv).[9]

High-risk chemical facilities would have discretion as to which option(s) to use for an affected individual. For example, even though a high-risk chemical facility could comply with RBPS 12(iv) for certain affected individuals by using Option 2, the high-risk chemical facility could choose to use Option 1 for those affected individuals. Similarly, a high-risk chemical facility, at its discretion, may choose to use either Option 1 or Option 2 rather than Option 3 for affected individuals who have TWICs. High-risk chemical facilities also may choose to combine Option 1 with Option 2 and/or Option 3, as appropriate, to ensure that adequate terrorist ties checks are performed on different types of affected individuals (e.g., employees, contractors, unescorted visitors). Each high-risk chemical facility will need to describe how it will comply with RBPS 12(iv) in its SSP or ASP.

In addition to the options described above for satisfying RBPS 12(iv), high-risk chemical facilities are welcome to propose alternative or supplemental options not described in this PRA notice in their SSPs or ASPs. The Department will assess the adequacy of such alternative or supplemental options on a facility-by-facility basis, in the course of evaluating each facility's SSP or ASP.

Although outside the scope of this PRA notice and the underlying ICR, the Department would like to highlight that high-risk chemical facilities also have other methods to address, or minimize the impacts of, compliance with RBPS 12(iv). For example, facilities may restrict the numbers and types of persons whom they allow to access their restricted areas and critical assets, thus limiting the number of persons who will need to be checked for terrorist ties. Facilities also have wide latitude in how they define their restricted areas and critical assets in their SSPs or ASPs, thus potentially limiting the number of persons who will need to be checked for terrorist ties. High-risk chemical facilities also may choose to escort visitors to restricted areas and critical assets in lieu of performing the background checks required by RBPS 12. For example, high-risk chemical facilities could propose in their SSPs or ASPs traditional escorting solutions and/or innovative escorting alternatives such as video monitoring (which may reduce facility security costs), as appropriate, to address the unique security risks present at each facility.

*Summary of Options Available to High-Risk Chemical Facilities To Comply With RBPS 12(iv)*

The purpose of the CFATS Personnel Surety Program is to identify individuals with terrorist ties that have or are seeking access to the restricted areas and/or critical assets at the nation's high-risk chemical facilities. As described above, under the CFATS Personnel Surety Program, for each affected individual a high-risk chemical facility would have at least three options under RBPS 12(iv):

- Option 1—Direct Vetting: High-risk chemical facilities (or their designees) may submit information to the Department about an affected individual to be compared against information about known or suspected terrorists, and/or

[6] U.S. Customs and Border Protection (CBP) has introduced SENTRI and Global Entry as Trusted Traveler Programs since the publication of CFATS in April 2007. The Department, therefore, intends to enable high-risk chemical facilities (or their designees) to submit information about affected individuals' SENTRI and Global Entry enrollments to DHS under Option 2, even though SENTRI and Global Entry were not listed along with the other Trusted Traveler Programs in the CFATS IFR preamble. *See* 72 FR 17709 (April 9, 2007).

[7] Each of the DHS programs conducts recurrent vetting, which is a Department best practice. Recurrent vetting compares an affected individual's information against new and/or updated TSDB records as those new and/or updated records become available.

[8] For more information about the Canceled Card List, please visit *http://www.tsa.gov/sites/default/files/publications/pdf/twic/canceled_card_list_ccl_faq.pdf.*

[9] Elsewhere in this issue of the **Federal Register**, the U.S. Coast Guard has published a notice of proposed rulemaking (NPRM) titled ''TWIC Reader Requirements.'' The procedures for using TWIC readers that are discussed in that NPRM would not apply to high-risk chemical facilities regulated under CFATS. Likewise, the ways in which high-risk chemical facilities could leverage TWICs as part of the CFATS Personnel Surety Program do not apply to maritime facilities or vessels regulated by the U.S. Coast Guard.

• Option 2—Use of Vetting Conducted Under Other DHS Programs: High-risk chemical facilities (or their designees) may submit information to the Department about an affected individual's enrollment in another DHS program so that the Department may electronically verify and validate that the affected individual is enrolled in the other program, and/or

• Option 3—Electronic Verification of TWIC: High-risk chemical facilities may electronically verify and validate an affected individual's TWIC, through the use of TWIC readers (or other technology which is periodically updated using the Canceled Card List), rather than submitting information about the affected individual to the Department.

Regardless of the option, in the event that there is a potential match, the Department has procedures in place that it will follow to resolve the match and coordinate with appropriate law enforcement entities as necessary. High-risk chemical facilities may be contacted as part of law enforcement investigation activity, depending on the nature of the investigation.

*Scope of This Notice and Commitment To Explore Additional Options in the Future*

Since withdrawing the previous CFATS Personnel Surety Program ICR in July 2012,[10] the Department has had substantial dialogue with key CFATS stakeholders. The discussion included program design issues, the CSAT Personnel Surety application, options the Department has been considering to date, and additional options stakeholders have recommended for the Department's consideration, both in the short and long term.

The options described in this notice and, if approved, the subsequent ICR that the Department intends to submit to OMB would allow high-risk chemical facilities and the Department to implement the CFATS Personnel Surety Program within the Department's existing statutory and regulatory authority, and U.S. Government watchlisting policies.

The Department is committed, however, to continuing to work with interested stakeholders to identify additional potential options that could further reduce the burdens related to the CFATS Personnel Surety Program, while still meeting the national security mandate to reduce the risk of an individual with terrorist ties obtaining access to the restricted areas or critical assets at a high-risk chemical facility. The Department will consider and review any alternatives suggested as part of public comments on this notice and on any subsequent notices related to the CFATS Personnel Surety Program. Through both the PRA process and other ongoing dialogues, the Department will, as appropriate, also continue to work with stakeholders to identify potential additional alternatives as new technologies emerge, and as other terrorist ties vetting programs are modified or become available over time, so as to reduce the burden of this new information collection.

*Who is impacted by the CFATS personnel surety program?*

The CFATS Personnel Surety Program will provide high-risk chemical facilities the ability to submit certain biographic information about affected individuals to the Department. As explained above, affected individuals are (1) facility personnel who have access, either unescorted or otherwise, to restricted areas or critical assets, and (2) unescorted visitors who have access to restricted areas or critical assets.

There are also certain groups of persons that the Department does not consider to be affected individuals, such as (1) Federal officials that gain unescorted access to restricted areas or critical assets as part of their official duties; (2) state and local law enforcement officials that gain unescorted access to restricted areas or critical assets as part of their official duties; and (3) emergency responders at the state or local level that gain unescorted access to restricted areas or critical assets during emergency situations.

In some emergency or exigent situations, access to restricted areas or critical assets by other individuals who have not had appropriate background checks under RBPS 12 may be necessary. For example, emergency responders not described above may require such access as part of their official duties under appropriate circumstances. If high-risk chemical facilities anticipate that any individuals will require access to restricted areas or critical assets without visitor escorts or without the background checks listed in RBPS 12 under exceptional circumstances, facilities may describe such situations and the types of individuals who might require access in those situations in their SSPs or ASPs. The Department will assess the appropriateness of such situations, and any security measures to mitigate the inherent vulnerability in such situations, on a case-by-case basis as it reviews each high-risk chemical facility's SSP or ASP.

*What/Who Is the Source of the Information Under Option 1 and Option 2*

High-risk chemical facilities are responsible for complying with RBPS 12(iv). However, companies operating multiple high-risk chemical facilities, as well as companies operating only one high-risk chemical facility, may comply with RBPS 12(iv) in a variety of ways. High-risk chemical facilities, or their parent companies, may choose to comply with RBPS 12(iv) by identifying and submitting the information about affected individuals to the Department directly. Alternatively, high-risk chemical facilities, or their parent companies, may choose to comply with RBPS 12(iv) by outsourcing the information submission process to third parties.

The Department anticipates that many high-risk chemical facilities will rely on businesses that provide contract services (e.g., complex turn-arounds, freight delivery services, lawn mowing) to the high-risk chemical facilities to identify and submit the appropriate information about affected individuals they employ to the Department for vetting pursuant to RBPS 12(iv). Businesses that provide services to high-risk chemical facilities may in turn choose to manage compliance with RBPS 12(iv) themselves or to acquire the services of other third party companies to submit appropriate information about affected individuals to the Department.

*CSAT User Roles and Responsibilities*

To minimize the burden of submitting information about affected individuals, under Options 1 and 2 (as described above), high-risk chemical facilities would have wide latitude in assigning CSAT user roles to align with their business operations and/or the business operations of third parties that provide contracted services to them.[11] In response to previous comments submitted to the Department about the CFATS Personnel Surety Program, the Department intends to structure the CSAT Personnel Surety application to allow designees of high-risk chemical facilities to submit information about affected individuals to the Department on behalf of high-risk chemical facilities.

High-risk chemical facilities will be able to structure their CSAT user roles

[10] *See* footnote 1, *supra.*

[11] CSAT user registration and the assignment of user roles within CSAT are covered under a different Information Collection (i.e., 1670–0007), which can be found at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201001-1670-007#.*

to submit information about affected individuals to the Department in three ways:

(1) A high-risk chemical facility could directly submit information about affected individuals, and designate one or more officers or employees of the facility as a Personnel Surety Submitter; and/or

(2) A high-risk chemical facility could submit information about affected individuals by designating one or more individuals affiliated with a third party (or with multiple third parties) to a user role(s) designated for third parties; and/or

(3) A company owning several high-risk chemical facilities could consolidate its submission process for affected individuals. Specifically, the company could designate one or more persons as CSAT users, and those users could submit information about affected individuals on behalf of all of the high-risk chemical facilities on a company-wide basis.

*Burden Resulting From the Submission of Duplicate Records About an Affected Individual*

The Department is aware that an affected individual may be associated with multiple high-risk chemical facilities, and thus information about an affected individual may be submitted to the Department multiple times by different high-risk chemical facilities and/or their designated third parties. However, the Department has learned in its dialogue with stakeholders (including third-party companies that conduct background checks for high-risk chemical facilities) that the duplicate submission of records about affected individuals is a common industry practice for companies when managing information about individuals. Specifically, when a person who has already had a background check (e.g., verification of legal authorization to work or criminal history) needs a new background check for different companies or for a new or different purpose (e.g., change in jobs or contract), third parties that routinely conduct background checks routinely will submit information about a person again to agencies responsible for maintaining relevant information (e.g., state motor vehicle databases, e-verify). Therefore, for the purpose of this notice, the Department's estimation of burden accounts for potential multiple submissions of information about affected individuals by high-risk chemical facilities and their designated third parties.

*Compliance With RBPS 12(iv) and the Potential for Increased Burden To Enter the Restricted Areas or Critical Assets at a High-Risk Chemical Facility*

Since the Department first began seeking to implement the CFATS Personnel Surety Program, stakeholders have expressed concern that the submission of information about affected individuals under Option 1 and Option 2 to the Department would impede the ability of affected individuals to enter the restricted areas or critical assets at high-risk chemical facilities. The Department does not believe that if a facility complies with RBPS 12(iv) the high-risk chemical facility will, on a routine basis, experience an unreasonable impact in allowing affected individuals access to restricted areas or critical assets.

In general, the Department expects that high-risk chemical facilities or their designees (e.g., third parties or companies employing affected individuals that provide services to high-risk chemical facilities) will already possess much, if not all, of the necessary information about affected individuals as a result of standard business practices related to employment or managing of service contracts. In the event that high-risk chemical facilities, or their designees, need to collect any additional information for the purpose of complying with RBPS 12(iv), they have significant flexibility in how to collect this information since CFATS does not prescribe how to do so.

The Department also expects that high-risk chemical facilities will likely consolidate RBPS 12(iv) processing with related routine hiring and access control procedures involving background checks that are already occurring prior to access by facility personnel or unescorted visitors to restricted areas or critical assets. Consolidating RBPS 12(iv) processing with these other routine procedures would allow submission of personal information already collected and maintained by facilities or their designees (e.g., a third party, contracted service company, or third party acting on behalf of a contracted service company) to the Department under RBPS 12(iv) before affected individuals require access to restricted areas or critical assets.

As mentioned above, third parties could submit screening information to the Department on behalf of high-risk chemical facilities as part of facilities' routine hiring and access control procedures. Some stakeholders have expressed concerns to the Department about submission of screening information by third parties, suggesting that in such cases facilities would not be able to adequately oversee third parties' work to ensure appropriate information submission to the Department. The Department expects, however, that high-risk chemical facilities could audit and/or review their third party designees' information collection and submission processes, to ensure that their designees submit appropriate information.

*Compliance With RBPS 12(iv) and Infrequent "Unescorted Visitors"*

Since the Department first began developing the CFATS Personnel Surety Program, some stakeholders have expressed concern that the submission of information to DHS about unescorted visitors who have only rare or infrequent access to high-risk chemical facilities would be overly burdensome and would make access by such infrequent unescorted visitors too difficult. As a general matter, however, the Department does not believe it likely that many high-risk chemical facilities will propose in their SSPs or ASPs to allow large numbers of visitors who visit the high-risk chemical facility infrequently to have unescorted access to restricted areas and critical assets, because then all four types of background checks listed in RBPS 12 would be required to be conducted for them. High-risk chemical facilities could choose to escort infrequent visitors in lieu of performing the four types of RBPS 12 background checks on them.

However, even for infrequent unescorted visitors that the high-risk chemical facility chooses to conduct all four types of background checks on, the Department does not expect data submission to the Department in compliance with RBPS 12(iv) to impede routine access procedures because the data submission is likely to be accomplished in concert with the other routine hiring and access control involving background check described above.

*Additional Data Privacy Considerations*

There are various privacy requirements for high-risk chemical facilities, their designees, and the Department related to the exchange of personally identifiable information (PII) for the CFATS Personnel Surety Program. Upon receipt of PII, the Department complies with all applicable federal privacy requirements including the Privacy Act, the E-Government Act, the Homeland Security Act, and Departmental policy. The United States also follows international instruments on privacy, all

of which are consistent with the Fair Information Practice Principles (FIPPs).[12] High-risk chemical facilities, or their designees, are responsible for complying with the federal, state, and national privacy laws applicable to the jurisdictions in which they do business. The Department believes that high-risk chemical facilities, or their designees, have multiple, established legal avenues that enable them to submit PII to the Department, which may include the Safe Harbor Framework,[13] and meet their privacy obligations.

**II. Information Collected About Affected Individuals**

*Option 1: Collecting Information To Conduct Direct Vetting*

If high-risk chemical facilities select Option 1 to satisfy RBPS 12(iv) for any affected individuals, the following information about these affected individuals would be submitted to the Department:

- For U.S. Persons (U.S. citizens and nationals as well as U.S. lawful permanent residents):
  - Full Name
  - Date of Birth
  - Citizenship or Gender
- For Non-U.S. Persons:
  - Full Name
  - Date of Birth
  - Citizenship
  - Passport information and/or alien registration number

To reduce the likelihood of false positives in matching against records in the Federal Government's consolidated and integrated terrorist watchlist, high-risk chemical facilities would also be able to submit the following optional information about affected individuals to the Department:

- Aliases
- Gender (for Non-U.S. Persons)
- Place of Birth
- Redress Number [14]

If a high-risk chemical facility chooses to submit information about an affected individual under Option 1, the following table summarizes the biographic data that would be submitted to the Department.

TABLE 1—AFFECTED INDIVIDUAL REQUIRED AND OPTIONAL DATA UNDER OPTION 1

| Data elements submitted to the department | For a U.S. person | For a non-U.S. person |
|---|---|---|
| Full Name | Required | |
| Date of Birth | Required | |
| Gender | Must provide Citizenship or Gender | Optional. |
| Citizenship | | Required. |
| Passport Information and/or Alien Registration Number | N/A | Required. |
| Aliases | Optional | |
| Place of Birth | Optional | |
| Redress number | Optional | |

*Option 2: Collecting Information To USE of Vetting Conducted Under Other DHS Programs*

In lieu of submitting information to the Department under Option 1 for terrorist ties vetting, chemical facilities would also have the option, where appropriate, to submit information to the Department to electronically verify that an affected individual is currently enrolled in one of the following DHS programs:

- TWIC Program;
- HME Program;
- Trusted Traveler Programs, including:
  - NEXUS;
  - FAST;
  - SENTRI; and
  - Global Entry.

Information collected by the Department about affected individuals under Option 2 would not be used to conduct duplicative vetting against the Federal Government's consolidated and integrated terrorist watchlist.

To verify an affected individual's enrollment in one of these programs under Option 2, the Department would collect the following information about the affected individual:

- Full Name;
- Date of Birth; and
- Program-specific information or credential information, such as unique number, or issuing entity (e.g., State for Commercial Driver's License (CDL) associated with an HME).

To further reduce the potential for misidentification, high-risk chemical facilities may also submit the following optional information about affected individuals to the Department:

- Aliases
- Gender
- Place of Birth
- Citizenship

If a high-risk chemical facility chooses to submit information about an affected individual under Option 2, the following table summarizes the biographic data that would be submitted to the Department.

[12] Examples of the international privacy instruments which the United States has endorsed are: (1) Organization for Economic Cooperation and Development (OECD) Guidelines on the Protection of Privacy and Trans-border Flows of Personal Data (1980), and (2) Asia Pacific Economic Cooperation (APEC) Privacy Framework (2004).

[13] The Safe Harbor Framework, which applies to commercial information, was developed by the U.S. Department of Commerce in consultation with the European Commission in order to provide a streamlined means for U.S. organizations to comply with the European Union Data Protection Directive 95/46/EC. More information on the Safe Harbor Framework can be found at *http://export.gov/safeharbor.*

[14] For more information about Redress Numbers, please go to *http://www.dhs.gov/one-stop-travelers-redress-process#1.*

TABLE 2—AFFECTED INDIVIDUAL REQUIRED AND OPTIONAL DATA UNDER OPTION 2

| Data elements submitted to the department | For affected individual with a TWIC | For affected individual with an HME | For affected individual enrolled in a Trusted Traveler Program (NEXUS, SENTRI, FAST, or Global Entry) |
|---|---|---|---|
| Full Name | Required | | |
| Date of Birth | Required | | |
| Expiration Date | Required | | |
| Unique Identifying Number<br>Issuing State of CDL | TWIC Serial Number: Required<br>N/A | CDL Number: Required<br>Required | PASS ID Number: Required<br>N/A |
| Aliases | Optional | | |
| Gender | Optional | | |
| Place of Birth | Optional | | |
| Citizenship | Optional | | |

Under the CFATS Personnel Surety Program, a high-risk chemical facility would be able to choose to follow the process described for Option 1, and would not have to implement Option 2, even if an affected individual seeking access to the high-risk chemical facility is already enrolled in the TWIC Program, HME Program, or one of the Trusted Traveler Programs.

*Option 3: Electronic Verification of TWIC*

Under Option 3, a high-risk chemical facility would not need to submit information about an affected individual enrolled in the TWIC Program to the Department, if the high-risk chemical facility is able to electronically verify and validate the affected individual's TWIC through the use of a TWIC reader (or other technology that is periodically updated using the Canceled Card List).

As discussed above, under the CFATS Personnel Surety Program, high-risk chemical facilities would also be able to choose to follow the processes described for Option 1 and/or Option 2, for some or all affected individuals already enrolled in the TWIC Program, in lieu of or in addition to Option 3.

*Other Information Collected*

In addition to the information about affected individuals collected under Options 1 and 2, the Department plans to collect certain information that identifies the high-risk chemical facility, or facilities, at which each affected individual has or is seeking access to restricted areas or critical assets.

The Department may also contact a high-risk chemical facility or its designees to request additional information (e.g., visa information) pertaining to affected individuals in order to clarify suspected data errors or resolve potential matches (e.g., in situations where an affected individual has a common name). Such requests will not imply, and should not be construed to indicate, that an affected individual's information has been confirmed as a match to a record of an individual with terrorist ties.

In the event that a confirmed match is identified as part of the CFATS Personnel Surety Program, the Department may obtain references to and/or information from other government law enforcement and intelligence databases, or other relevant databases that may contain terrorism information.

The Department may collect information necessary to assist in the submission and transmission of records, including electronic verification that the Department has received a particular record.

The Department may also collect information about points of contact who the Department or Federal law enforcement personnel may contact with follow-up questions. A request for additional information from the Department does not imply, and should not be construed to indicate, that an individual is known or suspected to be associated with terrorism.

The Department may also collect information provided by individuals or high-risk chemical facilities in support of any adjudications requested under Subpart C of the CFATS regulation,[15] or in support of any other redress requests.[16]

The Department may request information pertaining to affected individuals, previously provided to the Department by high-risk chemical facilities or their designees, in order to confirm the accuracy of that information, or to conduct data accuracy reviews and audits as part of the CFATS Personnel Surety Program.

The Department will also collect administrative or programmatic information (e.g., affirmations or certifications of compliance, extension requests, brief surveys for process improvement) necessary to manage the CFATS Personnel Surety Program.

Under Options 1 and 2, the Department will also collect information that will allow high-risk chemical facilities and their designees to manage their data submissions. Specifically, the Department will make available to high-risk chemical facilities and their designees blank data fields. These blank data fields may be used by a high-risk chemical facility or its designees to assign each record of an affected individual a unique designation or number that is meaningful to the high-risk chemical facility. Collecting this information will enable a high-risk chemical facility to manage the electronic records it submits into the CSAT Personnel Surety application. Entering this information into the CSAT Personnel Surety application will be voluntary, and is intended solely to enable high-risk chemical facilities and their designees to search through, sort, and manage the electronic records they submit.

[15] *See* 6 CFR 27.300–345.

[16] More information about access, correction, and redress requests under the Freedom of Information Act and the Privacy Act can be found in Section 7.0 of the Privacy Impact Assessment for the CFATS Personnel Surety Program, dated May 4, 2011, and available at *http://www.dhs.gov/privacy-documents-national-protection-and-programs-directorate-nppd.*

**III. Request for Exception to the Requirement Under 5 CFR 1320.8(b)(3)**

The Department is requesting from OMB an exception for the CFATS Personnel Surety Program to the PRA notice requirement in 5 CFR 1320.8(b)(3), which requires Federal agencies to confirm that their information collections provide certain reasonable notices under the PRA to affected individuals. If this exception is granted, the Department will be relieved of the potential obligation to require high-risk chemical facilities to collect signatures or other positive affirmations of these notices from affected individuals. Whether or not this exception is granted, Submitters must affirm that the required privacy notice regarding the collection of personal information has been provided to affected individuals before personal information is submitted to the Department.[17]

The Department's request for an exception to the PRA notice requirement under 5 CFR 1320.8(b)(3) would not exempt high-risk chemical facilities from having to adhere to applicable Federal, state, local, or tribal laws, or to regulations or policies pertaining to the privacy of affected individuals.

**IV. Responses to Previous Comments**

In June 2011, the Department submitted an ICR for the CFATS Personnel Surety Program to OMB for review. OMB subsequently received four comments about that ICR from members of the public and forwarded the comments to the Department for response. Each of the comments and the Department's responsive letters will be posted on the Federal eRulemaking Portal at *www.regulations.gov* under docket number DHS–2012–0061.

In June 2011, the Department solicited comments for 30 days about the CFATS Personnel Surety Program System of Records Notice (SORN) under Docket DHS–2011–0032.[18] Under Docket DHS–2011–0032, the Department received a comment that addressed the CFATS Personnel Surety Program ICR. The comment did not address the SORN or other CFATS Personnel Surety Program privacy issues. Therefore, the Department reviewed the comment and has responded to the comment under this docket in concert with the other comments submitted in June 2011 to OMB and the Department related to the CFATS Personnel Surety Program ICR.

In June 2011, the Department also solicited comments for 30 days about the Notice of Proposed Rulemaking to exempt the CFATS Personnel Surety Program System of Records from portions of the Privacy Act under Docket DHS–2011–0033.[19] Under Docket DHS–2011–0033, the Department received an additional comment that addressed the CFATS Personnel Surety Program ICR.[20] While the comment did support Privacy Act exemptions, the comment primarily addressed other aspects of the CFATS Personnel Surety Program not related to privacy issues. Therefore, the Department reviewed the comment and has responded to the comment under this docket as well in concert with the other comments submitted to OMB and the Department related to the CFATS Personnel Surety Program ICR.

**V. The Department's Methodology in Estimating the Burden**

*Frequency*

The Department will expect, unless otherwise noted in an authorized or approved SSP or ASP, that high-risk chemical facilities submit information, under Option 1 and/or Option 2, about affected individuals in accordance with the schedule outlined below in Table 3. Facilities may suggest alternative schedules for Option 1 or Option 2 based on their unique circumstances in their SSPs or ASPs. The schedule below would not apply to Option 3. Schedules for implementing Option 3, or alternative security measures other than Option 1 or Option 2, could vary from high-risk chemical facility to high-risk chemical facility, as described in individual facilities' SSPs or ASPs, subject to approval by the Department.

The Department will expect a high-risk chemical facility to begin submitting information about affected individuals under Option 1 and/or Option 2 under the schedule below after: (1) the high-risk chemical facility has received a letter of authorization or approval for its SSP or ASP that directs the high-risk chemical facility to comply with RBPS 12(iv); and (2) the high-risk chemical facility has been notified that the Department has implemented the CFATS Personnel Surety Program.

TABLE 3—COMPLIANCE SCHEDULE FOR OPTION 1 AND OPTION 2 UNDER THE CFATS PERSONNEL SURETY PROGRAM

| | Tier 1 | Tier 2 | Tier 3 | Tier 4 |
|---|---|---|---|---|
| Initial Submission Of Affected Individuals' Information. | 60 days after the day when both conditions are true:<br>(1) DHS issues your facility a letter of authorization or approval which directs you to comply with RBPS 12(iv), AND.<br>(2) DHS provides notification that it has implemented the CFATS Personnel Surety Program. | 60 days after the day when both conditions are true:<br>(1) DHS issues your facility a letter of authorization or approval which directs you to comply with RBPS 12(iv), AND.<br>(2) DHS provides notification that it has implemented the CFATS Personnel Surety Program. | 90 days after the day when both conditions are true:<br>(1) DHS issues your facility a letter of authorization or approval which directs you to comply with RBPS 12(iv), AND.<br>(2) DHS provides notification that it has implemented the CFATS Personnel Surety Program. | 90 days after the day when both conditions are true:<br>(1) DHS issues your facility a letter of authorization or approval which directs you to comply with RBPS 12(iv), AND<br>(2) DHS provides notification that it has implemented the CFATS Personnel Surety Program. |
| Submission Of A New Affected Individual's Information. | 48 hours prior to access to restricted areas or critical assets. | 48 hours prior to access to restricted areas or critical assets. | 48 hours prior to access to restricted areas or critical assets. | 48 hours prior to access to restricted areas or critical assets. |

[17] For more information. please see the CFATS Personnel Surety Program Privacy Impact Assessment, dated May 4, 2011 at *http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-nppd-cfats-ps.pdf.*

[18] The docket for the CFATS Personnel Surety Program System of Records Notice may be found at *http://www.regulations.gov/#!docketDetail;D=DHS-2011-0032.*

[19] The docket for the notice of proposed rulemaking to exempt portions of the CFATS Personnel Surety Program System or Records from one or more provisions of the Privacy Act may be found at *http://www.regulations.gov/#!docketDetail;D=DHS-2011-0033.*

[20] Document DHS–2011–0033–0004 is viewable at *http://www.regulations.gov/#!documentDetail;D=DHS-2011-0033-0004.*

TABLE 3—COMPLIANCE SCHEDULE FOR OPTION 1 AND OPTION 2 UNDER THE CFATS PERSONNEL SURETY PROGRAM—Continued

| | Tier 1 | Tier 2 | Tier 3 | Tier 4 |
|---|---|---|---|---|
| Submission Of Updates And Corrections To An Affected Individual's Information. | Within 90 days of becoming aware of the need for an update or correction. | Within 90 days of becoming aware of the need for an update or correction. | Within 90 days of becoming aware of the need for an update or correction. | Within 90 days of becoming aware of the need for an update or correction. |
| Submission Of Notification That An Affected Individual No Longer Has Access. | Within 90 days of access being removed. | Within 90 days of access being removed. | Within 90 days of access being removed. | Within 90 days of access being removed. |

Therefore, after evaluating the choices available to the Department under Question 16 on the Paperwork Reduction Act Submission form (Standard Form-83(i)),[21] the Department believes that the description of ''Other: In accordance with the compliance schedule or the facility SSP or ASP'' is the most appropriate choice.

*Affected Public*

Most high-risk chemical facilities regulated under CFATS are private businesses, or parts of private businesses. Most people that access the restricted areas and critical assets of high-risk chemical facilities do so for business purposes. Therefore, after evaluating the choices available to the Department on Standard Form 83(i), the Department selected the description of ''Business or other for-profit'' as the most appropriate selection for this proposed Information Collection.

*Number of Respondents*

The number of respondents under this collection is the number of affected individuals that high-risk chemical facilities or their designees submit information about in compliance with RBPS 12(iv). As described more fully below, for the purpose of this notice the number of respondents is estimated by multiplying:

- The estimated number and types of high-risk chemical facilities, and
- The estimated number of affected individuals at each type of high-risk chemical facility.

For the purpose of this notice, the Department estimates the number of affected individuals at each type of high-risk chemical facility as the sum of:

- The number of unescorted visitors at each type of high-risk chemical facility, and
- The number of facility personnel and resident contractors at each type of high-risk chemical facility.

Number and Type of High-Risk Chemical Facilities

In previous PRA **Federal Register** notices about the CFATS Personnel Surety Program, the Department estimated the number and type of high-risk chemical facilities by using the 2007 CFATS Regulatory Assessment, which established a best estimate of 5,000 high-risk facilities for calculating cost estimates.[22] In the 2007 CFATS Regulatory Assessment, the Department recognized that each chemical facility is unique; however, since it was impractical to estimate costs for each high-risk chemical facility, the Department created four categories of facilities for each tier; three categories of facilities where loss of containment of the chemicals of interest is the primary concern and one category of facilities where theft and diversion of chemicals is the primary concern. Specifically,

- Group A includes open facilities with 100 or more employees where loss of containment is the primary concern. These facilities are assumed to have five security entrances for the purpose of the cost analysis.
- Group B includes open facilities with 99 or fewer employees where loss of containment is the primary concern. In addition, facilities that store anhydrous ammonia for commercial refrigeration in outdoor vessels are also considered ''open'' for the purpose of this analysis because it is the outdoor storage that requires protection. These facilities are assumed to have two security entrances for the purpose of the cost analysis.
- Group C facilities are enclosed facilities where loss of containment is the primary concern (i.e., warehouses, enclosed manufacturing sites) that manufacture, process, use, store and/or distribute chemicals. The Department did not segment enclosed facilities by size because the same degree of variation between a large open facility (i.e., a 2,000-acre petrochemical complex) and a small open 3–5-acre facility does not exist. These facilities are assumed to have one security entrance for the purpose of the cost analysis.
- Theft/Diversion facilities are typically merchant wholesalers (often called chemical distributors), chemical manufacturers, or other manufacturers that manufacture, process, use, store or distribute chemicals that could be the target of theft and diversion. The theft of chemicals could include theft of portable containers by employees, visitors or adversaries. The diversion of chemicals involves what often looks like a legitimate transaction where an adversary, impersonating a legitimate customer, purchases chemicals that could later be turned into weapons. These facilities are assumed to have one security entrance for the purposes of cost analysis.

For the purpose of this notice, the Department updated the number and type of high-risk chemical facilities estimated in the 2007 CFATS Regulatory Assessment. The updated analysis, hereafter referred to as the 2012 CFATS Personnel Surety Program Analysis, determined the high-risk chemical facility count for each of the 16 model facility categories identified in the 2007 Regulatory Assessment by analyzing high-risk chemical facilities designated with a final tier under CFATS as of August 2012. A comparison of the number of high-risk chemical facilities, estimated by the 2007 CFATS Regulatory Assessment, to the number of high-risk chemical facilities identified within the 2012 CFATS Personnel Surety Program Analysis is presented in Table 4.

[21] A blank copy of Standard Form 83(i) may be found at *http://www.whitehouse.gov/sites/default/files/omb/inforeg/83i-fill.pdf.*

[22] *See* CFATS Regulatory Assessment Section 5.1 (April 1, 2007), *http://www.regulations.gov/#!documentDetail;D=DHS-2006-0073-0116.*

TABLE 4—NUMBER OF FACILITIES IN EACH MODEL FACILITY CATEGORY

| | 2007 CFATS regulatory assessment | 2012 CFATS personnel surety program analysis (raw data) |
|---|---|---|
| Tier 1 Group A | 81 | 4 |
| Tier 1 Group B | 89 | 6 |
| Tier 1 Group C | 24 | 10 |
| Tier 1 Theft | 6 | 93 |
| Tier 2 Group A | 166 | 8 |
| Tier 2 Group B | 64 | 16 |
| Tier 2 Group C | 80 | 15 |
| Tier 2 Theft | 189 | 400 |
| Tier 3 Group A | 315 | 22 |
| Tier 3 Group B | 438 | 33 |
| Tier 3 Group C | 329 | 66 |
| Tier 3 Theft | 718 | 935 |
| Tier 4 Group A | 242 | 72 |
| Tier 4 Group B | 690 | 190 |
| Tier 4 Group C | 599 | 13 |
| Tier 4 Theft | 970 | 1,683 |
| Total | 5,000 | 3,566 |

As of August 2012, 3,566 high-risk chemical facilities received a final tier determination. For the purpose of this notice, the Department estimates that CFATS will regulate approximately 4,000 high-risk chemical facilities. Therefore, the Department normalized the number of facilities in each model facility category to 4,000 facilities by multiplying the number of high-risk chemical facilities in each category by a factor of 1.22.[23] The 2012 CFATS Personnel Surety Program Analysis revised (i.e., normalized) high-risk chemical facility count is compared to the 2007 CFATS Regulatory Assessment high-risk chemical facility count, by model facility category, in Table 5.

TABLE 5—NUMBER OF HIGH-RISK CHEMICAL FACILITIES IN EACH MODEL FACILITY CATEGORY

[Normalized to 4,000 facilities]

| | 2007 CFATS regulatory assessment | 2012 CFATS personnel surety program analysis (normalized) |
|---|---|---|
| Tier 1 Group A | 81 | 4 |
| Tier 1 Group B | 89 | 7 |
| Tier 1 Group C | 24 | 11 |
| Tier 1 Theft | 6 | 104 |
| Tier 2 Group A | 166 | 9 |
| Tier 2 Group B | 64 | 18 |
| Tier 2 Group C | 80 | 17 |
| Tier 2 Theft | 189 | 449 |
| Tier 3 Group A | 315 | 25 |
| Tier 3 Group B | 438 | 37 |
| Tier 3 Group C | 329 | 74 |
| Tier 3 Theft | 718 | 1,049 |
| Tier 4 Group A | 242 | 81 |
| Tier 4 Group B | 690 | 213 |
| Tier 4 Group C | 599 | 15 |
| Tier 4 Theft | 970 | 1,888 |
| Total | 5,000 | 4,000 |

In addition to the reduction in the total number of regulated facilities, a comparison of the 2007 CFATS Regulatory Assessment and the 2012 CFATS Personnel Surety Program Analysis identifies one other key difference. In the original 2007 CFATS Regulatory Assessment, conducted prior to implementation of the CFATS Program, the Department assumed that 38 percent of all high-risk chemical facilities would be regulated due to the risk that one or more chemicals could be subject to theft or diversion for purposes of creating an explosion or producing an

[23] The factor of 1.22 was used because (4,000 facilities/3566 facilities) = 1.22.

improvised explosive device. However, the 2012 CFATS Personnel Surety Program Analysis found that 87 percent of all currently regulated CFATS high-risk chemical facilities are regulated due to the risk that a chemical could be subject to theft or diversion for purposes of creating an explosion or producing an improvised explosive device. For the purpose of this notice, the Department used the number and type of high-risk chemical facilities in each facility category estimated through the normalized 2012 CFATS Personnel Surety Program Analysis because the distribution of facility type (i.e., facility count) is based upon actual historical data.

Estimated Number of Affected Individuals at Each Type of High-Risk Chemical Facility—Unescorted Visitors With Access to Restricted Areas or Critical Assets

During the 30-day comment period after the Department submitted the previous CFATS Personnel Surety Program ICR to OMB in June 2011, the American Chemistry Council (ACC) provided a detailed burden cost assessment to the Department that included assumptions on visitors.[24] Specifically, the ACC provided the Department with an estimate on the number and turnover of frequent and infrequent visitors at high-risk chemical facilities.

ACC's analysis suggests that 1,200 total visitors per year should be expected at large open manufacturing facilities that align with Group A (Tier 1 through 4) model facility categories; 300 visitors each at small open manufacturing facilities (Group B model facility categories, Tier 1 through 4) and enclosed manufacturing facilities (Group C model facility categories, Tier 1 through 4); and 50 visitors expected at theft/diversion model facilities (Tier 1 through 4). ACC estimated an annual turnover rate of 71 percent for frequent visitors (e.g., delivery personnel) and an annual turnover rate of 20 percent for infrequent visitors that only visit the facility once or twice a year (e.g., corporate auditors). Frequent and infrequent visitors were expected to compose equal volume of traffic at high-risk chemical facilities. ACC also assumed that all visitors count towards the number of affected individuals. However, high-risk chemical facilities will only be responsible for submitting information for unescorted visitors with access to restricted areas or critical assets. The Department does not expect high-risk chemical facilities to allow large numbers of visitors to have unescorted access to restricted areas or critical assets. As a general matter, the Department does not believe it to be likely that many high-risk chemical facilities will propose in their SSPs under CFATS to allow large numbers of visitors to have unescorted access to the restricted areas and critical assets of high-risk chemical facilities because then these visitors would be subject to all four types of background checks listed in RBPS 12. However, for the purpose of estimating the potential burden this information collection could impose, the Department has determined that it is appropriate to include ACC's conservative assumptions about frequent and infrequent visitors and treat them all as unescorted visitors. Table 6 provides the Department's estimated number of visitors.

TABLE 6—ESTIMATE OF UNESCORTED VISITORS WITH ACCESS TO RESTRICTED AREAS OR CRITICAL ASSETS

| | Infrequent visitors | Frequent visitors | Infrequent visitor annual turnover (20%) | Frequent visitor annual turnover (71%) | Unescorted visitor annual turnover | Unescorted visitor estimate |
|---|---|---|---|---|---|---|
| | A | B | C * | D ** | E = C + D | A + B + E |
| Tier 1 Group A | 600 | 600 | 120 | 426 | 546 | 1,746 |
| Tier 1 Group B | 150 | 150 | 30 | 107 | 137 | 437 |
| Tier 1 Group C | 150 | 150 | 30 | 107 | 137 | 437 |
| Tier 1 Theft | 25 | 25 | 5 | 18 | 23 | 73 |
| Tier 2 Group A | 600 | 600 | 120 | 426 | 546 | 1,746 |
| Tier 2 Group B | 150 | 150 | 30 | 107 | 137 | 437 |
| Tier 2 Group C | 150 | 150 | 30 | 107 | 137 | 437 |
| Tier 2 Theft | 25 | 25 | 5 | 18 | 23 | 73 |
| Tier 3 Group A | 600 | 600 | 120 | 426 | 546 | 1,746 |
| Tier 3 Group B | 150 | 150 | 30 | 107 | 137 | 437 |
| Tier 3 Group C | 150 | 150 | 30 | 107 | 137 | 437 |
| Tier 3 Theft | 25 | 25 | 5 | 18 | 23 | 73 |
| Tier 4 Group A | 600 | 600 | 120 | 426 | 546 | 1,746 |
| Tier 4 Group B | 150 | 150 | 30 | 107 | 137 | 437 |
| Tier 4 Group C | 150 | 150 | 30 | 107 | 137 | 437 |
| Tier 4 Theft | 25 | 25 | 5 | 18 | 23 | 73 |

* $C = A \times 0.20$, ** $D = B \times 0.71$.

Estimated Number of Affected Individuals at Each Type of High-Risk Chemical Facilities—Facility Personnel With Access to Restricted Areas or Critical Assets

The 2007 CFATS Regulatory Assessment also provided an estimate of full time employees and resident contractors for the 16 model facility categories, as shown in Table 7.[25]

[24] This cost estimate has been posted to Docket DHS–2012–0061, which may be accessed through the Federal eRulemaking Portal at *www.regulations.gov.*

[25] *See* CFATS Regulatory Assessment Section 6.3.7, Table 15 (April 1, 2007), *http://www.regulations.gov/#!documentDetail;D=DHS-2006-0073-0116.*

TABLE 7—2007 CFATS REGULATORY ASSESSMENT ESTIMATE OF NUMBER OF FULL TIME EMPLOYEES AND RESIDENT CONTRACTORS

| | Number of full time employees per facility<br>A | Resident contractors per facility (as percent of full time employees)<br>B | Resident contractors per facility<br>C* | 20% Annual turnover (full time employees and resident contractors per facility)<br>D** | Number of full time employees and resident contractrs per facility (including 20% annual turnover)<br>A + C + D |
|---|---|---|---|---|---|
| Tier 1 Group A | 391 | 30 | 117 | 102 | 610 |
| Tier 1 Group B | 35 | 20 | 7 | 8 | 50 |
| Tier 1 Group C | 152 | 10 | 15 | 33 | 200 |
| Tier 1 Theft | 35 | 10 | 4 | 8 | 47 |
| Tier 2 Group A | 279 | 30 | 84 | 73 | 436 |
| Tier 2 Group B | 34 | 20 | 7 | 8 | 49 |
| Tier 2 Group C | 317 | 10 | 32 | 70 | 419 |
| Tier 2 Theft | 35 | 10 | 4 | 8 | 47 |
| Tier 3 Group A | 487 | 30 | 146 | 127 | 760 |
| Tier 3 Group B | 47 | 20 | 9 | 11 | 67 |
| Tier 3 Group C | 310 | 10 | 31 | 68 | 409 |
| Tier 3 Theft | 35 | 10 | 4 | 8 | 47 |
| Tier 4 Group A | 283 | 30 | 85 | 74 | 442 |
| Tier 4 Group B | 139 | 20 | 28 | 33 | 200 |
| Tier 4 Group C | 201 | 10 | 20 | 44 | 265 |
| Tier 4 Theft | 35 | 10 | 4 | 8 | 47 |
| Total | n/a | n/a | n/a | n/a | n/a |

* C = A × B, ** D = (A + C) × 0.20.

In the June 2011 ICR, the Department updated the estimate of employees and resident contractors in the 2007 CFATS Regulatory Assessment in response to a survey submitted by the American Fuel and Petrochemical Manufacturers [26] during the 30 day comment period associated with the previous CFATS Personnel Surety Program ICR.[27] Specifically, the Department increased the estimated number of full time employees/contractors in Group A facilities by 5, as shown in Table 8.

TABLE 8—REVISED 2007 CFATS REGULATORY ASSESSMENT ESTIMATE OF NUMBER OF FULL TIME EMPLOYEES AND RESIDENT CONTRACTORS

| | Number of full time employees per facility<br>A | Resident contractors per facility (as percent of full time employees)<br>B | Resident contractors per facility<br>C* | 20% Annual turnover (full time employees and resident contractors per facility)<br>D** | Number of full time employees and resident contractors per facility (including 20% annual turnover)<br>A + C + D |
|---|---|---|---|---|---|
| Tier 1 Group A | 1,955 | 30 | 587 | 508 | 3,050 |
| Tier 1 Group B | 35 | 20 | 7 | 8 | 50 |
| Tier 1 Group C | 152 | 10 | 15 | 33 | 201 |
| Tier 1 Theft | 35 | 10 | 4 | 8 | 46 |
| Tier 2 Group A | 1,395 | 30 | 419 | 363 | 2,176 |
| Tier 2 Group B | 34 | 20 | 7 | 8 | 49 |
| Tier 2 Group C | 317 | 10 | 32 | 70 | 418 |
| Tier 2 Theft | 35 | 10 | 4 | 8 | 46 |
| Tier 3 Group A | 2,435 | 30 | 731 | 633 | 3,799 |
| Tier 3 Group B | 47 | 20 | 9 | 11 | 68 |
| Tier 3 Group C | 310 | 10 | 31 | 68 | 409 |
| Tier 3 Theft | 35 | 10 | 4 | 8 | 46 |
| Tier 4 Group A | 1,415 | 30 | 425 | 368 | 2,207 |
| Tier 4 Group B | 139 | 20 | 28 | 33 | 200 |

[26] The American Fuel and Petrochemical Manufacturers is the name of the former National Petrochemical & Refiners Association, whose comment may be found at *http://www.regulations.gov/#!documentDetail;D=DHS-2009-0026-0029.*

[27] *See* Response To Comments Received During 30 Day Comment Period: New Information Collection Request 1670–NEW, 76 FR 34720, 34725 (June 14, 2011).

TABLE 8—REVISED 2007 CFATS REGULATORY ASSESSMENT ESTIMATE OF NUMBER OF FULL TIME EMPLOYEES AND RESIDENT CONTRACTORS—Continued

| | Number of full time employees per facility<br>A | Resident contractors per facility (as percent of full time employees)<br>B | Resident contractors per facility<br>C* | 20% Annual turnover (full time employees and resident contractors per facility)<br>D** | Number of full time employees and resident contractors per facility (including 20% annual turnover)<br>A + C + D |
|---|---|---|---|---|---|
| Tier 4 Group C | 201 | 10 | 20 | 44 | 265 |
| Tier 4 Theft | 35 | 10 | 4 | 8 | 46 |
| Total | n/a | n/a | n/a | n/a | n/a |

* C = A × B, ** D = (A + C) × 0.20.

In addition to submitting comments on the Department's June 2011 estimated burden about unescorted visitors, ACC also suggested that 80 percent of employees/resident contractors have access to restricted areas and/or critical assets at Group A, B and C facilities and only 15 percent of employees/resident contractors have access to theft/diversion facilities. To provide an additional estimate of the number of respondents the Department applied this ACC assumption to the revised 2012 CFATS Personnel Surety Program Analysis. The resulting estimate, referred to as the ''Adjusted June 2011 ICR Estimate of the Number of Full Time Employees and Resident Contractors'' is shown in Table 9.

TABLE 9—ADJUSTED JUNE 2011 ICR ESTIMATE OF THE NUMBER OF FULL TIME EMPLOYEES AND RESIDENT CONTRACTORS

| | Number of full time employees per facility<br>A | Resident contractors per facility (as percent of full time employees)<br>B | Resident contractors per facility<br>C* | 20% annual turnover (full time employees and resident contractors per facility)<br>D** | Number of full time employees and resident contractors per facility (including 20% annual turnover)<br>A + C + D | ACC's estimate of full time employees and contractors with access to restricted areas or critical assets (percent)<br>E | Number of full time employees and resident contractors per facility with access to restricted areas or critical assets (including 20% annual turnover)<br>(A + C + D) × E |
|---|---|---|---|---|---|---|---|
| Tier 1 Group A | 1,955 | 30 | 587 | 508 | 3,050 | 80 | 2,440 |
| Tier 1 Group B | 35 | 20 | 7 | 8 | 50 | 80 | 40 |
| Tier 1 Group C | 152 | 10 | 15 | 33 | 201 | 80 | 161 |
| Tier 1 Theft | 35 | 10 | 4 | 8 | 46 | 15 | 7 |
| Tier 2 Group A | 1,395 | 30 | 419 | 363 | 2,176 | 80 | 1,741 |
| Tier 2 Group B | 34 | 20 | 7 | 8 | 49 | 80 | 39 |
| Tier 2 Group C | 317 | 10 | 32 | 70 | 418 | 80 | 335 |
| Tier 2 Theft | 35 | 10 | 4 | 8 | 46 | 15 | 7 |
| Tier 3 Group A | 2,435 | 30 | 731 | 633 | 3,799 | 80 | 3,039 |
| Tier 3 Group B | 47 | 20 | 9 | 11 | 68 | 80 | 54 |
| Tier 3 Group C | 310 | 10 | 31 | 68 | 409 | 80 | 327 |
| Tier 3 Theft | 35 | 10 | 4 | 8 | 46 | 15 | 7 |
| Tier 4 Group A | 1,415 | 30 | 425 | 368 | 2,207 | 80 | 1,766 |
| Tier 4 Group B | 139 | 20 | 28 | 33 | 200 | 80 | 160 |
| Tier 4 Group C | 201 | 10 | 20 | 44 | 265 | 80 | 212 |
| Tier 4 Theft | 35 | 10 | 4 | 8 | 46 | 15 | 7 |
| Total | n/a | n/a | n/a | n/a | n/a | n/a | n/a |

*C = A × B, **D = (A + C) × 0.20.

For the purpose of this notice, the Department also evaluated whether or not the 2007 CFATS Regulatory Assessment should continue to be the basis for the estimate of full time employees and resident contractors. To provide an additional estimate of the number of respondents, the 2012 CFATS Personnel Surety Program Analysis analyzed actual information submitted by high-risk chemical facilities in response to Top-Screen [28] Question Q:1.45–400.[29] Based upon the

[28] Top-Screen is defined at 6 CFR 27.105.

[29] Q:1.45–400 refers to the specific question reference number in the online Top-Screen application which is not available to the general public. However, the exact text of the question is available on page 20 of the CSAT Top-Screen Survey Application User Guide v1.99 in the row entitled, ''Number of Full Time Employees.'' *See*

submitted information, the Department was able to estimate full time employees and resident contractors by each model facility category, as shown in Table 10.

TABLE 10—2012 CFATS PERSONNEL SURETY PROGRAM ANALYSIS' ESTIMATE OF THE NUMBER OF FULL TIME EMPLOYEES AND RESIDENT CONTRACTORS

| | Response to top screen question Q:1.45–400 A | Resident contractors per facility (as percent of full time employees) | Resident contractors per facility | 20% Annual turnover (full time employees and resident contractors per facility) B | Number of full time employees and resident contractors per facility (including 20% annual turnover) A + B |
|---|---|---|---|---|---|
| Tier 1 Group A | 599 | N/A Top Screen Question Q1:1.45* 400 incorporates estimate of resident contractors | | 120 | 719 |
| Tier 1 Group B | 36 | | | 7 | 43 |
| Tier 1 Group C | 300 | | | 60 | 360 |
| Tier 1 Theft | 653 | | | 131 | 783 |
| Tier 2 Group A | 222 | | | 44 | 267 |
| Tier 2 Group B | 30 | | | 6 | 36 |
| Tier 2 Group C | 489 | | | 98 | 587 |
| Tier 2 Theft | 416 | | | 83 | 499 |
| Tier 3 Group A | 594 | | | 119 | 713 |
| Tier 3 Group B | 33 | | | 7 | 39 |
| Tier 3 Group C | 188 | | | 38 | 225 |
| Tier 3 Theft | 233 | | | 47 | 279 |
| Tier 4 Group A | 737 | | | 147 | 884 |
| Tier 4 Group B | 17 | | | 3 | 20 |
| Tier 4 Group C | 175 | | | 85 | 211 |
| Tier 4 Theft | 195 | | | 39 | 234 |
| Total | n/a | | | n/a | n/a |

* In question Top Screen Question Q:1.45–400, facilities provide both full time employees and resident contractors.

Table 11 compares the estimates of full time employees and resident contractors in the: (1) 2007 CFATS Regulatory Assessment; (2) ICR submitted in June of 2011; (3) adjusted June 2011 ICR Estimate of the Number of Full Time Employees and Resident Contractors; and (4) 2012 CFATS Personnel Surety Program Analysis.

TABLE 11—AVERAGE NUMBER OF FULL TIME EMPLOYEES AND CONTRACTORS PER FACILITY BY MODEL FACILITY CATEGORY

| | 2007 CFATS regulatory assessment | Estimate used in June 2011 ICR | June 2011 ICR (adjusted with ACC's assumption on facility personnel with access to restricted areas or critical assets) | 2012 CFATS personnel surety program analysis |
|---|---|---|---|---|
| Tier 1 Group A | 610 | 3,050 | 2,440 | 719 |
| Tier 1 Group B | 50 | 50 | 40 | 43 |
| Tier 1 Group C | 200 | 201 | 161 | 360 |
| Tier 1 Theft | 47 | 46 | 7 | 783 |
| Tier 2 Group A | 436 | 2,176 | 1,741 | 267 |
| Tier 2 Group B | 49 | 49 | 39 | 36 |
| Tier 2 Group C | 419 | 418 | 335 | 587 |
| Tier 2 Theft | 47 | 46 | 7 | 499 |
| Tier 3 Group A | 760 | 3,799 | 3,039 | 713 |
| Tier 3 Group B | 67 | 68 | 54 | 39 |
| Tier 3 Group C | 409 | 409 | 327 | 225 |
| Tier 3 Theft | 47 | 46 | 7 | 279 |
| Tier 4 Group A | 442 | 2,207 | 1,766 | 884 |
| Tier 4 Group B | 200 | 200 | 160 | 20 |
| Tier 4 Group C | 265 | 265 | 212 | 211 |

*http://www.dhs.gov/xlibrary/assets/chemsec_csattopscreenusersmanual.pdf.*

TABLE 11—AVERAGE NUMBER OF FULL TIME EMPLOYEES AND CONTRACTORS PER FACILITY BY MODEL FACILITY CATEGORY—Continued

| | 2007 CFATS regulatory assessment | Estimate used in June 2011 ICR | June 2011 ICR (adjusted with ACC's assumption on facility personnel with access to restricted areas or critical assets) | 2012 CFATS personnel surety program analysis |
|---|---|---|---|---|
| Tier 4 Theft | 47 | 46 | 7 | 234 |

When evaluating the reasonable alternatives (*see* next section) to estimate the total number of respondents, the Department did not consider alternatives that used an assumption about the full time employees and resident contractors estimates from the 2007 CFATS Regulatory Assessment or the estimate in the June 2011 ICR.

Rather, when evaluating the reasonable alternatives to estimate the total number of respondents (see the next section of this document for this evaluation), the Department opted to use the best available industry estimates, as well as actual historical data collected directly from high-risk chemical facilities, to estimate the full time employees and resident contractors. Namely:

(1) The adjusted June 2011 ICR estimate of full time employees and resident contractors, and

(2) The estimate of full time employees and resident contractors in the 2012 CFATS Personnel Surety Program Analysis.

Summary of Alternatives To Estimate the Number of Respondents

As mentioned above, for the purpose of this notice the number of respondents is estimated by multiplying:

- The number and type of high-risk chemical facilities, and
- The number of affected individuals at each type of high-risk chemical facility.

For the purpose of this notice, the Department estimates the number of affected individuals at each type of high-risk chemical facility as the sum of:

- The number of unescorted visitors at each type of high-risk chemical facility, and
- The number of facility personnel and resident contractors at each type of high-risk chemical facility.

In light of the data submitted by commenters and the Department's own analysis, three alternatives for the total number of respondents were considered by the Department.

First, the total number of respondents is based on:

a. the number and type of high-risk chemical facilities assumed in the 2012 CFATS Personnel Surety Program Analysis;

b. the ACC's estimates about unescorted visitors; and

c. the adjusted June 2011 ICR estimate of the number of full time employees and resident contractors.

This alternative results in an estimate of an initial 972,584 respondents with an annual turnover of 290,459 respondents. *See* Table 12.

TABLE 12—ESTIMATE OF NUMBER OF RESPONDENTS—ALTERNATIVE 1

| | Number of full time employees and resident contractors CFATS personnel surety program ICR withdrawn in July of 2012 (including 20% annual turnover) (Table 8) | Estimate of full time employees and contractors with access to restricted areas or critical assets (percent) | Full time employees and resident contractors CFATS personnel surety program ICR withdrawn in July of 2012 with estimates of percentage of employees/resident contractors with restricted area and/or critical asset access (Table 9) | ACC Unescorted Visitor Estimate (including 71% turnover for frequent visitors, 20% turnover for infrequent vistors) (Table 6) | Number of facilities (Table 5) | Number of initial respondents (include 20% annual turnover) | CFATS personnel surety program ICR withdrawn in July of 2011 20% annual turnover (Table 9) | ACC unescorted visitors annual turnover (Table 6) | Annual respondent turnover |
|---|---|---|---|---|---|---|---|---|---|
| | A | B | A | B | C | (A + B) × C | D | E | (D + E) × C |
| Tier 1 Group A | 3,050 | 80 | 2,440 | 1,746 | 4 | 18,781 | 508 | 546 | 4,730 |
| Tier 1 Group B | 50 | 80 | 40 | 437 | 7 | 3,209 | 8 | 137 | 975 |
| Tier 1 Group C | 201 | 80 | 161 | 437 | 11 | 6,697 | 33 | 137 | 1,906 |
| Tier 1 Theft | 46 | 15 | 7 | 73 | 104 | 8,312 | 8 | 23 | 3,177 |
| Tier 2 Group A | 2,176 | 80 | 1,741 | 1,746 | 9 | 31,291 | 363 | 546 | 8,154 |
| Tier 2 Group B | 49 | 80 | 39 | 437 | 18 | 8,537 | 8 | 137 | 2,596 |
| Tier 2 Group C | 418 | 80 | 335 | 437 | 17 | 12,977 | 70 | 137 | 3,470 |
| Tier 2 Theft | 46 | 15 | 7 | 73 | 449 | 35,751 | 8 | 23 | 13,662 |
| Tier 3 Group A | 3,799 | 80 | 3,039 | 1,746 | 25 | 118,079 | 633 | 546 | 29,097 |
| Tier 3 Group B | 68 | 80 | 54 | 437 | 37 | 18,162 | 11 | 137 | 5,470 |

TABLE 12—ESTIMATE OF NUMBER OF RESPONDENTS—ALTERNATIVE 1—Continued

| | Number of full time employees and resident contractors CFATS personnel surety program ICR withdrawn in July of 2012 (including 20% annual turnover) (Table 8) | Estimate of full time employees and contractors with access to restricted areas or critical assets (percent) | Full time employees and resident contractors CFATS personnel surety program ICR withdrawn in July of 2012 with estimates of percentage of employees/resident contractors with restricted area and/or critical asset access (Table 9) | ACC Unescorted Visitor Estimate (including 71% turnover for frequent visitors, 20% turnover for infrequent vistors) (Table 6) | Number of facilities (Table 5) | Number of initial respondents (include 20% annual turnover) | CFATS personnel surety program ICR withdrawn in July of 2011 20% annual turnover (Table 9) | ACC unescorted visitors annual turnover (Table 6) | Annual respondent turnover |
|---|---|---|---|---|---|---|---|---|---|
| | A | B | A | B | C | (A + B) × C | D | E | (D + E) × C |
| Tier 3 Group C | 409 | 80 | 327 | 437 | 74 | 56,550 | 68 | 137 | 15,154 |
| Tier 3 Theft | 46 | 15 | 7 | 73 | 1,049 | 83,568 | 8 | 23 | 31,936 |
| Tier 4 Group A | 2,207 | 80 | 1,766 | 1,746 | 81 | 283,632 | 368 | 546 | 73,809 |
| Tier 4 Group B | 200 | 80 | 160 | 437 | 213 | 127,156 | 33 | 137 | 36,201 |
| Tier 4 Group C | 265 | 80 | 212 | 437 | 15 | 9,460 | 44 | 137 | 2,635 |
| Tier 4 Theft | 46 | 15 | 7 | 73 | 1,888 | 150,422 | 8 | 23 | 57,484 |
| Total | n/a | n/a | n/a | n/a | 4,000 | 972,584 | n/a | n/a | 290,459 |

Second, the total number of respondents is based on:

a. The number and type of high-risk chemical facilities assumed in the 2012 CFATS Personnel Surety Program Analysis;

b. The ACC's estimates about unescorted visitors;

c. The number of full time employees and resident contractors estimated by the 2012 CFATS Personnel Surety Program Analysis; and

d. ACC's estimate of the percentage of resident employees and contractors with access to restricted areas or critical assets.

This alternative results in an estimate of an initial 896,286 respondents with an annual turnover of 393,519 respondents. *See* Table 13.

TABLE 13—ESTIMATE OF NUMBER OF RESPONDENTS—ALTERNATIVE 2

| | 2012 CFATS personnel surety program analysis average number of full time employees and contractors (including 20% turnover) (Table 10) | Estimate of full time employees and contractors with access to restricted areas or critical assets (percent) | Average number of full time employees and contractors (including 20% turnover) | ACC unescorted visitor estimate (including 71% turnover for frequent visitors, 20% turnover for infrequent visitors) (Table 6) | Number of facilities (Table 5) | Number of Initial respondents (includes 20% annual turnover) | 2012 CFATS personnel surety program analysis 20% anual turnover (Table 10) | ACC unescorted visitors annual turnover (Table 6) | Annual respondent turnover |
|---|---|---|---|---|---|---|---|---|---|
| | A | B | (A × B) = C | D | E | (C + D) × E | F | G | (F + G) × E |
| Tier 1 Group A | 719 | 80 | 575 | 1,746 | 4 | 10,413 | 120 | 546 | 2,987 |
| Tier 1 Group B | 43 | 80 | 34 | 437 | 7 | 3,169 | 7 | 137 | 967 |
| Tier 1 Group C | 360 | 80 | 288 | 437 | 11 | 8,124 | 60 | 137 | 2,203 |
| Tier 1 Theft | 783 | 15 | 118 | 73 | 104 | 19,847 | 131 | 23 | 15,993 |
| Tier 2 Group A | 267 | 80 | 213 | 1,746 | 9 | 17,583 | 44 | 546 | 5,298 |
| Tier 2 Group B | 36 | 80 | 29 | 437 | 18 | 8,355 | 6 | 137 | 2,558 |
| Tier 2 Group C | 587 | 80 | 469 | 437 | 17 | 15,243 | 98 | 137 | 3,942 |
| Tier 2 Theft | 499 | 15 | 75 | 73 | 449 | 66,200 | 83 | 23 | 47,494 |
| Tier 3 Group A | 713 | 80 | 571 | 1,746 | 25 | 57,169 | 119 | 546 | 16,408 |
| Tier 3 Group B | 39 | 80 | 31 | 437 | 37 | 17,321 | 7 | 137 | 5,295 |
| Tier 3 Group C | 225 | 80 | 180 | 437 | 74 | 45,660 | 38 | 137 | 12,886 |
| Tier 3 Theft | 279 | 15 | 42 | 73 | 1,049 | 120,269 | 47 | 23 | 72,714 |
| Tier 4 Group A | 884 | 80 | 707 | 1,746 | 81 | 198,148 | 147 | 546 | 56,000 |
| Tier 4 Group B | 20 | 80 | 16 | 437 | 213 | 96,461 | 3 | 137 | 29,806 |
| Tier 4 Group C | 211 | 80 | 168 | 437 | 15 | 8,821 | 35 | 137 | 2,502 |
| Tier 4 Theft | 234 | 15 | 35 | 73 | 1,888 | 203,505 | 39 | 23 | 116,465 |
| Total | n/a | n/a | n/a | n/a | 4,000 | 896,286 | n/a | n/a | 393,519 |

Third, the total number of respondents is based on:

a. The number and type of high-risk chemical facilities assumed in the 2012 CFATS Personnel Surety Program Analysis;

b. The ACC's estimates about unescorted visitors;

c. The number of full time employees and resident contractors estimated by the 2012 CFATS Personnel Surety Program Analysis; and

d. Does not include ACC's estimate of the percentage of resident employees and contractors with access to restricted areas or critical assets.

This alternative results in an estimate of an initial 1,806,996 respondents with an annual turnover of 393,519 respondents. *See* Table 14.

TABLE 14—ESTIMATE OF NUMBER OF RESPONDENTS—ALTERNATIVE 3

| | 2012 CFATS personnel surety program analysis average number of full time employees and contractors (including 20% turnover) (Table 10) | Estimate of full time employees and contractors with access to restricted areas or critical assets (percent) | Average number of full time employees and contractors (including 20% turnover) | ACC unescorted visitors estimate (including 71% turnover for frequent visitors, 20% turnover for infrequent visitors) (Table 6) | Number of facilities (Table 5) | Number of initial respondents (includes 20% annual turnover) | 2012 CFATS personnel surety program analysis 20% annual turnover (Table 10) | ACC unescorted visitors annual turnover (Table 6) | Annual respondent turnover |
|---|---|---|---|---|---|---|---|---|---|
| | A | B | (A × B) = C | D | E | (C + D) × E | F | G | (F + G) × E |
| Tier 1 Group A | 719 | 100 | 719 | 1,746 | 4 | 11,058 | 120 | 546 | 2,987 |
| Tier 1 Group B | 43 | 100 | 43 | 437 | 7 | 3,227 | 7 | 137 | 967 |
| Tier 1 Group C | 360 | 100 | 360 | 437 | 11 | 8,930 | 60 | 137 | 2,203 |
| Tier 1 Theft | 783 | 100 | 783 | 73 | 104 | 89,306 | 131 | 23 | 15,993 |
| Tier 2 Group A | 267 | 100 | 267 | 1,746 | 9 | 18,061 | 44 | 546 | 5,298 |
| Tier 2 Group B | 36 | 100 | 36 | 437 | 18 | 8,485 | 6 | 137 | 2,558 |
| Tier 2 Group C | 587 | 100 | 587 | 437 | 17 | 17,218 | 98 | 137 | 3,942 |
| Tier 2 Theft | 499 | 100 | 499 | 73 | 449 | 256,361 | 83 | 23 | 47,494 |
| Tier 3 Group A | 713 | 100 | 713 | 1,746 | 25 | 60,689 | 119 | 546 | 16,408 |
| Tier 3 Group B | 39 | 100 | 39 | 437 | 37 | 17,611 | 7 | 137 | 5,295 |
| Tier 3 Group C | 225 | 100 | 225 | 437 | 74 | 48,997 | 38 | 137 | 12,886 |
| Tier 3 Theft | 279 | 100 | 279 | 73 | 1,049 | 369,426 | 47 | 23 | 72,714 |
| Tier 4 Group A | 884 | 100 | 884 | 1,746 | 81 | 212,432 | 147 | 546 | 56,000 |
| Tier 4 Group B | 20 | 100 | 20 | 437 | 213 | 97,319 | 3 | 137 | 29,806 |
| Tier 4 Group C | 211 | 100 | 211 | 437 | 15 | 9,435 | 35 | 137 | 2,502 |
| Tier 4 Theft | 234 | 100 | 234 | 73 | 1,888 | 578,440 | 39 | 23 | 116,465 |
| Total | n/a | n/a | n/a | n/a | 4,000 | 1,806,996 | n/a | n/a | 393,519 |

These three alternatives are summarized in Table 15.

TABLE 15—COMPARISON OF NUMBER OF RESPONDENTS FOR ALTERNATIVES 1, 2 AND 3

| | Initial/year | Year 2 | Year 3 | Number of respondents (annual average) |
|---|---|---|---|---|
| Alternative 1 | 972,584 | 290,459 | 290,459 | 517,834 |
| Alternative 2 | 896,286 | 393,519 | 393,519 | 561,108 |
| Alternative 3 | 1,806,996 | 393,519 | 393,519 | 864,678 |

For the purpose of this notice the Department selected alternative 3. Alternative 3 reasonably reflects the type and number of facilities regulated by CFATS, is based upon the actual number of full time employees and contractors as reported by high-risk chemical facilities, and explicitly estimates unescorted visitors as a separate population from facility employees and resident contractors.

Limitation of Respondents to Tier 1 and Tier 2 Facilities

The Department is proposing to limit this information collection, and to limit initial CFATS Personnel Surety Program implementation, to only Tier 1 and Tier 2 high-risk chemical facilities. A limited implementation would enable the Department to implement the CFATS Personnel Surety Program for those facilities presenting the highest risk, while not imposing the burden on all CFATS regulated facilities. Assuming this information collection request is approved, a subsequent ICR would be published and submitted to OMB for approval to incorporate any lessons learned and potential improvements to the CFATS Personnel Surety Program prior to collecting information from Tier 3 and Tier 4 high-risk chemical facilities. Table 16 provides the estimate of the number of respondents using alternative 3 for Tier 1 and 2 high-risk chemical facilities.

TABLE 16—ESTIMATE OF NUMBER OF TIER 1 AND 2 RESPONDENTS

| | 2012 CFATS personnel surety program analysis average number of full time employees and contractors (including 20% turnover) (table 10) | Estimate of full time employees and contractors with access to restricted areas or critical assets (percent) | Average number of full time employees and contractors (including 20% turnover) | ACC unescorted visitors estimate (including 71% turnover for frequent visitors, 20% turnover for infrequent visttors) (table 6) | Number of facilities (table 5) | Number of initial respondents (includes 20% annual turnover) | 2012 CFATS personnel surety program analysis 20% annual turnover (table 10) | ACC unescorted visitors annual turnover (table 6) | Annual respondent turnover |
|---|---|---|---|---|---|---|---|---|---|
| | A | B | (A × B) = C | D | E | (C + D) × E | F | G | (F + G) × E |
| Tier 1 Group A | 719 | 100 | 719 | 1,746 | 4 | 11,058 | 120 | 546 | 2,987 |
| Tier 1 Group B | 43 | 100 | 43 | 437 | 7 | 3,227 | 7 | 137 | 967 |
| Tier 1 Group C | 360 | 100 | 360 | 437 | 11 | 8,930 | 60 | 137 | 2,203 |
| Tier 1 Theft | 783 | 100 | 783 | 73 | 104 | 89,306 | 131 | 23 | 15,993 |
| Tier 2 Group A | 267 | 100 | 267 | 1,746 | 9 | 18,061 | 44 | 546 | 5,298 |
| Tier 2 Group B | 36 | 100 | 36 | 437 | 18 | 8,485 | 6 | 137 | 2,558 |
| Tier 2 Group C | 587 | 100 | 587 | 437 | 17 | 17,218 | 98 | 137 | 3,942 |
| Tier 2 Theft | 499 | 100 | 499 | 73 | 449 | 256,361 | 83 | 23 | 47,494 |
| Total | n/a | n/a | n/a | n/a | n/a | 412,647 | n/a | n/a | 81,443 |

Therefore, the annual average number of respondents is equal to 191,845, as shown in Table 17. The Department's rounded estimate is 192,000 respondents.

TABLE 17—ESTIMATE OF ANNUAL NUMBER OF RESPONDENTS FOR TIER 1 AND 2 FACILITIES

| | Total respondents year 1 | Total respondents year 2 | Total respondents year 3 | Number of respondents (annual average) |
|---|---|---|---|---|
| | A | B | C | (A + B + C)/3 |
| Tier 1 Group A | 11,058 | 2,987 | 2,987 | 5,677 |
| Tier 1 Group B | 3,227 | 967 | 967 | 1,720 |
| Tier 1 Group C | 8,930 | 2,203 | 2,203 | 4,446 |
| Tier 1 Theft | 89,306 | 15,993 | 15,993 | 40,431 |
| Tier 2 Group A | 18,061 | 5,298 | 5,298 | 9,553 |
| Tier 2 Group B | 8,485 | 2,558 | 2,558 | 4,534 |
| Tier 2 Group C | 17,218 | 3,942 | 3,942 | 8,367 |
| Tier 2 Theft | 256,361 | 47,494 | 47,494 | 117,116 |
| Total | 412,647 | 81,443 | 81,443 | 191,845 |

*Estimated Time per Respondent*

For the purpose of estimating the time per respondent, the Department considered making an assumption about the percentage of affected individuals under the three options outlined in the summary section of this notice (e.g., information about one-third of affected individuals would be submitted for direct vetting against the Federal Government's consolidated and integrated terrorist watchlist, information about one-third of affected individuals would be submitted to verify enrollment in other DHS programs, and information about one-third of affected individuals would not be submitted because they possess TWICs that high-risk chemical facilities would electronically verify through the use of TWIC readers). However, the Department concluded that such an assumption was unwarranted because: (1) The assumption would be without any factual basis; (2) the burden to submit information about an affected individual for direct vetting is approximately the same as the burden to submit information in order to verify enrollment (i.e., similar number of required data elements); and (3) the most conservative burden estimate would assume that information is submitted for all affected individuals (i.e., no facilities will choose to electronically verify the TWIC in the possession of an affected individual).

To avoid making unjustified assumptions, and to avoid underestimating the time per respondent, the Department decided to estimate the average burden per respondent by assuming each and every respondent's information will be manually submitted, rather than uploaded via a bulk file, to the Department for vetting for terrorist ties.

Accordingly, the Department's ''estimated time per respondent'' is the average burden for each respondent/submission, as shown in Table 18. The estimate includes (1) 30 minutes to type and submit each and every affected individual's required information during initial submission, (2) 10 minutes to type and submit each update/correction for five percent of the affected individuals, (3) 10 minutes to update information on 20 percent of the affected individuals expected to no

longer have access to a high-risk chemical facility restricted area(s) or critical asset(s) each year. Therefore, for the purpose of this notice, the estimated time per respondent is 0.54 hours.

TABLE 18—ESTIMATE OF BURDEN TIME PER RESPONSE

| | Percent of population | Duration |
|---|---|---|
| Initial Submission (100%) | 1.00 | 0.50 |
| Updates/Corrections (5%) | 0.05 | 0.17 |
| Removal—Turnover (20%) | 0.20 | 0.17 |
| Estimated Time per respondent | | 0.5425 |

*Total Burden Hours*

Annual burden hours are the sum of: (1) The number of respondents multiplied by the estimated time per respondent; (2) the number of respondents for which a high-risk chemical facility will need to update/correct information (five percent of the number of respondents) multiplied by the number of hours necessary to type and submit each update/correction (i.e., 0.17 hours or 10 minutes); and (3) the number of respondents that are expected to no longer have access to a high-risk chemical facility's restricted area(s) or critical asset(s) (i.e., 20 percent of the number of respondents) multiplied by the number of hours necessary to notify the Department (i.e., 0.17 hours or 10 minutes). Therefore, the average annual burden is 104,076 hours, as shown in Table 19. The Department's rounded estimate is 104,100 hours.

TABLE 19—ESTIMATE OF ANNUAL BURDEN HOURS FOR TIER 1 & TIER 2 FACILITIES

| | Annual respondents A | Duration B | Burden (hours) (A × B) |
|---|---|---|---|
| Initial Submission (100%) | 191,845 | 0.50 | 95,922 |
| Updates/Corrections (5%) | 9,592 | 0.17 | 1,631 |
| Removal—Turnover (20%) | 38,369 | 0.17 | 6,523 |
| Total Burden Hours | | | 104,076 |

*Total Burden Cost (Capital/Startup)*

The Department expects no capital/startup cost for facilities that choose to implement Option 1 or Option 2.

Although there are no costs associated with facilities providing information to the Department under Option 3, the Department has nonetheless estimated the potential capital costs incurred by facilities that choose to implement Option 3 under the CFATS Personnel Surety Program to ensure an appropriate accounting of the costs potentially incurred by this Information Collection. The capital cost of Option 3 can be estimated by multiplying (1) the number of facilities that are likely to implement Option 3 by (2) the cost to acquire, install, and maintain TWIC readers at the facilities.

Estimating Capital Costs for Option 3—Number and Type of High-Risk Chemical Facilities That May Choose To Use Option 3

High-risk chemical facilities and their designees have wide latitude in how they may implement Option 3, if they choose to do so. High-risk chemical facilities could propose, in their SSPs or ASPs, to share the costs of TWIC readers and any associated infrastructure at central locations, or high-risk chemical facilities could propose to purchase and install TWIC readers for their own use. The Department will assess the adequacy of such proposals on a facility-by-facility basis, in the course of evaluating each facility's SSP or ASP.

For the purpose of this notice, the Department estimates that the number of high-risk chemical facilities that are likely to implement Option 3 is the number of high-risk chemical facilities likely to have affected individuals who possess TWICs accessing their restricted areas or critical assets. Through the 2012 CFATS Personnel Surety Program Analysis, the Department determined that there are currently 32 high-risk chemical facilities that have claimed a partial Maritime Transportation Security Act (MTSA) exemption [30] and have received a final tier determination under CFATS. The Department then normalized the facility count by multiplying the number of facilities that claimed a partial exemption in each category by a factor of 1.22 (as it did in estimating the total number of facilities in Table 5 above), as shown in Table 20.

TABLE 20—ESTIMATE OF NUMBER OF HIGH-RISK CHEMICAL FACILITIES THAT MAY CHOOSE TO USE TWIC READERS

| | 2012 CFATS personnel surety program analysis A | 2012 CFATS personnel surety program analysis (normalized) A × 1.22 |
|---|---|---|
| Tier 1 Group A | 0 | 0 |
| Tier 1 Group B | 0 | 0 |
| Tier 1 Group C | 0 | 0 |
| Tier 1 Theft | 0 | 0 |

[30] Facilities that are partially regulated under both MTSA and CFATS have the opportunity to identify themselves in the CSAT Top-Screen. The text of the question is available on page 22 of the CSAT Top-Screen Survey Application User Guide v1.99. *See http://www.dhs.gov/xlibrary/assets/chemsec_csattopscreenusersmanual.pdf.*

TABLE 20—ESTIMATE OF NUMBER OF HIGH-RISK CHEMICAL FACILITIES THAT MAY CHOOSE TO USE TWIC READERS—Continued

| | 2012 CFATS personnel surety program analysis<br>A | 2012 CFATS personnel surety program analysis (normalized)<br>A × 1.22 |
|---|---|---|
| Tier 2 Group A | 0 | 0 |
| Tier 2 Group B | 0 | 0 |
| Tier 2 Group C | 1 | 1 |
| Tier 2 Theft | 3 | 3 |
| Tier 3 Group A | 3 | 3 |
| Tier 3 Group B | 0 | 0 |
| Tier 3 Group C | 2 | 2 |
| Tier 3 Theft | 13 | 15 |
| Tier 4 Group A | 1 | 1 |
| Tier 4 Group B | 2 | 2 |
| Tier 4 Group C | 0 | 0 |
| Tier 4 Theft | 7 | 8 |
| Total | 32 | 35 |

Estimating Capital Costs for Option 3—TWIC Readers Costs

For the purpose of this notice, the Department has based the potential per facility capital costs related to Option 3 on the TWIC Reader Requirements notice of proposed rulemaking (NPRM), published elsewhere in this issue of the **Federal Register**.[31] In the TWIC Reader Requirements NPRM, the Department estimated the initial phase-in costs annual recurring costs, and annual recurring costs that considers equipment replacement for container terminals, large passenger vessels/terminals, petroleum facilities, break-bulk terminals and small passenger vessels/towboats. For the purpose of this notice, the Department has based the capital costs related to Option 3 on the costs incurred by the petroleum facilities (i.e., bulk liquid facilities) in the TWIC Reader Requirements NPRM. Specifically, the Department estimated the capital costs in this notice to be the average of the initial phase-in cost plus three years of the annual reoccurring cost without equipment replacement. NPPD opted to use the annual reoccurring cost without equipment replacement to align with the TWIC Reader Requirements NPRM assumption that equipment replacement cost occurs every five years. This notice estimates average annual costs for a three year period. Thus, for the purposes of this notice the estimated capital costs per facility is $99,953.33, [($256,267 + ($14,531 × 3))/3].

The Department then calculated the capital costs for the 35 high-risk chemical facilities, as shown in Table 21.

TABLE 21—CAPITAL COST BURDEN ESTIMATE FOR HIGH-RISK CHEMICAL FACILITIES THAT MAY CHOOSE TO USE TWIC READERS

| | Number of facilities<br>A | Average TWIC reader implementation cost per facility<br>B | Capital cost of TWIC reader implementation<br>(A × B) |
|---|---|---|---|
| Tier 1 Group A | 0 | $99,953 | $0 |
| Tier 1 Group B | 0 | 99,953 | 0 |
| Tier 1 Group C | 0 | 99,953 | 0 |
| Tier 1 Theft | 0 | 99,953 | 0 |
| Tier 2 Group A | 0 | 99,953 | 0 |
| Tier 2 Group B | 0 | 99,953 | 0 |
| Tier 2 Group C | 1 | 99,953 | 99,953 |
| Tier 2 Theft | 3 | 99,953 | 299,860 |
| Tier 3 Group A | 3 | 99,953 | 299,860 |
| Tier 3 Group B | 0 | 99,953 | 0 |
| Tier 3 Group C | 2 | 99,953 | 199,907 |
| Tier 3 Theft | 15 | 99,953 | 1,499,300 |
| Tier 4 Group A | 1 | 99,953 | 99,953 |
| Tier 4 Group B | 2 | 99,953 | 199,907 |
| Tier 4 Group C | 0 | 99,953 | 0 |
| Tier 4 Theft | 8 | 99,953 | 799,627 |
| Total | 35 | n/a | 3,498,367 |

[31] *See* TWIC Reader Requirements NPRM Table 4.

The capital cost for the 35 high-risk chemical facilities totals $3,498,367.67; however, the Department intends to limit this information collection to only Tier 1 and Tier 2 facilities. Therefore, for the purpose of this notice, the Department estimates the capital cost for the implementation of TWIC readers is $399,813, as shown in Table 22. The Department's rounded estimate is $399,800.

TABLE 22—CAPITAL COST BURDEN ESTIMATE FOR TIER 1 & 2 HIGH-RISK CHEMICAL FACILITIES THAT MAY CHOOSE TO USE TWIC READERS

| | Number of facilities<br>A | Average TWIC reader implementation cost per facility<br>B | Capital cost of TWIC reader implementation<br>(A × B) |
|---|---|---|---|
| Tier 1 Group A | 0 | $99,953 | $0 |
| Tier 1 Group B | 0 | 99,953 | 0 |
| Tier 1 Group C | 0 | 99,953 | 0 |
| Tier 1 Theft | 0 | 99,953 | 0 |
| Tier 2 Group A | 0 | 99,953 | 0 |
| Tier 2 Group B | 0 | 99,953 | 0 |
| Tier 2 Group C | 1 | 99,953 | 99,953 |
| Tier 2 Theft | 3 | 99,953 | 299,860 |
| Total | 4 | n/a | 399,813 |

Consideration of Other Capital Costs

The burden estimates outlined in this notice are limited in scope to those activities listed in 5 CFR 1320.3(b)(1). Specifically, 5 CFR 1320.3(b)(1) and 5 CFR 1320.8 require the Department to estimate the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. Therefore, many costs (e.g., physical modification of the facility layout) a facility may choose to incur to develop or implement its SSP or ASP should not be accounted for when estimating the capital costs associated with this information collection.

The Department did consider estimating certain facility capital costs such as: (1) Capital costs for computer, telecommunications equipment, software, and storage to manage the data collection, submissions, and tracking; (2) capital and ongoing costs for designing, deploying and operating information technology (IT) systems necessary to maintain the data collection, submissions, and tracking; (3) cost of training facility personnel to maintain the data collection, submissions, and tracking; and (4) site security officer time to manage the data collection, submissions, and tracking. However, the Department has concluded that these costs should be excluded in accordance with 5 CFR 1320.3(b)(2), which directs federal agencies to not count the costs associated with the time, effort, and financial resources incurred in the normal course of their activities (e.g., in compiling and maintaining business records) if the reporting, recordkeeping, or disclosure activities are usual and customary.

The Department believes that the time, effort, and financial resources are usual and customary costs because these are costs that high-risk chemical facilities would incur to conduct background checks for identity, criminal history, and legal authorization to work under 6 CFR 27.230(a)(12)(i–iii), and also under various other Federal, state, or local laws or regulations.

*Recordkeeping Costs*

High-risk chemical facilities are not required to create, keep, or retain records under RBPS 12(iv). If a high-risk chemical facility elects, for its own business purposes, to create, keep, or retain records that identify and manage the submission of information about affected individuals, those records are not government records.

The recordkeeping costs, if any, to create, keep, or retain records pertaining to background checks as part of a high-risk chemical facility's SSP or ASP, are properly estimated in the recordkeeping estimates associated with the SSP Instrument under Information Collection 1670–0007.[32]

The Department considered estimating the potential recordkeeping burden associated with RBPS 12(iv), but subsequently concluded that no potential recordkeeping should be estimated in this notice in accordance with 5 CFR 1320.3(b)(2), which directs federal agencies to not count the costs associated with the time, effort, and financial resources incurred in the normal course of their activities (e.g., in compiling and maintaining business records) if the reporting, recordkeeping, or disclosure activities are usual and customary. The Department believes that the types of recordkeeping associated with RBPS 12(iv) are usual and customary costs that high-risk chemical facilities would incur to conduct background checks for identity, criminal history, and legal authorization to work as required by RBPS (12)(i)–(iii) and also by various other Federal, state, or local laws or regulations.

*Total Burden Cost (Operating/Maintaining)*

The annual burden cost is equal to the sum of the: (1) Annual burden hours multiplied by the hourly wage rate for appropriate facility personnel; (2) the capital costs ($399,800); and (3) recordkeeping costs ($0).

Comments associated with the previous ICR suggested an appropriate wage rate between $20 and $40 per hour; the Department picked the midpoint of $30 to estimate the hourly direct wage rate, which corresponds to a fully loaded wage rate of $42.

Therefore, the annual burden not including capital costs and recordkeeping costs is $4,371,181 as shown in Table 23. The rounded estimate is $4,371,000.

[32] Information Collection 1670–0007 may be viewed at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201001-1670-007#.*

TABLE 23—ESTIMATE OF ANNUAL BURDEN COST FOR TIER 1 & TIER 2 FACILITIES

| | Burden (hours) A | Wage rate B | Cost (A × B) |
|---|---|---|---|
| Initial Submission | 95,922 | 42 | $4,028,738 |
| Updates/Corrections | 1,631 | 42 | 68,489 |
| Removal—Turnover | 6,523 | 42 | 273,954 |
| Total Burden Cost (operating/maintaining) | 104,076 | 42 | 4,371,181 |

Therefore, the total annual burden cost is $4,770,994, after the inclusion of the $399,813 capital cost burden. The Department's rounded estimate is $4,771,000.

## VI. Solicitation of Comments

*OMB is particularly interested in comments which:*

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

## VII. Analysis

*Agency:* Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

*Title:* Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program.

*OMB Number:* 1670—NEW.

*Frequency:* Other: In accordance with the compliance schedule or the facility Site Security Plan or Alternative Security Plan.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 192,000 affected individuals.

*Estimated Time per Respondent:* 0.54 hours (32.4 minutes).

*Total Burden Hours:* 104,100 annual burden hours.

*Total Burden Cost (capital/startup):* $399,800.

*Total Recordkeeping Burden:* $0.

*Total Burden Cost (operating/maintaining):* $4,771,000.

Dated: March 13, 2013.

**Scott Libby,**

*Deputy Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.*

[FR Doc. 2013–06184 Filed 3–21–13; 8:45 am]

BILLING CODE 9110–9P–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0095]**

### Agency Information Collection Activities: Notice of Appeal or Motion, Form I–290B; Revision of a Currently Approved Collection

**ACTION:** 60-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until May 21, 2013.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615–0095 in the subject box, the agency name and Docket ID USCIS–2008–0027. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.Regulations.gov* under e-Docket ID number USCIS–2008–0027;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

**SUPPLEMENTARY INFORMATION:**

*Comments:* Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Appeal or Motion.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–290B; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households, employers, private entities and organizations, businesses, non-profit institutions/organizations, and attorneys. Form I–290B is necessary in order for USCIS to make a determination that the appeal or motion to reopen or reconsider meets the eligibility requirements, and for USCIS to adjudicate the merits of the appeal or motion to reopen or reconsider.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,465 responses at 1.5 hours (90 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 38,198 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: March 14, 2013.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2013–06583 Filed 3–21–13; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0044]**

### Agency Information Collection Activities: Application for Action on an Approved Application or Petition, Form I–824; Revision of a Currently Approved Collection

**ACTION:** 60-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until May 21, 2013.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615–0044 in the subject box, the agency name and Docket ID USCIS–2007–0012. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.Regulations.gov* under e-Docket ID number USCIS–2007–0012;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

**SUPPLEMENTARY INFORMATION:**

**Comments**

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–824; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Primary: Individuals or households. Form I–824 is used to request a duplicate approval notice, or to notify the U.S. Consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 11,653 responses at .417 hours (25 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,859 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: March 18, 2013.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2013–06582 Filed 3–21–13; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5681–N–12]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, Room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Brenda Carignan, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 337, Washington, DC 20024, (202)– 401–0787; *COE:* Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; *NASA:* Mr. Frank T. Bellinger, Facilities Engineering Division, National Aeronautics & Space Administration, Code JX, Washington, DC 20546, (202)–358–1124; *VA:* Ms. Jessica L. Kaplan, Real Property Service, Department of Veterans Affairs, 810 Vermont Avenue NW. (003C1E), Washington, DC 20420, (202)–461–8234; (These are not toll-free numbers).

Dated: March 14, 2013.

**Mark Johnston,**

*Deputy Assistant Secretary for Special Needs.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 03/22/2013**

**Suitable/Available Properties**

*Building*

California

Valley Resident Office
2021 Jefferson Blvd.
W. Sacramento CA 95691
Landholding Agency: COE
Property Number: 31201310008
Status: Unutilized
Comments: 3,840 sf.; 9 mons. vacant; poor conditions; restricted area; transferee will need an escort to access property

Connecticut

Garage

Colebrook River Lake
Riverton CT 06065
Landholding Agency: COE
Property Number: 31201240005
Status: Underutilized
Comments: Off-site removal only; 635 sf.; storage; major renovations needed

Kansas

Sun Dance Park
31051 Melvern Lake Pkwy
Melvern KS 66510
Landholding Agency: COE
Property Number: 31201220011
Status: Underutilized
Comments: 133 sf.; bathroom; poor to fair conditions; fairly significant deterioration on interior wood frame in several places

Building 81002
Turkey Point Park
Osage City KS
Landholding Agency: COE
Property Number: 31201310001
Status: Unutilized
Comments: 89 sf.; park office; 7 mons. vacant; deteriorated

Wilson Lake
4860 Outlet Blvd.
Sylvan Grove KS 67481
Landholding Agency: COE
Property Number: 31201310002
Status: Unutilized
Comments: 280 sf.; park shower bldg.; 48 mons. vacant; deteriorated

Missouri

W. Hwy Vault Toilet
US Army COE
Smithville MO 64089
Landholding Agency: COE
Property Number: 31201220004
Status: Underutilized
Comments: Available for off-site removal; 100 sf.; current use: toilet; need extensive repairs

St. Louis District
Wappapello Lake Project Office
Wappapello MO 63966
Landholding Agency: COE
Property Number: 31201220014
Status: Unutilized
Comments: 376.69 sf.; comfort station; significant structural issues; need repairs

New Mexico

Abiquiu Lake Project Office
USACE
Abiquiu NM
Landholding Agency: COE
Property Number: 31201240004
Status: Unutilized
Comments: Off-site removal only; 165 sf.; vault-type comfort station; repairs needed

New York

Building 606
1 Amsterdam Rd.
Scotia NY 12301
Landholding Agency: GSA
Property Number: 54201310009
Status: Surplus
GSA Number: NY–0975
Directions: Previously reported by Navy w/ assigned property number 7720120019
Comments: 137,409 sf.; Navy Exchange, supermarket, & storage; 24 mons. vacant; mold, asbestos, & lead-based paint, significant renovations needed

JJP Bronx VA Medical Ctr.
903 Avenue St. John
Bronx NY 10455
Landholding Agency: VA
Property Number: 97201310002
Status: Unutilized
Comments: UPDATED INFO. 700–1,000 usable square feet. residential; significant renovations needed; contact VA Real Property Service (*Amanda.Wehner@va.gov;* (202) 632–5676) for more info.

North Carolina

Well House
Property ID # BEJ–17942
B.E. Jordon Dam& Lake NC
Landholding Agency: COE
Property Number: 31201240002
Status: Unutilized
Comments: Vacant; poor conditions; need repairs

Oklahoma

Robert S. Kerr Lake
HC 61 Box 238
Sallisaw OK 74955
Landholding Agency: COE
Property Number: 31201220005
Status: Unutilized
Comments: Off-site removal only; 704 sf.; current use: bathroom; needs repairs

5 Buildings
RS Kerr Lake
Sallisaw OK 74955
Landholding Agency: COE
Property Number: 31201230002
Status: Underutilized
Directions: 42863, 42857,42858,42859,42860
Comments: Off-site removal only; 264 sf.; use: vault toilet; excessive vegetation; severe damage from vandals

Oologah Lake
Spencer Creek
Oologah OK 74053
Landholding Agency: COE
Property Number: 31201240003
Status: Underutilized
Comments: Off-site removal only; 576 sf.; picnic shelter; repairs needed

Oregon

Ochoco Nat'l Forest
33700 NE Ochoco Ranger Station Rd.
Prineville OR 97754
Landholding Agency: Agriculture
Property Number: 15201310019
Status: Unutilized
Comments: 2,432 sf.; office; fair conditions; repairs needed; 14 mons. vacant

South Carolina

Observation Tower
J. Storm Thurmond Lake & Dam
Clarks Hill SC 29821
Landholding Agency: COE
Property Number: 31201310004
Status: Unutilized
Comments: 64 sf.; poor conditions; vacant

South Dakota

Big Bend Project
33573 N. Shore Rd.
Chamberlin SD 57325
Landholding Agency: COE
Property Number: 31201240001
Status: Unutilized
Comments: Off-site removal only; 221 sf. (w/ porch), office; poor conditions; severe mold

Texas

Restroom
2000 FM 2271
Belton TX 76513
Landholding Agency: COE
Property Number: 31201240006
Status: Unutilized
Comments: Off-site removal only; 850 sf.; 12 mons. vacant; poor conditions

Virginia

Vault Toilet
1930 Mays Chapel Rd.
Meckenlenburg VA 23917
Landholding Agency: COE
Property Number: 31201310005
Status: Unutilized
Directions: JHK–26740
Comments: Off-site removal only; 25.02 sf.; vacant; poor conditions

Vault Toilet
1930 Mays Chapel Rd.
Meckenlenburg VA 23917
Landholding Agency: COE
Property Number: 31201310006
Status: Unutilized
Directions: JHK–26741
Comments: Off-site removal only; 25.02 sf.; vacant; poor conditions

Vault Toilet
1930 Mays Chapel Rd.
Meckenlenburg VA 23917
Landholding Agency: COE
Property Number: 31201310007
Status: Unutilized
Directions: JHK–26739
Comments: Off-site removal only; 25.05 sf.; vacant; poor conditions;

Washington

Residence, Central Ferry Park
1001 Little Goose Dam Rd.
Dayton WA 99328
Landholding Agency: COE
Property Number: 31201220008
Status: Unutilized
Comments: Off-site removal only; 1,500 sf.; residence; good conditions; an access easement is required through a real estate instrument

Restroom, Central Ferry Park
1001 Little Goose Dam Rd.
Dayton WA 99328
Landholding Agency: COE
Property Number: 31201220009
Status: Unutilized
Comments: Off-site removal only; 2,457 sf.; restroom; good conditions; an access easement is required through a real estate instrument

Restroom, Central Ferry Park
1001 Little Goose Dam Rd.
Dayton WA 99328
Landholding Agency: COE
Property Number: 31201220010
Status: Unutilized
Directions: Boat Ramp Area
Comments: Off-site removal only; 420 sf.; restroom; good conditions; an access easement is required through a real estate instrument

Restroom, Central Ferry Park

1001 Little Goose Dam Rd.
Dayton WA 99328
Landholding Agency: COE
Property Number: 31201220012
Status: Unutilized
Comments: Off-site removal only; 660 sf.; restroom; an access easement is required through a real estate instrument

Restroom, Illia Dunes
1001 Little Goose Dam Rd.
Dayton WA 99328
Landholding Agency: COE
Property Number: 31201220013
Status: Unutilized
Comments: Off-site removal only; 220 sf.; restroom

Mill Creek Project Office
3211 Reservoir Rd.
Walla Walla WA 99362
Landholding Agency: COE
Property Number: 31201310003
Status: Unutilized
Comments: Off-site removal only; less than 900 sf.; office; moderate conditions; asbestos & lead base paint

*Land*

Oklahoma

Keystone Lake
USACE Tract No. 2424
Keystone OK
Landholding Agency: COE
Property Number: 31201220007
Status: Excess
Comments: .013 acres; current use: civil works land; contact COE for further conditions

Ft. Gibson Lake
Ft. Gibson
Wagoner OK
Landholding Agency: COE
Property Number: 31201310009
Status: Unutilized
Directions: Tract 1240
Comments: 0.0329 acres; recreation; poor conditions

**Unsuitable Properties**

*Building*

California

Trailers (4)
4800 Oak Grove Dr.
Pasadena CA 91109
Landholding Agency: NASA
Property Number: 71201310002
Status: Underutilized
Directions: T1701–T1704
Comments: Secured area; public access denied & no alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

*Land*

Oklahoma

Fort Gibson Lake-Tract 1251A
Lake Ft. Gibson
Wagoner OK
Landholding Agency: COE
Property Number: 31201220015
Status: Unutilized
Comments: Landlocked; no established rights or means of entry; crossing onto privately-owned property is prohibited by owners
Reasons: Not accessible by road

[FR Doc. 2013–06293 Filed 3–21–13; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Privacy Act of 1974, as Amended; Notice of a New System of Records

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of creation of a new system of records.

Department of the Interior is issuing a public notice of its intent to create the Department of the Interior system of records titled, ''Office of Insular Affairs Programs.'' The system will assist the Department of the Interior Office of Insular Affairs with overseeing programs in certain United States territories and increasing communication and economic development of the U.S. Insular Areas, including administering grants and scholarships, providing business, employment and entrepreneurial opportunities, and locating support and services for individuals and businesses in need. This newly established system will be included in the Department of the Interior's inventory of record systems.

**DATES:** Comments must be received by May 1, 2013. This new system will be effective May 1, 2013.

**ADDRESSES:** Any person interested in commenting on this new system of records may do so by: Submitting comments in writing to OS/NBC Privacy Act Officer, 1849 C Street NW., MIB Mail Stop 2650, Washington, DC 20240; hand-delivering comments to OS/NBC Privacy Act Officer, 1849 C Street NW., MIB Mail Stop 2650, Washington, DC 20240; or emailing comments to *privacy@nbc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Director, Office of Insular Affairs, Department of the Interior, 1849 C Street NW., Mail Stop 2429 MIB, Washington, DC 20240, 202–208–4736.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Department of the Interior (DOI)'s Office of Insular Affairs (OIA) is responsible for administering and overseeing programs in certain United States territories, including American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and the Freely Associated States, which are comprised of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. OIA's programs include administering grant funds, awarding scholarships and identifying educational opportunities, promoting business opportunities, facilitating the distribution of information about island and government procurement resources, locating support and services for individuals and businesses in need, and assisting individuals in the Insular Areas with labor and immigration matters. DOI is creating the Office of Insular Affairs Programs system of records as a comprehensive system to cover all of the OIA's Privacy Act records with the exception of records collected and maintained by OIA's Federal Labor Ombudsman, which will be addressed under a separate system of records notice.

The Office of Insular Affairs Programs system of records will be used to manage OIA communications and gather necessary information to efficiently run and execute the duties and responsibilities of OIA, including promoting economic development initiatives and employment and educational opportunities, and assisting individuals and businesses in need.

The system of records will be effective as proposed at the end of the comment period (the comment period will end 40 days after the publication of this notice in the **Federal Register**), unless comments are received that would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

### II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''record'' is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual. The Privacy Act defines an

individual as a United States citizen or lawful permanent resident. As a matter of policy, DOI extends administrative Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act Regulations, 43 CFR part 2.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, identifying the routine uses that are contained in each system in order to make agency record keeping practices transparent, notifying individuals regarding the uses of their records, and assisting individuals to more easily find such records within the agency. Below is the description of the Office of Insular Affairs Programs system of records.

In accordance with 5 U.S.C. 552a(r), DOI has provided a reporting of this system of records to the Office of Management and Budget and to Congress.

## III. Public Disclosure

Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**David Alspach,**

*OS/NBC Privacy Act Officer.*

## SYSTEM OF RECORDS: OS–21

### SYSTEM NAME:

Office of Insular Affairs Programs.

### SYSTEM CLASSIFICATION:

Unclassified.

### SYSTEM LOCATION:

Records in this system are maintained by the Department of the Interior, Office of Insular Affairs, 1849 C Street NW., Mail Stop 2429 MIB, Washington, DC 20240. Records may also be located in regional offices providing services for Insular Affairs programs or initiatives.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Office of Insular Affairs Programs system will cover individuals who communicate with OIA concerning: (1) Grants or scholarships, (2) business opportunities in the Insular Areas, including business owners and entrepreneurs, and (3) assistance with personal or economic needs or victim assistance, which could potentially include any citizen, resident or Insular area alien or visitor.

### CATEGORIES OF RECORDS IN THE SYSTEM:

The system will cover three categories of records: (1) Records concerning individuals related to grants or scholarships offered or coordinated by OIA, (2) records relating to individuals pursuing business opportunities in the Insular Areas, and (3) records relating to individuals seeking assistance with personal or economic needs or victim assistance. This system contains individual information including, but not limited to: First name, last name, username, email address, home or work address, home or work phone number, other contact information, labor codes, eligibility criteria for Federal, state and local procurement opportunities, financial data, gender, age, date of birth, nationality, country of origin, country of citizenship, citizenship status, passport number, Customs and Border Protection I–94 Arrival and Departure Form number and associated data, educational history, and professional licensing information.

Many business and financial records are contained in the system, including some records concerning businesses seeking procurement and other entrepreneurial opportunities that do not include personal information about individuals. Records in this system are subject to the Privacy Act only to the extent they are about an individual within the meaning of the Act.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 1451, the Department of the Interior, Establishment; 5 U.S.C. 301, Departmental Regulations; U.S.C. Title 48, Territories and Insular Possessions.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The DOI is creating the Office of Insular Affairs Programs system of records as a comprehensive system to cover all of OIA's Privacy Act records with the exception of records collected and maintained by OIA's Federal Labor Ombudsman, which will be addressed under a separate system of records notice. The Office of Insular Affairs Programs system of records will be used to manage OIA communications and gather necessary information to efficiently run and execute the duties and responsibilities of OIA including promoting economic development initiatives and employment and educational opportunities, and assisting individuals and businesses in need.

The U.S. Insular Areas include the Territories of Guam, American Samoa, the U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands (CNMI) as well as the Freely Associated States that are comprised of the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, disclosures outside DOI may be made as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1)(a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with that for which the records are collected or maintained.

(4) To any criminal, civil or regulatory law enforcement authority (whether Federal, state, territorial, insular, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(5) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(6) To Federal, state, territorial, insular, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(7) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(8) To state, territorial, insular and local governments, and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(9) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(10) To appropriate agencies, entities and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(11) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(12) To the Department of the Treasury to recover debts owed to the United States.

(13) To a consumer reporting agency if the disclosure requirements of the Debt Collection Act, as outlined at 31 U.S.C. 3711(e)(1), have been met.

(14) To an official of another Federal agency, territorial or insular area government to provide information needed in the performance of official duties related to employment authorization, immigration status and enforcement, Form I–94 Arrival Record validation, Pell Grant verification, the management and administration of Office of Insular Affairs programs or other relevant matter to enable the Office of Insular Affairs to respond to a request for assistance from the individual to whom the record pertains.

(15) To the news media, with the approval of the Public Affairs Officer in consultation with Counsel and the Senior Agency Official for Privacy, to provide recognition of the achievements of individuals receiving a grant, scholarship, or business opportunity promoted by OIA.

(16) After OIA makes a finding of fraud, impropriety, deceit or misrepresentation by an individual related to a business opportunity, grant, or scholarship promoted by OIA, disclosure may be made to businesses or educational institutions or other third parties that have been the recipients of fraudulent or deceitful information or have been the victims of impropriety, where disclosure will assist in preventing further harm from fraud or deceit. Such disclosures will only be made when OIA determines that release of the specific information in the context of a particular case would not constitute an unwarranted invasion of personal privacy.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records are contained in file folders stored in file cabinets; electronic records are contained in removable drives, computers, magnetic disks, computer tapes, email and electronic databases.

**RETRIEVABILITY:**

Electronic information within this system may be retrieved by full-text search, and searches may be conducted using a variety of personal identifiers, such as individual's first name, last name, email address, or user name. Paper records are indexed using various indexing methods, which may include the use of a variety of personal identifiers, such as individual's first name, last name, email address, or user name.

**SAFEGUARDS:**

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security rules and policies. Access to DOI network servers containing records in this system is limited to DOI personnel who have a need to know the information for the performance of their official duties and requires a valid username and password. DOI network servers are located in secured DOI facilities with access codes, security codes and security guards. Records are also located in computer systems located in regional offices providing services for Office of Insular Affairs programs. Personnel authorized to access systems must complete all Security, Privacy, and Records training and sign the DOI rules of behavior. Paper records are maintained in file cabinets located in secure DOI facilities under the control of authorized personnel.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of in accordance with applicable Office of the Secretary (OS) records schedule or General Records Schedule (GRS) for each type of record. General management files, user files and Web site files are retained in accordance with OS records series 1200 and 1400. Records will be destroyed when no longer needed for agency business in accordance with records retention schedules, National Archives and Records Administration (NARA) guidelines and 384 Departmental Manual 1. A records retention schedule for Office of Insular Affairs Programs records not covered by the schedules listed above is being developed for submission to NARA. These records will be treated as permanent until the records are scheduled and approved by NARA.

**SYSTEM MANAGER AND ADDRESS:**

Director, Office of Insular Affairs, Department of the Interior, 1849 C Street NW., Mail Stop 2429 MIB, Washington, DC 20240; and designated offices providing services in the U.S. Insular Areas.

**NOTIFICATION PROCEDURES:**

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.235.

**RECORDS ACCESS PROCEDURES:**

An individual requesting access to records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' The request letter should describe the records sought as specifically as possible. A request for access must meet the requirements of 43 CFR 2.238.

**CONTESTING RECORDS PROCEDURES:**

An individual requesting corrections or contesting information contained in his or her records must send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.246.

**RECORD SOURCE CATEGORIES:**

Records in the system are obtained from DOI and other Federal officials, state, territorial and local government officials, non-governmental organizations, private parties, business and other entities, entrepreneurs, procurement officials, and individual members of the public who communicate or interact with OIA.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2013–06579 Filed 3–21–13; 8:45 am]

**BILLING CODE 4310–RK–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R6–ES–2013–N018; 60120–1113–0000–C2]**

### Endangered and Threatened Wildlife and Plants; Draft Revised Supplement to the Grizzly Bear Recovery Plan

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability; request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability of a draft Revised Supplement to the Grizzly Bear Recovery Plan. Specifically, this supplement proposes to revise the demographic recovery criteria for the Yellowstone Ecosystem. In the lower 48 States, Grizzly bears (*Ursus arctos horribilis*) are federally listed as threatened under the Endangered Species Act of 1973, as amended (Act). The Service solicits review and comment from the public on this draft revised plan.

**DATES:** Comments on the draft revised recovery plan must be received on or before May 21, 2013.

**ADDRESSES:** An electronic copy of the draft Revised Supplement to the Grizzly Bear Recovery Plan is available at *http://www.fws.gov/endangered/species/recovery-plans.html.* Hard copies of the draft revised demographic criteria are available by request from the Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, MT 59812; telephone 406–243–4903. Submit comments on the draft Revised Supplement to the Grizzly Bear Recovery Plan to the Grizzly Bear Recovery Coordinator at this same address.

**FOR FURTHER INFORMATION CONTACT:** Grizzly Bear Recovery Coordinator, at the above address, or telephone 406–243–4903.

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for the federally listed species native to the United States where a plan will promote the conservation of the species. Recovery plans describe site-specific actions necessary for the conservation of the species; establish objective, measurable criteria which, when met, would result in a determination that the species no longer needs the protection of the Act (16 U.S.C. 1531 *et seq.*); and provide estimates of the time and cost for implementing the needed recovery measures.

The Act requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. The original plan for the species was approved in 1982 and revised in 1993. In 2007, we formally supplemented the 1993 Grizzly Bear Recovery Plan with revised demographic criteria for the Greater Yellowstone Area population. Since that time, new information relevant to these demographic criteria has become available indicating that the current criteria no longer represent the best scientific approach to assess recovery of the Yellowstone grizzly bear population. Therefore, consistent with Task Y11 of the Grizzly Bear Recovery Plan, the Service is proposing additional revisions to the demographic criteria. For additional information about the revisions, see the draft Revised Supplement to the Grizzly Bear Recovery Plan available at *http://www.fws.gov/endangered/species/recovery-plans.html* (as described in the **ADDRESSES** section above).

Section 4(f) of the Act, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information received during a public comment period when preparing each new or revised recovery plan for approval. The Service and other Federal agencies also will take these comments into consideration in the course of implementing approved recovery plans. It is our policy to request peer review of recovery plans. We will summarize and respond to the issues raised by the public and peer reviewers in an appendix to the approved recovery plan.

#### Request for Public Comments

The Service solicits public comments on a draft Revised Supplement to the Grizzly Bear Recovery Plan. Specifically, this supplement proposes to revise the demographic recovery criteria for the Yellowstone Ecosystem. All comments received by the date specified in **DATES** will be considered prior to approval of the final Revised Supplement to the Grizzly Bear Recovery Plan. Written comments and materials regarding the plan should be addressed to the Grizzly Bear Recovery Coordinator (see **ADDRESSES** section). Comments and materials received will be available, by appointment, for public inspection during normal business hours at the above address. If you submit a comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

#### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 19, 2013.

**Noreen E. Walsh,**

*Regional Director, Denver, Colorado.*

[FR Doc. 2013–06612 Filed 3–21–13; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–ES–2012–N198; FXES11130100000C2–123–FF01E00000]**

### Endangered and Threatened Wildlife and Plants; Recovery Plan for Rogue and Illinois Valley Vernal Pool and Wet Meadow Ecosystems

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of the approved Recovery Plan for Rogue and Illinois Valley Vernal Pool and Wet Meadow Ecosystems. The recovery plan addresses two endangered plant species that are endemic to southern Oregon, and also includes some recommendations for other species in these ecosystems. The plan includes recovery objectives and criteria, and prescribes specific recovery actions necessary to achieve downlisting and delisting of the species from the Federal List of Endangered and Threatened Wildlife and Plants.

**ADDRESSES:** An electronic copy of the recovery plan is available at *http://www.fws.gov/endangered/species/recovery-plans.html* and *http://www.fws.gov/pacific/ecoservices/endangered/recovery/plans.html.* Copies of the recovery plan are also available by request from the U.S. Fish and Wildlife Service, Roseburg Field Office, 2900 NW. Stewart Parkway, Roseburg, Oregon 97470 (phone: 541–957–3474). Printed copies of the recovery plan will be available for distribution within 4 to 6 weeks of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Sam Friedman, Botanist, at the above Roseburg address.

**SUPPLEMENTARY INFORMATION:**

### Background

Recovery of endangered or threatened animals and plants is the primary goal of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of a federally listed species to the point at which listing it is no longer required under the criteria set forth in section 4(a)(1) of the Act and its implementing regulations at 50 CFR part 424. The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans help guide the recovery effort by prescribing actions considered necessary for the conservation of the species, establishing criteria for downlisting or delisting listed species, and estimating time and cost for implementing the measures needed for recovery.

Section 4(f) of the Act requires public notice and an opportunity for public review and comment during recovery plan development. From September 22, 2006, through November 21, 2006, we provided the draft of this recovery plan to the public and solicited comments (71 FR 55508). We considered information we received during the public comment period and comments from peer reviewers in our preparation of the final recovery plan, and have summarized that information and our responses to comments in Appendix G of the approved recovery plan. We welcome continuing public comment on this recovery plan, and we will consider all substantive comments on an ongoing basis to inform the implementation of recovery activities and future updates to the recovery plan.

In this recovery plan, we describe our recovery strategies and objectives for two endangered plants: *Lomatium cookii* (Cook's desert-parsley) and *Limnanthes floccosa* ssp. *grandiflora* (equivalent to *Limnanthes pumila* ssp. *grandiflora* in current taxonomy) (large-flowered woolly meadowfoam). The plan also provides recommendations for recovery of the threatened vernal pool fairy shrimp (*Branchinecta lynchi*) within Oregon, supplementing the existing rangewide recovery plan for the species that was published on March 7, 2006 (71 FR 11441). In addition, site-specific information and recommendations for long-term conservation are provided for seven species of conservation concern.

The species addressed in this recovery plan occur in vernal pool, swale, or seasonal wet meadow habitats within southern Oregon and are largely confined to limited areas by topographic constraints, soil types, and climatic conditions. Surrounding (or associated) upland habitat is critical to the proper ecological function of these vernal pool habitats. Most of the vernal pool plants and animals addressed in the recovery plan have life histories adapted to the short period for growth and reproduction within inundated or drying pools and meadows interspersed with long dormant periods and extreme year-to-year variation in rainfall. All of the species addressed in this recovery plan are threatened by the continued degradation, loss, and fragmentation of their native vernal pool or wet meadow ecosystems.

The recovery actions described in this recovery plan include: (1) Protection, management, and restoration of vernal pool and wet meadow habitat; (2) population status surveys and monitoring; (3) research on biology and management of the species; and (4) enhancement of public awareness and participation in species recovery. The recovery strategy is oriented to adaptive management of vernal pool and wet meadow habitat, consistent with the Service's Strategic Habitat Conservation process, which calls for an iterative process of biological planning, conservation design, conservation delivery, and monitoring and research. The biological planning and conservation design set forth in this recovery plan lay out the criteria for recovery and identify localities for implementing actions, while the recovery actions describe a process for implementing conservation on the ground, outcome-based monitoring to assess success, and ongoing assumption-driven research to test biological hypotheses important to management. The objective of this recovery plan is to recover the two endangered plants and the threatened animal species sufficiently to warrant delisting, and to ensure the long-term conservation of the seven taxa of concern. An interim goal is to downlist *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* from endangered to threatened status.

### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: November 6, 2012.

**Richard R. Hannan,**

*Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2013–06621 Filed 3–21–13; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–IA–2013–N072; FXIA16710900000P5–123–FF09A30000]**

### Endangered Species; Marine Mammals; Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

**ADDRESSES:** Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:** On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 69463A | Denver Zoological Foundation | 77 FR 41198; July 12, 2012 | February 22, 2012. |
| 69465A | Denver Zoological Foundation | 77 FR 41198; July 12, 2012 | February 22, 2012. |
| 88568A | The Living Desert | 77 FR 66476; November 5, 2012 | February 12, 2013. |
| 91717A | Thomas Archipley | 77 FR 74506; December 14, 2012 | March 4, 2013. |
| 90697A | Stephen Dunbar, Loma Linda University | 78 FR 4162; January 18, 2013 | March 15, 2013. |
| 724540 | Archie Carr Center for Sea Turtle Research. | 78 FR 5481; January 25, 2013 | March 12, 2013. |

MARINE MAMMALS

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 134593 and 134595 | Point Defiance Zoo and Aquarium | 71 FR 53464; September 11, 2006 | March 13, 2013. |
| 73634A | Seward Association for the Advancement of Marine Science, Alaska SeaLife Center. | 77 FR 70457; November 26, 2012 | March 8, 2013. |

## Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280.

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2013–06596 Filed 3–21–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R6–ES–2013–N071; FXES11130600000D2–123–FF06E00000]**

### Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application to conduct certain activities with endangered or threatened species. With some exceptions, the Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

**DATES:** To ensure consideration, please send your written comments by April 22, 2013.

**ADDRESSES:** You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE–98708A).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (e.g., Permit No. TE–98708A) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225
- *In-Person Drop-off, Viewing, or Pickup:* Call (303) 236–4212 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

**FOR FURTHER INFORMATION CONTACT:** Kathy Konishi, Permit Coordinator Ecological Services, (303) 236–4212 (phone); *permitsR6ES@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:**

## Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes you to conduct activities with United States endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or

enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

**Application Available for Review and Comment**

We invite local, State, and Federal agencies, and the public to comment on the following application. Documents and other information the applicant has submitted are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

**Permit Application Number: TE–98708A**

*Applicant:* South Dakota Department of Environment & Natural Resources, PMB 2020, Joe Foss Building, 523 E. Capitol, Pierre, SD 57501.

The applicant requests a permit to take (capture, handle, release) Topeka shiner (*Notropis topeka*) in conjunction with surveys and population monitoring activities in South Dakota for the purpose of enhancing the species' survival.

**National Environmental Policy Act**

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

**Public Availability of Comments**

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: March 18, 2013.

**Michael G. Thabault,**

*Assistant Regional Director, Mountain-Prairie Region.*

[FR Doc. 2013–06624 Filed 3–21–13; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–IA–2013–N073; FXIA16710900000P5–123–FF09A30000]**

### Endangered Species; Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

**DATES:** We must receive comments or requests for documents on or before April 22, 2013.

**ADDRESSES:** Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:**

**I. Public Comment Procedures**

*A. How do I request copies of applications or comment on submitted applications?*

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES.** If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I review comments submitted by others?*

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**II. Background**

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

**III. Permit Applications**

*A. Endangered Species*

*Applicant:* Riverbanks Zoo and Garden, Columbia, SC; PRT–96245A.

The applicant requests a permit to import biological samples collected from wild leatherback sea turtles (*Dermochelys coriacea*) in Suriname for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

*Applicant:* Miami-Dade Zoological Park and Gardens, Miami, FL; PRT–97266A.

The applicant requests a permit to export a captive-born female harpy eagle (*Harpia harpyja*) to Parque Municipal Summit de Panama, Gamboa, Panama, for the purpose of enhancement of the survival of the species.

*Applicant:* Mesker Park Zoo, Evansville, IN; PRT–678968.

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Bovidae
Cebidae
Cercopithecidae
Cervidae
Hylobatidae
Lemuridae
Macropodidae
Gruidae

Genus

Panthera

Species

Snow leopard (*Uncia uncia*)
Clouded leopard (*Neofelis nebulosa*)
Bactrian camel (*Camelus bactrianus*)
Cheetah (*Acinonyx jubatus*)
Baird's tapir (*Tapirus bairdii*)
Przewalski's horse (*Equus przewalskii*)
Pygmy slow loris *(Nycticebus pygmaeus*)
Tartaruga (*Podocnemis expansa*)

*Applicant:* Gary Johnson, Perris, CA; PRT–808265.

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the Asian elephant (*Elephas maximus*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

*Applicant:* Zoological Society of Philadelphia, Philadelphia, PA; PRT–679328.

The applicant requests amendment and renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Bovidae
Canidae
Cebidae
Cercopithecidae
Cervidae
Elephantidae
Equidae
Felidae (*does not* include jaguar, margay, or ocelot)
Hominidae
Hylobatidae
Lemuridae
Rhinocerotidae
Accipitridae
Bucerotidae
Cathartidae
Columbidae
Cotingidae
Gruidae
Muscicapidae
Pedionomidae
Psittacidae (*does not* include thick-billed parrots)
Rallidae
Strigidae
Sturnidae (*does not* include *Aplonis pelzelni*)
Threskiornithidae
Trogonidae
Alligatoridae
Boidae (*does not* include Mona boa or Puerto Rico boa)
Crocodylidae (*does not* include the American crocodile)
Testudinidae
Varanidae
Bufonidae

Species

Rodrigues fruit bat (*Pteropus rodricensis*)
Central American river turtle (*Dermatemys mawii*)
Giant otter (*Pteronura brasiliensis*)

*Applicant:* Richard Ray, Farragut, TN; PRT–99438A.

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

*Applicant:* Oregon Zoo, Portland, OR; PRT–677662.

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Cebidae
Cercopithecidae
Elephantidae
Equidae
Felidae (*does not* include jaguar, margay, or ocelot)
Hylobatidae
Lemuridae
Hominidae
Rhinocerotidae

*Applicant:* Charles Salisbury, Lakeland, FL; PRT–56309A.

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to include Siamang (*Symphalangus syndactylus*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

*Applicant:* Chicago Zoological Society, Brookfield, IL; PRT–682781.

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Bovidae
Camelidae
Canidae
Cebidae
Cercopithecidae
Equidae
Felidae (*does not* include jaguar, ocelot, or margay)
Hominidae
Hylobatidae
Lemuridae
Lorisidae
Pteropodidae
Rhinocerotidae
Tapiridae
Psittacidae (*does not* include thick-billed parrots)
Sturnidae (*does not* include *Aplonis pelzelni)*
Crocodylidae (*does not* include the American crocodile)
Testudinidae

*Applicant:* East Coast Zoological Society dba Brevard Zoo, Melbourne, FL; PRT–036218.

The applicant requests amendment and renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera, and species, to enhance their

propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Cebidae
Canidae
Cercopithecidae
Hominidae
Hylobatidae
Lemuridae
Tapiridae

Species

Cheetah (*Acinonyx jubatus*)
Grevy's Zebra (*Equus grevyi*)
Golden parakeet (*Guarouba guarouba)*
Bali starling (*Leucopsar rothschildi*)
Radiated tortoise (*Astrochelys radiata*)
Goliath frog (*Conraua goliath*)

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Franklin Brown, Rainbow City, AL; PRT–99428A.

*Applicant:* Michael Couch, Lebanon, TN; PRT–97814A.

*Applicant:* Coll John, El Paso, TX; PRT–99723A.

*Applicant:* Montague James, El Paso, TX; PRT–99724A.

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2013–06595 Filed 3–21–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVL01000. L51100000.GN0000. LVEMF1201170 241A; NVN–090444; 13–08807; MO#4500047785; TAS: 14X5017]**

### Notice of Availability of the Draft Environmental Impact Statement for the Proposed Pan Mine Project, White Pine County, NV

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Egan Field Office, Ely, Nevada has prepared a Draft Environmental Impact Statement (EIS) for the proposed Pan Mine Project and by this notice is announcing the opening of the comment period.

**DATES:** To ensure comments will be considered, the BLM must receive written comments on the Pan Mine Project Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce any public meetings or other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

**ADDRESSES:** You may submit comments related to the Pan Mine Project by any of the following methods:

- *Email: BLM_NV_EYDO_Midway_Pan_EIS@blm.gov.*
- *Fax:* 775–289–1910.
- *Mail:* BLM Ely District, Egan Field Office, HC 33, Box 33500, Ely, NV 89301.

Copies of the Pan Mine Project Draft EIS are available in the Ely District Office at the above address and on the Ely District's Web page at *http://www.blm.gov/nv/st/en/fo/ely_field_office/blm_programs/minerals/mining_projects/pan_mine_project.html.*

**FOR FURTHER INFORMATION CONTACT:** For further information contact Miles Kreidler, project lead, telephone: 775–289–1893; address: 702 North Industrial Way, Ely, NV 89301; email: *mkreidler@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** Midway Gold US, Inc., (Midway) proposes to construct and operate an open-pit gold mining operation in the northern part of the Pancake Mountain Range, approximately 50 miles west of Ely in White Pine County, Nevada. The proposed location is 10 miles south of US Route 50 near Newark Valley. The proposed operations and associated disturbance would be on approximately 3,204 acres of public land managed by the BLM. The proposed power line runs along Highway 50 and south along a proposed access road to the mine site. An updated inventory of lands with wilderness characteristics was completed and found no lands with wilderness characteristics in the project area. The projected project life of the mine is 25 years: 13 years of mining and additional time for associated construction, closure, and post-closure monitoring periods. Midway is currently conducting exploration activities in this area which were analyzed in 2 environmental assessments (EAs): the *Castleworth Ventures, Inc. Pan Exploration Project EA* (May 2004) and the *Midway Gold Pan Project Exploration Amendment EA* (July 2011).

The Draft EIS describes and analyzes the proposed project site-specific impacts (including cumulative) on all affected resources. There are 3 action alternatives (including the Proposed Action) analyzed in addition to the No Action Alternative. The Waste Rock Disposal Site Design Alternative would result in a decrease of 79 acres of disturbance compared to the Proposed Action. It would also involve a more conventional waste rock disposal design and move waste rock away from more important greater sage-grouse habitat. The Southwest Power Line Alternative was developed to addresses concerns of potential impacts to greater sage-grouse from the Proposed Action power line. It is marginally further away and is less visible from 2 active greater sage-grouse leks. There were 10 other alternatives considered but eliminated from further analysis. Mitigation measures are considered to minimize environmental impacts and to assure the proposed action does not result in unnecessary or undue degradation of public lands.

On April 16, 2012, a Notice of Intent was published in the **Federal Register** inviting scoping comments on the proposed action. A legal notice was prepared by the BLM and published in the Elko Daily Free Press, Ely Daily Times, and the Reno Gazette-Journal informing the public of the BLM's intention to prepare the Pan Mine EIS. Public scoping meetings were held in May 2012 in Ely, Eureka, and Reno, Nevada. A total of 26 comments were received. The comments are incorporated in a Scoping Summary Report and were considered in the preparation of this Draft EIS.

Concerns raised during scoping include: potential impacts to archaeological resources, including damage to Carbonari sites and the loss of use of the 1913 alternative route of the Lincoln Highway; impacts to population and habitat of greater sage-grouse; impacts to wild horses and their habitat; impacts to air quality through point (equipment) and non-point (waste rock disposal areas) pollution sources; changes to the quantity and quality of

surface water and groundwater; potential occurrence of acid drainage from waste rock disposal areas into surface and groundwater; impacts to the sensitive desert landscape, vegetation communities, and vegetative food resources for wildlife; short- and long-term impacts on wildlife population dynamics and habitats; impacts to general health of the rangeland resources; release of pollutants and hazardous materials to the environment during operations and following closure; increase in light pollution in the areas and direct visual impacts from mine facilities; positive and negative socioeconomic impacts to the communities of Ely and Eureka, and to White Pine County; and cumulative impacts to wildlife, wild horses, cultural, air, water, and vegetation resources. The 2 action alternatives were developed to help reduce impacts to greater sage-grouse. Mitigation measures have also been included to show how impacts on resources could be minimized.

The BLM has prepared the Draft EIS in conjunction with its three Cooperating Agencies: Nevada Department of Wildlife, Eureka County, and White Pine County.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (7:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR part 1501 and 43 CFR part 3809.

**Jill A. Moore,**

*Field Manager, Egan Field Office.*

[FR Doc. 2013–06508 Filed 3–21–13; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLMTM00000 L16100000.DP0000 LXSS048E0000]**

### Notice of Availability of the HiLine District Draft Resource Management Plan and Draft Environmental Impact Statement, MT

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the HiLine District in Montana and by this notice is announcing the opening of the comment period.

**DATES:** To ensure that comments will be considered, the BLM must receive written comments on the draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes the notice of the draft RMP/EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

**ADDRESSES:** You may submit comments related to the HiLine District draft RMP/EIS by any of the following methods:

- *Email: MT_HiLine_RMP@blm.gov.*
- *Fax:* 406–262–2856.
- *Mail:* District Manager, BLM, 3990 Hwy 2 West, Havre, MT 59501

Copies of the HiLine District draft RMP/EIS are available in the Havre Field Office at the above address or on the following Web site: *http://www.blm.gov/8qkd.*

**FOR FURTHER INFORMATION CONTACT:** Brian Hockett, Planning & Environmental Coordinator, telephone: 406–262–2837; address: 3990 Hwy 2 West, Havre, MT 59501; email: *MT_HiLine_RMP@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The HiLine District draft RMP/EIS was developed through a collaborative planning process. The HiLine District RMP decision area encompasses approximately 2.4 million acres of public land and 3.8 million acres of Federal mineral estate administered by the BLM HiLine District, which are located in northern Montana in Glacier, Toole, Liberty, Chouteau, Hill, Blaine, Phillips, and Valley counties. These lands and minerals are managed by the Havre, Malta, Glasgow and Great Falls Field Offices. The HiLine RMP decision area does not include private lands, State lands, tribal reservations, Federal lands not administered by BLM, or lands addressed in the Upper Missouri River Breaks National Monument RMP (January 2008).

Current guidance is provided by the West HiLine (1988) and Sweet Grass Hills Amendment (1996) and Judith-Valley-Phillips Resource Management Plans (1994) and land use plan amendments (1996). Oil and gas leasing in Phillips and Valley counties is currently managed under four Management Framework Plans (MFP): Phillips MFP, Valley MFP, Little Rocky Mountains MFP, and the UL Bend/Zortman MFP.

The key issues raised during the planning process include renewable and traditional energy development, management of solid minerals, soil and vegetation management, land tenure, public land access, off-highway vehicles, lands with wilderness characteristics, wildlife habitat and special status species, cultural and paleontological resources, special designations and management areas, wildfire and prescribed fire management, and social and economic conditions across the HiLine District. Five alternatives, including a no-action alternative, were developed in response to these key issues. The no action alternative, Alternative A, represents the current management of public lands within the HiLine District. The four action alternatives, Alternatives B through E, present a reasonable set of objectives and actions to guide future management of the planning area. Comments collected during the scoping process in 2006, during which 18 public open houses were held, were instrumental in determining the issues to be addressed. Through the draft RMP/EIS, the BLM is seeking public input on the alternatives developed to address these issues. The HiLine District's identified preferred alternative is Alternative E, which focuses on a balance between managing public lands for economic and recreational growth while protecting valuable resources.

Among the special designations under consideration within the range of alternatives, Areas of Critical Environmental Concern (ACEC) are proposed to protect certain resource values. There are seven existing ACECs: Azure Cave, Big Bend of the Milk River, Bitter Creek, Kevin Rim, Mountain Plover, Prairie Dog Towns within the 7km Complex, and Sweet Grass Hills; these ACEC designations would be carried forward in some alternatives, sometimes with changes in acreage depending on the alternative.

Pertinent information regarding all proposed ACECs in the preferred alternative, including values, resource use limitations, if formally designated, and acreages, is summarized below. Further information is available at the following Web site: *http://www.blm.gov/8qkd.*

**Azure Cave ACEC (141 Acres)**

- Relevant and Important Values: Wildlife habitat, natural hazards.
- Limitations on the Following Uses: Solid mineral leasing, mineral material sales, commercial wind energy development.
- Other Restrictions: Avoidance area for rights-of-way.

**Big Bend of the Milk River ACEC (1,972 Acres)**

- Relevant and Important Values: Cultural, historic.
- Limitations on the Following Uses: Oil and gas leasing, mineral material sales, commercial wind energy development.
- Other Restrictions: Avoidance area for rights-of-way.

**Bitter Creek ACEC (60,701 Acres)**

- Relevant and Important Values: Historic, cultural, scenic, wildlife habitat, natural processes.
- Limitations on the Following Uses: Oil and gas leasing, commercial wind energy development.
- Other Restrictions: Avoidance area for rights-of-way, managed as Visual Resource Management (VRM) Classes I and II.

**Kevin Rim ACEC (4,557 Acres)**

- Relevant and Important Values: Cultural, wildlife habitat.
- Limitations on the Following Uses: Oil and gas leasing, solid mineral leasing, mineral material sales, commercial wind energy development.
- Other Restrictions: Avoidance area for rights-of-way.

**Mountain Plover ACEC (24,762 Acres)**

- Relevant and Important Values: Wildlife habitat.
- Limitations on the Following Uses: Oil and gas leasing, solid mineral leasing, mineral material sales, commercial wind energy development.
- Other Restrictions: Avoidance area for rights-of-way.

**Sweet Grass Hills ACEC (7,419 Acres)**

- Relevant and Important Values: Historic, cultural.
- Limitations on the Following Uses: Oil and gas leasing, solid mineral leasing, mineral material sales, commercial wind energy development.
- Other Restrictions: Avoidance area for rights-of-way, managed as VRM Class II.

**Frenchman ACEC (42,020 Acres, or 63,482 Acres in Alternative D)**

- Relevant and Important Values: Scenic, wildlife habitat, natural processes.
- Limitations on the Following Uses: Oil and gas leasing, solid mineral leasing, mineral material sales, commercial wind energy development.
- Other Restrictions: Avoidance area for rights-of-way, managed as VRM Class II.

**Malta Geological ACEC (6,153 Acres)**

- Relevant and Important Values: Geologic, paleontological, natural processes.
- Limitations on the Following Uses: Oil and gas leasing, solid mineral leasing, mineral material sales, commercial wind energy development.
- Other Restrictions: Avoidance area for rights-of-way; personal collection of common fossils would not be allowed.

**Woody Island ACEC (32,869 Acres, or 22,411 Acres in Alternatives C & D)**

- Relevant and Important Values: Scenic, wildlife habitat.
- Limitations on the Following Uses: Oil and gas leasing, solid mineral leasing, mineral material sales, commercial wind energy development.
- Other Restrictions: Avoidance area for rights-of-way, managed as VRM Class II.

**Zortman/Landusky Mine Reclamation ACEC (2,682 Acres, or 3,609 Acres in Alternatives B & C)**

- Relevant and Important Values: Natural hazards, public safety.
- Limitations on the Following Uses: Commercial wind energy development.
- Other Restrictions: Avoidance area for rights-of-way, closed to all unauthorized vehicle use during reclamation activities.

Some of the ACECs in the preferred alternative may also appear in other alternatives with different acreages and management prescriptions. Also, some ACECs that appear in other alternatives may not be included in the preferred alternative. For example, the Little Rocky Mountains ACEC is analyzed in Alternative D for relevant and important historic and cultural values; and the Greater Sage-Grouse Protection Priority Area and Grassland Bird/Greater Sage-Grouse Priority Areas are proposed ACECs in Alternative B to protect relevant and important Greater Sage-Grouse and grassland bird habitat.

The preferred alternative identifies 930,265 acres as a Greater Sage-Grouse Protection Priority Area and 298,772 acres as Grassland Bird/Greater Sage-Grouse Priority Areas with special management prescriptions on these BLM-administered lands to provide high-quality habitat for Greater Sage-Grouse and other sagebrush-dependent species. These priority habitat areas would be closed to solid mineral leasing, and oil and gas leasing would be subject to a no surface occupancy and use stipulation. Both areas would be designated as exclusion areas for wind energy rights-of-way, and avoidance areas for all other rights-of-way.

Two areas are being considered for designation as off-highway vehicle (OHV) use areas. In the preferred alternative, 40 acres in the Glasgow OHV area would remain open until an alternate site is located, and in the Fresno OHV area 125 acres would be designated as open to OHV use.

Following the close of the public review and comment period on this draft RMP/EIS, public comments will be used to prepare the BLM HiLine District Proposed RMP and Final EIS. The BLM will respond to each substantive comment received during the draft RMP/DEIS review period by making appropriate revisions to the document, or by explaining why a comment did not warrant a change. After comments have been considered and the draft RMP/EIS has incorporated all potential revisions to develop the Proposed RMP and Final EIS, a notice of the availability for the Proposed RMP and Final EIS will be posted in the **Federal Register**.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your

comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

**Jamie E. Connell,**

*State Director.*

[FR Doc. 2013–06503 Filed 3–21–13; 8:45 am]

**BILLING CODE 4310–DN–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLIDI00000–L11200000–PH0000]**

### Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meetings.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

**DATES:** The Idaho Falls District RAC will meet in Challis, Idaho, April 23–24, 2013 for a two-day meeting at the Challis Field Office, 1151 Blue Mountain Road, Challis, Idaho 83226. The first day will begin at 10:00 a.m. and adjourn at 5:00 p.m. The second day will begin at 8:30 a.m. and adjourn at 2:30 p.m. Members of the public are invited to attend. A comment period will be held following the introductions from 10:00–10:30 a.m. All meetings are open to the public.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

Items on the agenda include an overview and tour of the Thompson Creek Mine and proposed Broken Wing Ranch Land Exchange.

The Recreation RAC will convene at approximately 11:15 a.m. to discuss the Caribou-Targhee National Forest proposed new cabin rental fee for the Al Taylor Cabin in Dubois and the Salmon Challis National Forest will provide some informational material regarding potential changes to the river lottery system. Following the morning part of the meeting, a tour of the Broken Wing Ranch will be conducted. The second day RAC members will meet briefly at the office to discuss Thompson Creek Mine and then head to the mine for a tour.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

**FOR FURTHER INFORMATION CONTACT:** Sarah Wheeler, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone: (208) 524–7550. Email: *sawheeler@blm.gov.*

Dated: March 11, 2013.

**Sarah Wheeler,**

*District RAC Coordinator.*

[FR Doc. 2013–06622 Filed 3–21–13; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLORB00000.L10200000. PH0000.L.X.SS.036H0000.13XL1109AF; HAG13–0151]**

### Notice of Public Meeting Cancellation

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting cancellation.

**SUMMARY:** The meeting of the Southeast Oregon Resource Advisory Council (RAC) scheduled for Monday, April 22, 2013, and Tuesday, April 23, 2013, is cancelled. The event is cancelled due to budget sequestration and will not be rescheduled.

**DATES:** April 22–23, 2013.

**FOR FURTHER INFORMATION CONTACT:** Tara Martinak, Public Affairs Specialist, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738–9424, (541) 573–4519, or email *tmartina@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Southeast Oregon RAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in southeast Oregon.

**Brendan Cain,**

*BLM Burns District Manager.*

[FR Doc. 2013–06623 Filed 3–21–13; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCO923000 L13400000.PQ0000]**

### Notice Seeking Public Interest for Solar Energy Development on Public Lands in the State of Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management's (BLM) Colorado State Office is providing an opportunity for parties to express an interest in proposing solar energy development projects on approximately 3,705 acres of public land administered by the BLM's San Luis Valley Field Office in Saguache and Conejos counties, Colorado.

**DATES:** Parties interested in proposing a solar energy development project on the lands described in this notice should submit a letter of interest in response to this notice and a preliminary right-of-way (ROW) application (SF–299) to the address listed below on or before May 21, 2013. The ROW application form can be downloaded at: *http://www.gsa.gov/portal/forms/download/117318.*

**ADDRESSES:** Documentation should be sent to the Bureau of Land Management, Attention: Maryanne Kurtinaitis, CO923, 2850 Youngfield Street, Lakewood, CO 80215. Electronic submissions will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Maryanne Kurtinaitis, Renewable Energy Program Manager, by telephone at 303–239–3708 or by email at

*mkurtina@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** BLM Colorado has received two ROW applications within two designated Solar Energy Zones (SEZs) serialized as COC–074761 (Los Mogotes East SEZ) and COC–074763 (De Tilla Gulch SEZ). Applications for solar energy development are processed as ROW authorizations under Title V of the Federal Land Policy and Management Act of 1976. The regulations at 43 CFR 2804.23 authorize the BLM to determine whether competition exists among ROW applications filed for the same facility or system. The regulations also allow the BLM to resolve any such competition by using competitive bidding procedures.

The BLM will review submissions from interested parties in response to this notice and determine whether competition exists to develop solar energy projects in the De Tilla Gulch and Los Mogotes East SEZs. If the BLM determines sufficient competition exists, the BLM may use a competitive bidding process, consistent with the regulations, to select a preferred applicant in one or both of the SEZs.

The first parcel is called De Tilla Gulch SEZ, and consists of approximately 1,064 acres of public land within sections 29, 30, 31, 32, and 33 of T. 45 N., R. 9 E., New Mexico Principal Meridian, Saguache County, Colorado. This parcel lies approximately seven miles east of the town of Saguache, Colorado. The second parcel is called Los Mogotes East SEZ, and consists of approximately 2,641 acres of public land within sections 1, 12, 13, 24, and 25 of T. 34N., R. 8 E., New Mexico Principal Meridian, Conejos County, Colorado. This parcel lies three miles west of the town of Romeo, Colorado. A map of both SEZs can be viewed and downloaded at: *http://solareis.anl.gov/maps/index.cfm.*

**Authority:** 43 CFR 2804.23.

**Helen M. Hankins,**

*BLM Colorado State Director.*

[FR Doc. 2013–06507 Filed 3–21–13; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CACA–049491, LLCAD01500 L51010000 FX0000 LVRWB12B4920]**

### Notice of Availability of the Record of Decision for the EDF Renewable Energy Desert Harvest Solar Field Project and California Desert Conservation Area Plan Amendment, Riverside County, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD)/Approved Amendment to the California Desert Conservation Area (CDCA) Plan, for the Desert Harvest Solar Project (DHSP), in Riverside County, California. The Secretary of the Interior approved the ROD on March 13, 2013, which constitutes the final decision of the Department.

**ADDRESSES:** Copies of the ROD/Approved Amendment to the CDCA Plan are available upon request from the BLM Field Manager, Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262 and the BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553, or via the Internet at the following Web site: *http://www.blm.gov/ca/st/en/fo/palmsprings/Solar_Projects/Desert_Harvest_Solar_Project.html.*

**FOR FURTHER INFORMATION CONTACT:** Frank McMenimen, BLM Project Manager, telephone 760–833–7150; mail 1201 Bird Center Drive, Palm Springs, California 92262; email *fmcmenimen@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** EDF Renewable Energy (formerly enXco Development Corporation) (Applicant) has requested right-of-way (ROW) grant authorization to construct, operate, maintain, and decommission an up to 150-megawatt (MW), nominal capacity, alternating current, solar photovoltaic (PV) energy generation facility and necessary ancillary facilities including an operations and maintenance (O&M) facility, site security, on-site substation, switchyard, access road, and a 220-kilovolt (kV) generation interconnection line (gen-tie line). The project site is located approximately 6 miles north of Interstate 10 and the rural community of Desert Center and 3 miles north of Lake Tamarisk, between the cities of Coachella and Blythe.

The project site is in the California Desert District within the planning boundary of the CDCA Plan, which is the applicable Resource Management Plan for the project site and the surrounding areas. The CDCA Plan, while recognizing the potential compatibility of solar generation facilities on public lands, requires that all sites associated with power generation or transmission not already identified in the Plan be considered through the BLM's land use plan amendment process. As a result, prior to approval of a ROW grant to the DHSP, the BLM must amend the CDCA Plan to allow the solar generating project on that site. Additionally, the CDCA Plan also requires that transmission lines above 161 kV be placed within a federally designated utility corridor or that the transmission line be specifically allowed outside a corridor through a plan amendment process. Since there is no designated corridor from DHSP generation tie-in transmission line, the CDCA Plan must also be amended to allow that line outside of a designated corridor. The approved Amendment to the CDCA Plan specifically revises the CDCA Plan to allow for the development of the DHSP and ancillary facilities on land managed by the BLM. The BLM selected alternative would result in construction of a solar farm, capable of generating up to 150 MW of electricity, and is within the range of alternatives analyzed in the Final Environmental Impact Statement (EIS). The Notice of Availability of the Final EIS for the DHSP and proposed CDCA Plan Amendment was published in the **Federal Register** on November 2, 2012 (77 FR 66183).

Publication of the Notice of Availability for the Final EIS and Proposed CDCA Plan Amendment initiated a 30-day protest period for the proposed amendment to the CDCA Plan. At the close of the 30-day protest period, six protests were received and resolved. Their resolution is summarized in the Director's Protest Summary Report, available online at *http://www.blm.gov/pgdata/content/wo/en/prog/planning/planning_overview/protest_resolution.html.* The proposed amendment to the CDCA Plan was not modified as a result of the protest resolution, however, the BLM did

provide some clarifications and modifications to project mitigation measures. These clarifications and modifications were minor and do not warrant supplementation of the Final EIS. Simultaneously with the protest period, the Governor of California conducted a consistency review for the proposed CDCA Plan Amendment to identify any inconsistencies with State or local plans, policies, or programs. No inconsistencies were identified.

Because the decisions described in the ROD are approved by the Secretary of the Interior, they are not subject to administrative appeal (43 CFR 4.410(a)(3)).

**Authority:** 40 CFR 1506.6.

**Jamie Connell,**

*Acting Deputy Director, Bureau of Land Management.*

[FR Doc. 2013–06672 Filed 3–21–13; 8:45 am]

**BILLING CODE 4310–40–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVSO3100 L51010000 ER0000 LVRWF12F8740.241A; 13–08807; MO# 4500048381; TAS: 14X5017]**

### Notice of Availability of a Record of Decision for the Searchlight Wind Energy Project, Clark County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Searchlight Wind Energy Project. The Department of the Interior Secretary signed the ROD on March 13, 2013, which constitutes the final decision of the Department.

**ADDRESSES:** Copies of the ROD are available upon request and for public inspection at the Southern Nevada District Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, NV, 89130 or on the internet at *http://www.blm.gov/nv/st/en/fo/lvfo/blm_programs/energy/searchlight_wind_energy.html*.

**FOR FURTHER INFORMATION CONTACT:** Gregory Helseth, Renewable Energy Project Manager, telephone 702–515–5173; address 4701 N. Torrey Pines Drive, Las Vegas, NV 89130; email *ghelseth@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** Searchlight Wind Energy, LLC, (SWE) a wholly-owned subsidiary of Duke Energy, applied to the BLM for a right-of-way (ROW) grant on public lands to develop a 200-megawatt (MW) wind energy facility. The ROW application area encompasses approximately 18,949 acres of BLM-administered public lands adjacent to Searchlight, Nevada, about 60 miles southeast of Las Vegas, in Clark County, Nevada. An updated inventory of lands with wilderness characteristics was completed and no lands with wilderness characteritics were found within the project area. The area was segregated from mineral entry in the Notice of Availability of the Draft Environmental Impact Statement (EIS) for the Searchlight Wind Energy Project. In connection with the SWE proposal, Western Area Power Administration (Western) submitted a ROW application to the BLM for construction and operation of an electrical interconnection facility/switchyard adjacent to the existing Davis-Mead transmission line that would interconnect the power generated from the wind facility to Western's electrical grid system. The Western application was also analyzed as part of the Searchlight Wind Energy Project Environmental Impact Statement. The proposed project is in conformance with the 1998 Las Vegas Resource Management Plan, pages 2–26 and 2–27 and the Record of Decision, October 5, 1998, pages 19 and 20.

The Environmental Protection Agency (EPA) and the BLM published the Notice of Availability of the Draft Environmental Impact Statement concurrently in the **Federal Register** (77 FR 2979 and 77 FR 2999) on January 20, 2012, starting a 60-day comment period on the Draft EIS.

The EPA published the Notice of Availability of the Final Environmental Impact Statement in the **Federal Register** (77 FR 74479) on December 14, 2012 and the BLM notice (77 FR 74865) was published on December 18, 2012. Printed and electronic copies of the Draft EIS and Final EIS are available at the Southern Nevada District Office and posted on the Internet at *http://www.blm.gov/nv/st/en/fo/lvfo/blm_programs/energy/searchlight_wind_energy.html*. Three alternatives were analyzed in the EIS—a 96 wind turbine layout, an 87 wind turbine layout, and a no-action alternative. The 87 wind turbine alternative is the BLM's preferred alternative. The BLM received 6 comment submissions during the 30-day availability period following the release of the Final EIS. In response to those comments, the BLM incorporated 7 additional mitigation measures and made minor editorial changes to clarify language in the ROD.

The ROD approves, with all mitigation measures identified in the Final EIS and additional mitigation measures identified in the ROD, the 87 wind turbine alternative, including associated infrastructure, and the switching station proposed by Western.

Because this decision is approved by the Secretary of the Interior, it is not subject to administrative appeal (43 CFR 4.410(a)(3)).

**Authority:** 40 CFR 1506.6 and 40 CFR 1506.10.

**Jamie Connell,**

*Acting Deputy Director for Operations Bureau of Land Management.*

[FR Doc. 2013–06673 Filed 3–21–13; 8:45 am]

**BILLING CODE 4310–HC–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CACA 048728, LLCAD06000, L51010000.LVRWB09B2510.FX0000]**

### Notice of Availability of the Record of Decision for the McCoy Solar Energy Project, Riverside County, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) to grant a Right-of-Way (ROW) and amend the California Desert Conservation Area Plan (CDCA Plan) for the McCoy Solar Energy Project (MSEP), a photovoltaic solar electricity generation project. The Secretary of the Interior approved the ROD on March 13, 2013, which constitutes the final decision of the Department.

**ADDRESSES:** Copies of the ROD/Approved Amendment to the CDCA Plan are available upon request from the Field Manager, Palm Springs/South Coast Field Office 1201 Bird Center Drive, Palm Springs, CA 92262, and the California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553–9046, or via the Internet at the following Web site: *http://www.blm.gov/ca/st/en/fo/palmsprings/Solar_Projects/McCoy.html*.

**FOR FURTHER INFORMATION CONTACT:** Jeffery Childers; telephone, 951–697–5308; mail, BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553–9046; or email *jchilders@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** McCoy Solar, LLC, filed a ROW application for the MSEP. The project as originally proposed would have consisted of an up to 750-megawatt photovoltaic solar energy generation facility and necessary ancillary facilities. The proposed project included a 4,437-acre solar plant site and a 14.5-mile generation tie line (Eastern Route), access roads, a distribution line, and a 2-acre switch yard (total linear disturbance is 146 acres, for a total project area of 4,583 acres) to be located adjacent to and connect into Southern California Edison's Colorado River Substation. The proposed project would require approximately 477 acres of private lands. The project site is 13 miles northwest of Blythe, California and 32 miles east of Desert Center.

The Preferred Alternative identified in the Final Environmental Impact Statement (EIS) is the proposed 4,437-acre solar plant site, a reconfigured 12.5-mile gen-tie and access road (Central Route), and the switch yard interconnection (total linear disturbance of 136 acres) to the Colorado River Substation.

The project site is in the California Desert District within the planning boundary of the CDCA Plan, which is the applicable resource management plan (RMP) for the project site and surrounding areas. The CDCA Plan, while recognizing the potential compatibility of solar energy generation facilities with other uses on public lands, requires that all sites associated with power generation or transmission not already identified in the Plan be considered through the BLM's land use plan amendment process. As a result, prior to approval of a ROW grant for the MSEP, the BLM must amend the CDCA Plan to allow the solar energy generating project on that site. The approved Amendment to the CDCA Plan specifically revises the CDCA Plan to allow for the development of the MSEP and ancillary facilities on land managed by the BLM. With respect to the plan amendment, the publication of the Notice of Availability of the Proposed Plan Amendment/Final EIS for the MSEP on December 21, 2012, initiated a 30-day protest period for the proposed amendment to the CDCA Plan which concluded on January 22, 2013. The BLM received two timely and complete written protests which were resolved prior to the execution of the ROD. Their resolution is summarized in the Director's Protest Summary Report attached to the ROD. The proposed amendment to the CDCA Plan was not modified as a result of the protests received or their resolution. Simultaneously with the protest period, the Governor of California conducted an expedited 30-day consistency review of the proposed CDCA Plan amendment to identify any inconsistencies with State or local plans, policies or programs; no inconsistencies were identified by the Governor's Office.

Because this decision is approved by the Secretary of the Interior, it is not subject to administrative appeal (43 CFR 4.410(a)(3)).

**Authority:** 40 CFR 1506.6.

**Jamie Connell,**

*Acting Deputy Director, Bureau of Land Management.*

[FR Doc. 2013–06670 Filed 3–21–13; 8:45 am]

**BILLING CODE 4310–40–P**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NRNHL–12533; PPWOCRADI0, PCU00RP14.R50000]**

## National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 2, 2013. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 8, 2013. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 8, 2013.

**J. Paul Loether,**

*Chief, National Register of Historic Places/National Historic Landmarks Program.*

**CALIFORNIA**

**Los Angeles County**

Southern California Sanitarium Historic District, 2900 E. Del Mar Blvd., Pasadena, 13000160

**Orange County**

Huntington Beach Public Library on Triangle Park, 525 Main St., Huntington Beach, 13000157

**Santa Clara County**

Rhoades Ranch, 2290–A Chochrane Rd., Morgan Hill, 13000158

**COLORADO**

**Larimer County**

Bingham Homestead Rural Historic Landscape, 4916 Bingham Hill Rd. (County Rd 50E), Bellvue, 13000161

**CONNECTICUT**

**Litchfield County**

Lakeville Manor, 12 Elm St.; 33 Sharon Rd., Lakeville, 13000159

**Windham County**

Temple Beth Israel, 39 Killingly Dr., Danielson, 13000162

**FLORIDA**

**De Soto County**

Johnson—Smith House, 1519 N. Arcadia Ave., Arcadia, 13000163

*Pinellas County*

Henry, James, House, 950 12th St., N., St. Petersburg, 13000164

**KANSAS**

**Douglas County**

Kibbee Farmstead, (Agriculture-Related Resources of Kansas MPS) 1500 Haskell Ave., Lawrence, 13000165

University of Kansas Historic District, Roughly bounded by W Campus Rd., S edge of Jayhawk Blvd., Sunnyside Ave., Lilac Ln., Oread Ave., and W. 13th St., Lawrence, 13000167

**Wyandotte County**

Welborn Community Congregational Church, 5217 Leavenworth Rd., Kansas City, 13000166

**MAINE**

**Penobscot County**

Phi Gamma Delta House, 79 College Ave., Orono, 13000169

**York County**

Saco Central Fire Station, 14 Thorton Ave., Saco, 13000168

**MASSACHUSETTS**

**Hampshire County**

Center Cemetery, 178 College Hwy (Rte 10), Southhampton, 13000170

**MISSOURI**

**Boone County**

Frederick Apartments, 1001 University Ave., Columbia, 13000172

**Newton County**

Neosho Wholesale Grocery Company, 224 N. Washington St., Neosho, 13000171

**OHIO**

**Meigs County**

Buffington Island Battlefield (Boundary Increase), Roughly bounded by E. bank of Ohio R., Dry Run Creek, a ridgeline, and Laucks Run, Portland, 13000173

**RHODE ISLAND**

**Washington County**

Anthony—Kinney Farm, 505 Point Judith Rd., Narragansett, 13000178

**TEXAS**

**Camp County**

Pittsburg Commercial Historic District, Along Marshall, Quitman, Jefferson, Church, and College Sts., roughly from Cypress St. to North St., Pittsburg, 13000175

**Colorado County**

Spanish Trail (Old) from US 90 to I–10, Cty. Rd. 268 bet US 90 and N. access road of I–1O, Columbus, 13000176

**La Salle County**

Cotulla Downtoun Historic District, Roughly bounded by Kerr, Tilden, Market and Carrizon Sts., Cotulla, 13000177

**WEST VIRGINIA**

**Jackson County**

Buffington Island Battlefield (Boundary Increase), Roughly bounded by Ohio River, Dry Run Creek, a ridgeline and Laucks Run, Portland, 13000174

[FR Doc. 2013–06569 Filed 3–21–13; 8:45 am]

**BILLING CODE 4312–51–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Revised Second Agreement and Order Regarding Modification of the Consent Decree Under the Clean Water Act

On March 18, 2013, the Department of Justice lodged a proposed Revised Second Agreement and Order Regarding Modification of the Consent Decree (''Revised Second Consent Decree Modification'') with the United States District Court for the Middle District of Louisiana in the lawsuit entitled *United States and the State of Louisiana* v. *City of Baton Rouge and Parish of East Baton Rouge,* Civil Action No. No. 3:01–cv–00978–BAJ–SCR.

This action was originally filed in 2001 by the United States and the State of Louisiana under Clean Water Act (''CWA'') Section 301, 33 U.S.C. 1311, seeking civil penalties and injunctive relief for violations related to the publically owned treatment works owned and operated by the City of Baton Rouge and the Parish of East Baton Rouge (collectively ''the City/Parish''). On March 14, 2002, the Court entered a Consent Decree resolving all claims in the Complaint (''the 2002 Consent Decree''). Among other requirements, the 2002 Consent Decree required the City/Parish to complete implementation by January 1, 2015 of a project to improve its sewage collection system including addressing Unauthorized Discharges such as sanitary sewer overflows. Under the proposed Revised Second Consent Decree Modification, the deadline would be extended to December 31, 2018 and the City/Parish would implement additional work including installation of a supervisory control and data acquisition system and installation of emergency generators at over 400 pump stations used in the sewage collection system.

The publication of this notice opens a period for public comment on the Revised Second Consent Decree Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *City of Baton Rouge,* D.J. Ref. No. 90–5–1–1–2769/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By e-mail | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

*During* the public comment period, the Revised Second Consent Decree Modification may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Revised Second Consent Decree Modification upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. Please enclose a check or money order for $7.00 (25 cents per page reproduction cost) payable to the United States Treasury.

**Maureen M. Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2013–06559 Filed 3–21–13; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Worker Profiling and Reemployment Services Activities and Worker Profiling and Reemployment Outcomes

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Worker Profiling and Reemployment Services Activities and Worker Profiling and Reemployment Outcomes,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

**DATES:** Submit comments on or before April 22, 2013.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** Reporting forms ETA–9048 and ETA–9049 are used to identify those claimants who are most likely to exhaust their Unemployment Insurance benefits and to provide reemployment services to expedite those beneficiaries return to suitable work. The ETA–9048 report provides a count of the claimants who were referred to Worker Profiling and Reemployment Services (WPRS) and a count of those who completed the services. The ETA–9049 report provides the subsequent collection of wage records, which is a useful management tool for monitoring the success of the WPRS program in the State. This ICR also covers preliminary activities when States collect information from program beneficiaries.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0353. The current approval is scheduled to expire on March 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 27, 2012 (77 FR 70833).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0353. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–ETA.

*Title of Collection:* Worker Profiling and Reemployment Services Activities and Worker Profiling and Reemployment Outcomes.

*OMB Control Number:* 1205–0353.

*Affected Public:* Individuals or Households and State, Local, and Tribal Governments.

*Total Estimated Number of Respondents:* 1,342,807.

*Total Estimated Number of Responses:* 2,685,932.

*Total Estimated Annual Burden Hours:* 2,819,995.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: March 18, 2013.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2013–06597 Filed 3–21–13; 8:45 am]

**BILLING CODE 4510–FW–P**

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Bureau of International Labor Affairs; National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements

**ACTION:** Notice of Charter Renewal.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), the North American Agreement on Labor Cooperation (NAALC), and the Labor Chapters of U.S. Free Trade Agreements (FTAs), the Secretary of Labor has determined that the renewal of the charter of the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements (NAC) is necessary and in the public interest and will provide information that cannot be obtained from other sources. The committee shall provide its views to the Secretary of Labor through the Bureau of International Labor Affairs of the U.S. Department of Labor, which is the point of contact for the NAALC and the Labor Chapters of U.S. FTAs. The committee shall comprise twelve members, four representing the labor community, four representing the business community, and four representing the public.

*Purpose:* In accordance with the provisions of the FACA, Article 17 of the NAALC, Article 17.4 of the United States-Singapore Free Trade Agreement, Article 18.4 of the United States-Chile Free Trade Agreement, Article 18.4 of the United States-Australia Free Trade Agreement, Article 16.4 of the United States-Morocco Free Trade Agreement, Article 16.4 of the Central America-Dominican Republic-United States Free Trade Agreement (CAFTA–DR), Article 15.4 of the United States-Bahrain Free Trade Agreement, Article 16.4 of the United States-Oman Free Trade Agreement, Article 17.5 of the United States-Peru Trade Promotion Agreement, Article 17.5 of the United States-Colombia Trade Promotion Agreement, Article 19.5 of the United States-Korea Free Trade Agreement, and Article 16.5 of the United States-Panama Trade Promotion Agreement, the Secretary of Labor has determined that the renewal of the charter of the NAC is necessary and in the public interest and will provide information that cannot be obtained from other sources.

The Bureau of International Labor Affairs of the U.S. Department of Labor serves as the U.S. point of contact under the FTAs listed above. The committee shall provide its advice to the Secretary of Labor through the Bureau of International Labor Affairs concerning the implementation of the NAALC and the Labor Chapters of U.S. FTAs. The committee may be asked to provide advice on the implementation of labor provisions of other FTAs to which the United States may be a party or become a party. The committee should provide advice on issues within the scope of the NAALC and the Labor Chapters of the FTAs, including cooperative activities and the labor cooperation mechanism of each FTA as established in the Labor Chapters and the corresponding annexes. The committee may be asked to provide advice on these and other matters as they arise in the course of administering the labor provisions of other FTAs.

The committee shall comprise 12 members, four representing the labor community, four representing the business community, and four representing the public. Unless already employees of the United States Government, no members of the

committee shall be deemed to be employees of the United States Government for any purpose by virtue of their participation on the committee. Members of the committee will not be compensated for their services or reimbursed for travel expenses.

**Authority:** The authority for this notice is granted by the FACA (5 U.S.C. App. 2) and the Secretary of Labor's Order No. 18–2006 (71 FR 77560 (12/26/2006)).

**FOR FURTHER INFORMATION CONTACT:** Paula Church Albertson, Division Chief, Monitoring and Enforcement of Free Trade Agreements, Bureau of International Labor Affairs, U.S. Department of Labor, telephone (202) 693–4789.

Signed at Washington, DC, this *15th* day of *March* 2013.

**Carol Pier,**

*Acting Deputy Undersecretary, Bureau of International Labor Affairs.*

[FR Doc. 2013–06630 Filed 3–21–13; 8:45 am]

**BILLING CODE 4510–28–P**

## LIBRARY OF CONGRESS

### U.S. Copyright Office

**[Docket No. 2013–2]**

### Technological Upgrades to Registration and Recordation Functions

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of Inquiry.

**SUMMARY:** The United States Copyright Office (hereinafter Copyright Office or Office) is in the process of identifying and evaluating potential improvements and technical enhancements to the information technology platforms that support its registration and recordation functions, including its online registration system. These efforts are part of the Office's ongoing special projects, commenced October 25, 2011 (available at the Office's Web site at *www.copyright.gov/docs/priorities.pdf*). The information garnered through this process has and will continue to inform the development of the Copyright Office's long-term strategic plan, scheduled to commence in October 2013.

At this time, the Office seeks comments regarding existing capabilities and future possibilities. Broadly, the Office seeks comments on (1) how stakeholders use the current online offerings of the Copyright Office, especially with respect to registration and recorded documents, and how the current offerings meet, fail to meet, or exceed user expectations; and (2) how stakeholders would like to interact with the Copyright Office electronically in the future, or, put differently, what online services, or aspects of existing online services stakeholders would like to see. The Office appreciates the comments and suggestions of those who use the national registration and recordation systems to protect their intellectual property, as well as those who regularly use Copyright Office resources to identify copyright owners, investigate the copyright status of works and the public domain, and perform other research, including statistical analysis on aggregated data sets.

**DATES:** Comments on the Notice of Inquiry and Requests for Comments are due on or before May 21, 2013.

*Submission:* All comments shall be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/technical_upgrades.* The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, all comments must be uploaded in a single file in either the Portable Document File (PDF) format that contains searchable, *accessible* text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–8350 for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Douglas Ament, Director of Information Technology, Copyright, by email at *uscotechupgrades@loc.gov*; Christopher S. Reed, Senior Advisor for Policy & Special Projects, Office of the Register of Copyrights, by email at *creed@loc.gov*; or call the U.S. Copyright Office by phone at 202–707–8350.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In 2000, the Copyright Office initiated a comprehensive business process reengineering initiative intended to update the Office's technology platform and improve operational efficiency. With the assistance of outside consultants and business analysts, the Office identified opportunities for efficiency enhancements and process improvements. The most significant recommendation was to convert the existing paper-based copyright registration system to an electronic system, which included the development of related new business processes and the automated production of public copyright records.

Funding available for the reengineering effort was limited and decisions made by the Copyright Office and the greater Library were necessarily constrained. Ultimately the Office implemented a commercial off-the-shelf software package. The Office piloted the internal business process functions of the software with a subset of constituents in February 2005, followed by full implementation of the Copyright Office's electronic processing system in August 2007. The public-facing electronic registration system—the system that enables copyright registration applicants to submit materials online—was launched in July 2008. The Office implemented a significant upgrade to its software and hardware platforms in August 2010, and implemented periodic upgrades and enhancements to accommodate the needs of the system's stakeholders—namely those that submit materials for registration, those that search the Copyright Office database for copyright ownership information, and the Copyright Office's staff that process and examine copyright claims.

Today, more than eighty percent of the Office's applications for copyright registration come through the electronic system, demonstrating the copyright community's widespread interest in electronic registration functions. Although the current system, and the periodic upgrades and enhancements, have allowed the Office to maintain a functional electronic platform for many types of works, there is room for substantial improvement. Notably, the Office's recordation services were included in the initial reengineering plan, but were later dropped for budgetary reasons. Recordation processes are, thus, still paper-based and are a top concern of the Copyright Office. Thus, the Office's current systems represent the ''first generation'' of the Office's electronic processing capabilities.

### II. Discussion

In recent months, project leaders from the Copyright Office have engaged copyright owners, users of copyright records, technical experts, public interest organizations, and lawyers,

including through professional associations and small businesses to participate in a series of focused discussions on issues relating to the Office's platforms for registration, document recordation, and public access to copyright ownership information. Through these discussions, as well as through its own expert analysis, the Office has identified a number of areas in which the current electronic system could be improved. For example, numerous interested parties have observed that the current user interface for electronic registration is a challenge to navigate. Users have told the Office that it would be helpful to be able to customize the user interface and workflow in order to streamline the registration process to accommodate their own internal workflows. Moreover, users would like to exercise some degree of control over the nature and scope of information they view in a personalized registration system dashboard. The Copyright Office is aware of similar requests from its own staff, many of whom desire customizable workflows to enhance productivity and process efficiency, which would result in improved turnaround times for remitters.

At a global level, the Office is aware that as mobile technology becomes ubiquitous, an increasing number of stakeholders desire to use mobile devices to interact with the Office. To that end, the Office is evaluating the potential to deploy a mobile optimized web interface, ''apps'' that support popular mobile platforms, and the development of an application program interface (API) that can be utilized within third party applications.

The Office has also heard that many of its users would benefit from improved tracking capabilities. Remitters have indicated that the existing electronic registration process is cumbersome and are oftentimes uncertain of their progress within the application process; to improve that aspect of the system, they have suggested that the Office implement a visual representation of the registration workflow and the user's status within it (*e.g.,* a status bar).

Beyond improvements to the registration functions, the Office is aware of opportunities for improvement to its public record search capabilities. Stakeholders have indicated that the Office's search function should be more robust, allowing for more search criteria, refining the display of the search results, adding filters, and generally making the search functionality more user-friendly. Representatives from interested parties also suggested the Copyright Office make it easier to provide updates to the public record to ensure the data maintained is accurate and up to date (*e.g.,* address changes). The Office is thus investigating methods of secure and effective data sharing between interested parties and the Copyright Office in order to determine if such functionality can be implemented in a manner that ensures integrity of the Office's records.

The Office is also aware of the need for long-term, scalable data storage and archiving capability to accommodate the growing volume of digital works that the Office receives. The Office has received recommendations to centralize the various information clusters internally within the Copyright Office to a central data repository and establish a central data warehouse. Implementing such a warehouse presents a series of challenges that the Office seeks to learn more about, including determining scalable infrastructure solutions to accommodate vast amounts of data, analyzing data standards needed to establish a central data model, and evaluating potential data archival strategies.

One recommendation that the Office frequently hears, and one that underlies many of the areas of improvement noted above, is the need for bulk data transfer between the Office and interested outside parties. Such transfer mechanisms would allow more widespread distribution of the Office's records, as well as permit remitters to submit large quantities of electronic material and associated application data to the Office. Such ''system-to-system'' or ''business-to-business'' capabilities are a central area of inquiry for the Office. Interested parties have suggested that the Office expose data portals enabled to facilitate data exchange over standards-based protocols such as ebMS, SOAP, and AS4.

In support of potential bulk data transfer capabilities, the Office is investigating specific data exchange standards, including those that already exist as well as the potential for developing a new standard based upon the needs of the Office's constituents. Interested parties have told the Office that it should continue to take an active role and adopt existing standards that support data exchange between the Office and its stakeholders. This includes defining or adopting metadata standards that support particular industries (*e.g.,* IPTC for photography; ISRC for sound recordings; ONIX for books). Further, standards such as CISAC's Common Works Registration (CWR) and DDEX digital supply chain standards should be considered to help develop the Office's ability to provide better business-to-business data transfers. Interested parties have suggested that the Copyright Office publish a recognized list of data standards so that users are able to establish systems that support more efficient interactions with the Copyright Office.

## III. Subjects of Inquiry

The Copyright Office is currently evaluating what the ''next generation'' of its electronic services should look like. Through a comprehensive evaluation of its current technical processing capabilities, and extensive interaction with stakeholders, the Office hopes to develop a complete picture of how the Office currently supports the needs of the copyright community, and where its systems and services could be improved. The Office hopes to achieve a greater understanding of current technical challenges facing the copyright community as well as gain a comprehensive understanding of how the community hopes to conduct business with the Copyright Office in the future. This evaluation process, which is tied to special projects detailed in *Priorities and Special Projects of the U.S. Copyright Office* released by the Register of Copyrights in October 2011, is intended to inform the development of the Office's next five-year strategic plan that will commence in October 2013 and guide, among other things, the technological evolution of the Copyright Office. That plan will, in turn, inform the Library of Congress's overarching strategic plan.

Because the Office's evaluation of its technology platform is intended to be a wide-ranging review of existing capabilities and future possibilities, the Office seeks comments that present conceptual frameworks with concrete examples of future potential applications or services. Broadly, the Office seeks comments on (1) how stakeholders use the current online offerings of the Copyright Office, especially with respect to registration and recorded documents, and how the current offerings meet, fail to meet, or exceed user expectations; and (2) how stakeholders would like to interact with the Copyright Office electronically in the future, or, put differently, what online services, or aspects of existing online services stakeholders would like to see.

Although the Office welcomes comments on the wide range of topics germane to this inquiry, it is particularly interested in comments that address: (1) The nature and capabilities of the Copyright Office's public portals (*e.g.,*

for electronic registration services), including interface-based portals as well as business-to-business portals, or access to Copyright Office services or data through application program interfaces; (2) the nature and scope of information captured during the course of the registration and recordation processes, including that which could be captured through user input, or through metadata harvesting; (3) metadata standards in particular industries that the Copyright Office might adopt or incorporate into its systems (*e.g.,* IPTC for photography; ISRC for sound recordings; ONIX for books); (4) data storage and security standards for electronic copyright deposits, including the development of policies and best practices for data retention and migration; (5) new ways of searching and accessing registration and recordation data and/or registration deposit metadata (*e.g.,* image or music search technology); and (6) the integration of third-party databases of copyright ownership and licensing information (such as those maintained by collective management organizations) and related technologies with data maintained by the Copyright Office.

Dated: March 18, 2013.

**Maria A. Pallante,**

*Register of Copyrights, U.S. Copyright Office.*

[FR Doc. 2013–06633 Filed 3–21–13; 8:45 am]

**BILLING CODE 1410–30–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0020]**

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice; correction.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on February 5, 2013 (78 FR 8195), regarding the applications and amendments to facility operating licenses and combined licenses involving no significant hazards considerations. This action is necessary to correct an erroneous date.

**FOR FURTHER INFORMATION CONTACT:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3667; email: *Cindy.Bladey@nrc.gov.*

**Correction**

In the FR of February 5, 2013, in FR Doc. 2013–02352, on page 8202, first column, correct the fourth full paragraph to read:

*Date of initial notice in* ***Federal Register:*** September 4, 2012 (77 FR 53927).

Dated at Rockville, Maryland, this 18th day of March, 2013.

For the Nuclear Regulatory Commission.

**Cindy Bladey,**

*Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 2013–06545 Filed 3–21–13; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30427; File No. 812–14114]**

### Ivy Funds Variable Insurance Portfolios, et al.; Notice of Application

March 15, 2013 .

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

**APPLICANTS:** Ivy Funds Variable Insurance Portfolios (the ''Trust''), Waddell & Reed Investment Management Company (''WRIMCO''), and Waddell & Reed, Inc. (''W&R'').

**FILING DATES:** The application was filed on January 18, 2013.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 9, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 6300 Lamar Avenue, Overland Park, Kansas 66202–4200.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

**Applicants' Representations**

1. The Trust is a Delaware statutory trust registered under the Act as an open-end management investment company. WRIMCO, a Kansas corporation, is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'') and serves as investment adviser to the Trust. W&R is organized as a Delaware corporation, and is a registered broker–dealer under the Securities Exchange Act of 1934, as amended (''1934 Act''); W&R is the principal underwriter of the Trust.

2. Applicants request the exemption to the extent necessary to permit any existing or future series of the Trust and any other registered open-end management investment company or series thereof that (i) is advised by WRIMCO or any person controlling, controlled by or under common control with WRIMCO (any such adviser or WRIMCO, an ''Adviser''),[1] (ii) is in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Trust and invests in other registered open-end management investment companies in that same group (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iii) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each a ''Fund of Funds''), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial

[1] Any other Adviser also will be registered under the Advisers Act.

instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[2] Applicants also request that the order exempt W&R and any entity, including any entity controlled by or under common control with an Adviser, that in the future acts as principal underwriter, or broker or dealer (if registered under the 1934 Act) with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, the Trust's board of trustees will review the advisory fees charged by the Fund of Funds' Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

**Applicants' Legal Analysis**

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the 1934 Act, or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that each Funds of Funds will comply with rule 12d1–2 under the Act, except to the extent it may invest a portion of its assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

**Applicants' Condition**

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06639 Filed 3–21–13; 8:45 am]

BILLING CODE 8011–01–P

[2] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69162; File No. SR–Phlx–2013–34]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Mini Options

March 18, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange proposes to address the manner in which options contracts overlying 10 shares of a security (''Mini Options'') will trade as a Complex Order.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to provide for the manner in which Mini Options will trade as a Complex Order pursuant to Exchange Rule 1080. The Exchange previously filed to list and trade Mini Options.[4] Exchange Rule 1080 entitled ''Phlx XL and Phlx XL II'' describes the manner in which Complex Orders,[5] trade on the Exchange. The Exchange will describe below the manner in which Rule 1080 operates with respect to Mini Options.

With respect to Complex Orders, the Exchange states in Rule 1080 that Complex Orders involve the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced as a net debit or credit based on relative prices of the individual components. The Exchange would permit Mini Options to trade as Complex Orders provided that the order involves the simultaneous purchase and/or sale of two or more different Mini Options series in the same underlying security, priced as a net debit or credit based on relative prices of the individual components and Mini Options are only part of a Complex Order strategy that includes other Mini Options. For example, a Complex Order strategy cannot be comprised of standard options in AAPL and Mini Options in AAPL7. Also, with respect to Complex Orders, the Exchange will not permit Mini Options to trade as a stock-option order. The Exchange proposes to add rule text with respect to Mini Options trading as Complex Orders to Commentary .08 of Rule 1080.

The Exchange proposes to commence trading Mini Options on March 22, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities and Exchange Act of 1934 (''Exchange Act''),[6] in general, and with Section 6(b)(5) of the Exchange Act,[7] 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 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, the Exchange believes that investors and other market participants would benefit from the current rule proposal because it would allow market participants to take advantage of legitimate investment strategies and execute Complex Orders in Mini Options. Additionally, the Exchange believes the proposed rule change will avoid investor confusion by providing how Mini Options will trade the same or different as compared to standard options with respect to Complex Orders.

The Exchange's proposal to permit Mini Options to trade as Complex Orders provided the strategy does not combine Mini Options and standard options serves to maintain the permissible ratios that are applicable to Complex Orders by separating the trading of standard Complex Orders and Mini Options Complex Orders. Also, the Exchange has determined to not permit Mini Option Complex Orders to trade as a stock-option order because as Mini Options are a new product, the Exchange would like to consider the impact in this area and file to amend the rule at a later date.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. All members may transact Complex Orders on Phlx. The rule change does not permit unfair discrimination and does not impose a burden on Members with respect to trading Mini Options.

### *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)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) of the Act[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii) of the Act,[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In November 2012, the Exchange filed a proposed rule change to amend its rules to list and trade certain mini-options contracts on the Exchange, and represented in that filing that the Exchange's rules that apply to the trading of standard options contracts would apply to mini-options contracts.[12] The Exchange has represented that it intends to launch trading in mini-options contracts on March 22, 2013. The Exchange believes that waiver of the 30-day operative

[4] *See* Securities Exchange Act Release No. 68132 (November 1, 2012), 77 FR 66904 (November 7, 2012) (SR–Phlx–2012–126). The Exchange amended amend Rules 1001 (Position Limits), 1012 (Series of Options Open for Trading) and 1033 (Bids and Offers—Premium) to list and trade Mini Options overlying five (5) high-priced securities for which the standard contract overlying the same security exhibits significant liquidity. Specifically, the Exchange filed to list Mini Options on SPDR S&P 500 (''SPY''), Apple, Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG'') and Amazon.com Inc. (''AMZN''). The Exchange filed a separate proposal to specify the application of Mini Options to Qualified Contingent Cross and PIXL transactions. *See* SR–Phlx–2013–32 (not yet published).

[5] *See* Commentary .08 to Exchange Rule 1080.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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 the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 68132 (November 1, 2012), 77 FR 66904 (November 7, 2012) (SR–Phlx–2012–126).

delay is consistent with the protection of investors and the public interest because such waiver would minimize confusion among market participants about how complex orders and stock-options orders involving mini-options contracts will trade.[13]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange to implement the proposed rule change prior to its launch of mini-options contracts trading on March 22, 2013, thereby mitigating potential investor confusion as to how complex orders and stock options orders involving mini-options contracts will trade. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–34 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–34, and should be submitted on or before April 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06608 Filed 3–21–13; 8:45 am]

**BILLING CODE 8011–01–P**

[13] *See id.*

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69164; File No. SR–ISE–2013–07]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change To Amend International Securities Exchange, LLC Amended and Restated Constitution

March 18, 2013.

## I. Introduction

On January 13, 2013, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Amended and Restated Constitution[3] (the ''ISE Constitution'') to declassify the Non-Industry Directors of the board of directors, change the term of the Non-Industry Directors and the Former Employee Director to a one-year term, and eliminate the three-term limit for the Former Employee Director. The proposed rule change was published for comment in the **Federal Register** on February 1, 2013.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

As described more fully in the Notice, the Exchange's proposal would amend the ISE Constitution to: (i) Declassify the Non-Industry Directors (including the Public Directors) of the Board; (ii) change the term of the Non-Industry Directors (including the Public Directors) and the Former Employee Director to a one-year term, subject to re-election; and (iii) eliminate the three-term limit for the Former Employee Director.

Currently, Section 3.2(c) of the ISE Constitution requires, in part, that both Non-Industry Directors (including the Public Directors)[5] and Exchange Directors[6] be classified into two classes designated as Class I and Class II directors, and that all Directors (including the Former Employee Director)[7] serve two-year terms, subject to re-election.

ISE has proposed to amend Section 3.2(c) of the ISE Constitution to: (i) Remove any reference to Class I directors or Class II directors for Non-Industry Directors (including Public Directors); and (ii) state that the Non-Industry Directors (including the Public Directors) would hold office for a one-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amended and Restated Constitution of International Securities Exchange, LLC (last amended December 28, 2007).

[4] *See* Securities Exchange Act Release No. 68740 (January 28, 2013), 78 FR 7470 (''Notice'').

[5] Section 3.2(b)(iv) of the ISE Constitution requires that the Board be composed of eight Non-Industry Directors (at least two of which are Public Directors) elected by the Sole LLC Member.

[6] Section 3.2(b)(i)–(iii) of the ISE Constitution requires that the Board be composed of six Exchange Directors elected by the holders of Exchange Rights.

[7] Section 3.2(b)(vi) of the ISE Constitution allows the Sole LLC Member, in its sole and absolute discretion, elect one additional director who shall meet the requirements of ''Non- Industry Directors,'' except that such person was employed by the Exchange at any time during the three-year period prior to his or her initial election.

year term, subject to annual re-election for additional terms. In the Notice, ISE noted that the rule change would not affect the manner of election of Non-Industry Directors (including the Public Directors), who would continue to be elected by the Sole LLC Member at each annual meeting of the Sole LLC Member and the holders of Exchange Rights in accordance with Section 3.2 of the ISE Constitution.

Similarly, ISE has proposed to modify the term of the Former Employee Director so that any such director shall hold office for a one-year term, subject to re-election, and to make conforming technical changes to the applicable parts of Section 3.2(c).

Finally, the proposal would eliminate the three-term limit for the Former Employee Director.[8] In the Notice, ISE observed that, with these modifications, the Former Employee Director would qualify to become a Non-Industry Director after serving on the Board of Directors for three years as he or she would no longer have been employed by the Exchange in the previous three-year period after his or her initial election. As such, according to ISE, there would no longer be a need for the three-term limit.

According to ISE, the declassification of the Non-Industry Directors, and the institution of a one-year term for Non-Industry Directors and the Former Employee Director, subject to re-election, would allow the Exchange to align its Board structure in accordance with corporate governance best practices guidelines that advocate the repeal of classified or staggered boards and the institution of annual elections of directors. The best practices cited by ISE include, but are not limited to, the Institutional Shareholder Services Proxy Voting Guidelines, the CalPERS Core Principles of Accountable Corporate Governance, the TIAA–CREF Policy Statement on Corporate Governance, and the AFI–CIO Proxy Voting Guidelines. Although ISE has only one shareholder, as opposed to many shareholders in a public company, the Exchange nonetheless stated its belief that adherence to the aforementioned corporate governance best practices guidelines would be beneficial to the Exchange in that they would provide for flexibility, transparency, and accountability for the sole shareholder and, ultimately, for the members of the Exchange and the customers of the Exchange members. According to ISE, the proposed modifications to the ISE Constitution would provide ISE with the most flexibility to structure the board of directors in a way that is most effective for: (i) Attracting and keeping Non-Industry Directors and the Former Employee Director who provide valuable insight and knowledge to the Board; (ii) providing the Sole LLC Member with the ability to evaluate and hold accountable Non-Industry Directors and the Former Employee Director on an annual basis; and (iii) removing an underperforming, inactive, or ineffective Non-Industry Director or Former Employee Director who may be detrimental to the enhancement of long-term corporate value.

In the Notice, ISE noted, however, that it was not proposing any changes to the current requirements in the ISE Constitution that specify that Exchange Directors serve two-year terms in a classified manner. The Exchange stated its belief that the current structure continues to be an effective and practical mechanism for ensuring continuity and fair representation of the Exchange's membership on the Board. ISE further noted that Exchange Directors represent the membership of the Exchange on the Board of Directors. Due to the connection between the Exchange's business and each Exchange Director's underlying business, ISE also stated that it believes that Exchange Directors provide a very different perspective from the Non-Industry Directors and the Former Employee Director. Specifically, according to ISE, Exchange Directors not only have an interest in seeing certain Exchange initiatives through to implementation, but are uniquely positioned to offer valuable feedback on such initiatives directly to the Board of Directors. Given the regulatory nature of the Exchange's business and the extended period of time necessary to see initiatives through to implementation, the Exchange stated that a term longer than one year is necessary for Exchange Directors to achieve the full benefit of participation of the Board. The Exchange also noted that the classified structure of the Exchange Directors allows for a more consistent representation of the Exchange's membership on the Board of Directors. By never having a whole slate of new Exchange Directors join the Board at the same time, the Exchange stated its belief that the classified structure allows incumbent Exchange Directors to provide leadership and continuity to new Exchange Directors and the Board of Directors, as a whole.

As to implementation, under the Exchange's proposal, the declassification changes to the Board of Directors would be implemented through a process in which each current Non-Industry Director (including the Public Directors) will serve out the remainder of his or her two-year term, and any subsequent election or re-election of a Non-Industry Director (including any Public Director) vacancy will be for a one-year term. ISE noted that this process would result in all Non-Industry directors being declassified at the conclusion of the Exchange's 2014 annual meeting.

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[10] which requires, among other things, that an exchange be so organized and have the capacity to be able to carry out the purposes of the Act and (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Exchange Act) to enforce compliance by its members and persons associated with its members with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange and consistent with Section 6(b)(5) of the Act,[11] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

ISE has proposed, in part, to declassify the Non-Industry Directors (including the Public Directors) of the ISE board. The Commission finds the declassification of the Non-Industry Director members (including the Public Directors) of the ISE board in the manner proposed to be consistent with other self-regulatory organization

[8] Section 3.2(e)(iv) of the Constitution provides that a Former Employee Director may not serve on the Board of Directors for more than three consecutive terms. Any such director may be eligible for election as a director following a two-year hiatus from service on the Board of Directors, provided, that he or she meets the director qualifications pursuant to Section 3.2(b).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(1).

[11] 15 U.S.C. 78f(b)(5).

governance structures that were approved by the Commission.[12]

Moreover, ISE has proposed, in part, to change the term of the Non-Industry Directors (including the Public Directors) and the Former Employee Director to a one-year term, subject to re-election. The Commission finds the one-year term for Non-Industry Directors (including the Public Directors) and for the Former Employee Director to be consistent with the Act.

The Commission notes that the elimination of the term limit for the Former Employee Director will have no practical effect on board composition at ISE. As proposed, an ISE director who serves as the Former Employee Director for three years will have been, by definition, a former employee of ISE for those three years, and could thereby meet the requirements to serve as a Non-Industry Director. The Commission finds the elimination of this term limit to be consistent with the Act.

Finally, the Commission notes that ISE will not be making any other changes to its governance structure other than those specifically described in this filing. Under the proposed rule change, the ISE Constitution would continue to provide that eight of the members of the Exchange's board of directors—out of a maximum total of 16 members—must be non-industry representatives. This proposed balance with respect to the composition of the Exchange's Board is consistent with other self-regulatory organization governance structures that were approved by the Commission,[13] and the Commission continues to believe that this board composition is consistent with the Act.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ISE–2013–07) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06609 Filed 3–21–13; 8:45 am]

**BILLING CODE 8011–01–P**

[12] *See* Securities Exchange Act Nos. 56955 (December 13, 2007); 72 FR 71979, 71981 fn. 33 (December 19, 2007) (File No. SR–ISE–2007–101) (approving declassification the board for ISE's parent, International Securities Exchange Holdings, Inc.); 51741 (May 25, 2005); 70 FR 31558 (June 1, 2005) (File No. SR–NASD–2005–054) (approving declassification of the board for NASD).

[13] *See, e.g.,* Securities Exchange Act Release No. 54494 (September 25, 2006), 71 FR 58023 (October 2, 2006) (File No. SR–CHX–2006–23). *See also* Securities Exchange Act Release No. 56211 (August 6, 2007); 72 FR 45287 (August 13, 2007) (File No. SR–ISE–2007–34).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69153; File No. SR–ISE–2013–23]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules Related to Mini Options Traded on the Exchange

March 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules related to Mini Options traded on the Exchange. The text of the proposed rule change is available on the Exchange's Web site *www.ise.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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

ISE proposes to amend its rules related to Mini Options traded on the Exchange. Mini Options overlie 10 equity or ETF shares, rather than the standard 100 shares.[3] Mini Options are currently approved on the following five (5) underlying securities: SPDR S&P 500 ETF (''SPY''), Apple Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG''), and Amazon.com, Inc. (''AMZN'').

The purpose of this proposed rule change is to adopt new Supplementary Material .13(d) to ISE Rule 504 to codify the minimum contract threshold requirement for the execution of Mini Options in the Exchange's Block Order Mechanism and Solicited Order Mechanism. The Block Order Mechanism is a process by which a Member can obtain liquidity for the execution of block-size orders.[4] Block-size orders are orders for fifty (50) or more contracts.[5] The Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent against contra orders that it solicited.[6] The minimum contract threshold required for the Block Order Mechanism and the Solicited Order Mechanism applies to option contracts that overlie 100 shares and therefore does not currently apply to Mini Options.

This proposed rule change also proposes to adopt a minimum contract threshold for the execution of a Qualified Contingent Cross Order in Mini Options. A Qualified Contingent Cross Order is an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order to buy or sell an equal number of contracts.[7] Again, the minimum contract threshold required for the execution of a Qualified Contingent Cross order applies to option contracts that overlie 100 shares and therefore does not currently apply to Mini Options.

[3] Mini Options were approved for trading on September 28, 2012. *See* Securities Exchange Act Release No. 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (Approving SR–ISE–2012–58). The Exchange expects to begin trading Mini Options on March 18, 2013.

[4] *See* ISE Rule 716(c).

[5] *See* ISE Rule 716(a).

[6] *See* ISE Rule 716(e).

[7] *See* ISE Rule 715(j).

The Exchange now proposes to adopt new Supplementary Material .13(d) to Rule 504 to adjust the minimum contract threshold for executing Mini Options in the Block Order Mechanism and Solicited Order Mechanism by ten times their current requirement. Thus, Mini Options executed in the Block Order Mechanism must be for five hundred (500) or more Mini Option contracts, and Mini Options executed in the Solicited Order Mechanism must be for five thousand (5,000) or more Mini Option contracts. Further, new Supplementary Material .13(d) to Rule 504 also adjusts the minimum contract threshold for the execution of Qualified Contingent Cross orders in Mini Options. Thus, a Qualified Contingent Cross order in Mini Options must be comprised of an order to buy or sell at least 10,000 Mini Option contracts coupled with a contra-side order to buy or sell an equal number of Mini Option contracts.

The Exchange believes it is appropriate to adjust the minimum contract threshold for Mini Options so they are equivalent (same number of underlying securities) to the minimum contract threshold required for standard options that are executed in the Block Order Mechanism and Solicited Order Mechanism and for the execution of Qualified Contingent Cross orders in Mini Options. The Exchange believes that adjusting the minimum contract threshold will remove any confusion on the part of market participants that want to use these Exchange functionalities to execute Mini Options.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is found in Section 6(b)(5), in that the proposed change is designed to promote just and equitable principles of trade, will serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change will assure that standard options and Mini Options on the same underlying security will have an equivalent minimum contract threshold for the execution of orders in the Exchange's Block Order Mechanism and Solicited Order Mechanism and for Qualified Contingent Cross orders executed on the Exchange. The Exchange believes the proposed rule change will also avoid investor confusion because in the absence of this proposal, the minimum contract threshold for executing Mini Options in the Block Order Mechanism and Solicited Order Mechanism and for executing Qualified Contingent Cross orders in Mini Options would have been different than that for standard options (*i.e.,* different number of underlying securities). The Exchange does not intend that Mini Options and standard options have different minimum contract threshold requirements for its auction mechanisms and for Qualified Contingent Cross orders executed on the Exchange. The Exchange further believes that investors and other market participants will benefit from this proposed rule change because it proposes to clarify and establish the minimum contract threshold for executing Mini Options in the Block Order Mechanism and Solicited Order Mechanism and for executing Qualified Contingent Cross orders in Mini Options prior to the commencement of trading. The Exchange believes that investors generally will be expecting the minimum contract threshold for Mini Options to be equivalent to the minimum contract threshold for standard options when it comes to executing trades in the Exchange's various auctions and in executing Qualified Contingent Cross orders in Mini Options on the same underlying security. This proposed rule change will therefore lessen investor confusion.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. ISE believes that the proposed rule change will in fact relieve any burden on, or otherwise promote, competition. Mini Options are currently approved for trading on multiple options exchanges and all of the options exchanges that have a minimum contract threshold in their rules will have the opportunity to amend their rules to adopt minimum contract thresholds for Mini Options that are equivalent to the minimum contract threshold for standard options.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may coincide with the anticipated launch of trading in Mini Options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[10] Waiver of the operative delay will allow the Exchange to implement its proposal consistent with the commencement of trading in Mini Options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2013–23 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2013–23 and should be submitted on or before April 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06568 Filed 3–21–13; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69160; File No. SR–BATS–2013–019]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend the Minimum Trading Increments for Mini Options

March 18, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal for the BATS Options Market (''BATS Options'') to permit the minimum trading increment for Mini Options to be the same as the minimum trading increment permitted for standard options on the same underlying security. The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to amend BATS Rules to permit the minimum trading increment for Mini Options to be the same as the minimum trading increment permitted for standard options on the same underlying security. Mini Options overlie 10 equity or ETF shares, rather than the standard 100 shares.[5] Mini Options are currently approved on the following five (5) underlying securities: SPDR S&P 500 ETF (''SPY''), Apple Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG''), and Amazon.com, Inc. (''AMZN''). Of the five securities on which Mini Options are permitted, four of them (SPY, AAPL, GLD, and AMZN) participate in the Penny Pilot Program.[6] Under the Penny Pilot Program, with the exception of three classes,[7] the minimum price variation for all participating options classes is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater.

[5] *See* Securities Exchange Act Release No. 69018 (March 1, 2013), 78 FR 15090 (March 8, 2013) (Notice of filing and immediate effectiveness allowing Mini Options to be listed and traded on BATS Options) (SR–BATS–2013–013). The Exchange expects to begin listing and trading Mini Options on March 18, 2013.

[6] The rules of BATS Options, including rules applicable to BATS Options' participation in the Penny Pilot, were approved on January 26, 2010. *See* Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031). BATS Options commenced operations on February 26, 2010. The Penny Pilot was extended for BATS Options through June 30, 2013. *See* Securities Exchange Act Release No. 67306 (December 21, 2012), 77 FR 77176 (December 31, 2012) (SR–BATS–2012–048).

[7] The three classes are the Nasdaq–100 Index Tracking Stock (''QQQQ''), SPY, and the iShares Russell 2000 Index Fund (''IWM''). QQQQ, SPY, and IWM are quoted in $0.01 for all options series.

Therefore, the minimum trading increment for AAPL, GLD, and AMZN is $0.01 for option series under $3 and $0.05 for options quoted at $3 or greater, while the minimum trading increment for SPY, which is not subject to a price test, is $0.01 across all option series. The Exchange notes that GOOG is not in the Penny Pilot Program and therefore, standard options in GOOG have a minimum increment of $0.05 and $0.10 per contract depending on the price at which the standard option on GOOG is quoted.

This proposed rule change will permit the minimum trading increment for Mini Options to be identical to the minimum trading increment applicable to standard options on the same underlying security. The Exchange believes having different trading increments for Mini Options than those permitted for standard options on the same underlying security would be detrimental to the success of this new product offering and would also lead to investor confusion. The Exchange notes that the Commission approved Mini Options on SPY, AAPL, GLD, GOOG, and AMZN because of their high price and current volume levels and because of the level of retail investor participation in trading options on these underlying securities. Mini Options are a natural extension to the options overlying these securities and therefore should retain the most important characteristic, i.e., trading increments. The Exchange believes that by reducing the minimum trading increments for Mini Options, the proposed rule change will provide market participants with meaningful trading opportunities in this product. Further, quoting and trading in smaller increments will enable market participants to trade Mini Options with greater precision as to price. Providing these more refined increments will permit the Exchange's market makers the opportunity to provide better fills (meaning less spread than the current wider minimum increments rules allow) to customers. Therefore, the Exchange proposes to amend its rules to permit the listing and trading of Mini Options in the same increment permitted for standard options on the same underlying security.

With this proposed rule change, although certain Mini Options would be trading in penny increments, they would not be considered part of the Penny Pilot Program.

The Exchange's proposal to quote and trade certain option classes that are outside of the Penny Pilot Program in $0.01 increments is not novel. Specifically, the Commission has approved proposals by International Securities Exchange LLC (''ISE'') and Chicago Board Options Exchange, Incorporated (''CBOE'') that allows the exchanges to permit the minimum trading increment for Mini Options to be the same as the minimum trading increment permitted for standard options on the same underlying security.[8] Similarly, the Commission has approved proposals by ISE and NASDAQ OMX PHLX, Inc. that permitted the exchanges to set the minimum increment for foreign currency options in $0.01 increments, regardless of the price at which the option is quoted.[9]

In support of this proposed rule change, the Exchange proposes to amend BATS Rule 19.6 Interpretation and Policy .07 by adding new paragraph (d) to the rule which provides that the minimum trading increment for Mini Options shall be the same as the minimum trading increment permitted for standard options on the same underlying security.

With regard to the impact of this proposal on system capacity, the Exchange represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with this proposal. The Exchange does not believe that this increased traffic will become unmanageable since Mini Options are limited to a fixed number of underlying securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(5) of the Act [11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

In particular, the Exchange believes that the proposed rule change will assure that standard options and Mini Options on the same underlying security will trade in similar increments and therefore provide market participants meaningful trading opportunities and enable them to trade Mini Options with greater precision as to price. The Exchange also believes that the proposed rule change will avoid investor confusion if both standard options and Mini Options on the same underlying security are permitted to trade in similar trading increments. The Exchange further believes that investors and other market participants will benefit from this proposed rule change because it proposes to clarify and establish the minimum trading increment for Mini Options prior to the commencement of trading. The Exchange believes that investors generally will be expecting the minimum trading increment for Mini Options to be the same as the minimum trading increment for standard options on the same underlying security. This proposed rule change will therefore lessen investor confusion because Mini Options and standard options on the same underlying security will have the same minimum trading increment.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to the CBOE and ISE filings. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to

[8] *See* Securities Exchange Act Release No. 69124 (March 12, 2013) (order approving proposal to permit the minimum trading increment for Mini Options to be the same as the minimum trading increment permitted for standard options on the same underlying security) (SR–CBOE–2013–016; SR–ISE–2013–08).

[9] *See* Securities Exchange Act Release Nos. 56933 (December 7, 2007), 72 FR 71185 (December 14, 2007) (SR–PHLX–2007–70) and 57019 (December 20, 2007), 72 FR 73937 (December 28, 2007) (SR–ISE–2007–120).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may coincide with the anticipated launch of trading in Mini Options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[14] Waiver of the operative delay will allow the Exchange to implement its proposal consistent with the commencement of trading in Mini Options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2013–019 *on the subject line.*

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2013–019. 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–BATS–2013–019 and should be submitted on or before April 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06629 Filed 3–21–13; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69163; File No. SR–ISE–2013–27]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Complex Orders and Mini Options

March 18, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding certain complex orders traded on the Exchange. The text of the proposed rule change is available on the Exchange's Web site *www.ise.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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

ISE recently amended its rules to allow for the listing of Mini Options on SPDR S&P 500 (''SPY''), Apple, Inc.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG'') and Amazon.com Inc. (''AMZN'').[3] Whereas standard options contracts represent a deliverable of 100 shares of an underlying security, Mini Options contracts represent a deliverable of 10 shares. Except for the difference in the number of deliverable shares, Mini Options have the same terms and contract characteristics as regular-sized equity and ETF options, including exercise style. Accordingly, the Exchange noted in its Mini Options filing that Exchange rules that apply to the trading of standard options contracts would apply to Mini Option contracts as well.[4]

Prior to the commencement of trading Mini Options, the Exchange proposes to amend Rule 722 (Complex Orders) and Rule 1900 (Definitions) to provide that Exchange rules regarding complex orders shall apply to Mini Options and that consequently, Members may execute complex and stock-option orders involving Mini Options provided that all options legs of such orders are Mini Options. Moreover, the Exchange seeks to amend these rules to provide that all permissible ratios referenced in the definitions of stock-option orders represent the total number of shares of the underlying stock in the option leg to the total number of shares of the underlying stock in the stock leg.

ISE Rule 722 governs Complex Orders on the Exchange and ISE Rule 1900 lists definitions applicable to intermarket linkage. Currently, stock-option orders are defined in Rule 722(a)(2) and Rule 1900(d)((ii)(A)–(B) as orders to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than 8 options contracts per unit of trading of the underlying stock or convertible security established for that series by the Clearing Corporation. Therefore, under this definition it would be permissible to execute, for example, a trade where the options leg consists of one (1) standard option contract (i.e., 100 shares) and the stock leg consists of 100 shares of the underlying stock. Additionally, it would be permissible to execute a trade where the options leg consists of eight (8) standard option contracts (i.e., 800 shares) and the stock leg consists of 100 shares of the underlying stock.

The Exchange notes that the abovementioned permissible ratios were established to ensure that only stock-option orders that seek to achieve legitimate investment strategies are afforded certain benefits. Particularly, since compliance with trade-through rules may impede a market participant's ability to achieve the legitimate investment strategies that stock-option orders facilitate, an exception from the prohibition on trade-throughs is provided for any transaction that was effected as a portion of a legitimate stock-option order. Requiring a meaningful relationship between the different legs of a stock-option order prevents market participants from taking advantage of these orders to circumvent the otherwise applicable trade-through rules (e.g., preventing the execution of a stock-option order where the option leg consists of 100 options (i.e., 10,000 shares) and the stock leg consists of only 100 shares).

Therefore, the Exchange proposes to amend the definition of stock-option orders in Rule 722(a)(2) and Rule 1900(d)(ii)(A)–(B). As discussed above, the stock-option order definition in both Rule 722 and Rule 1900 clearly permits that an options leg may be coupled with a stock leg representing the same number of units of the underlying stock (i.e., one-to-one ratio). The Exchange seeks to provide that Mini Options may also be coupled with a stock leg if the stock leg represents the same number of units of the underlying stock. For example, pursuant to the definition, it would be permissible to execute a trade where leg one consists of one (1) Mini Option contract (i.e., 10 shares) and leg two consists of 10 shares of the underlying stock.

Next, the Exchange seeks to amend the stock-option order definition in Rule 722 and Rule 1900 to provide that in addition to standard options, Mini Options may be coupled with a stock leg consisting of however many units of the underlying stock is necessary to create a delta neutral position, provided that the total number of shares of the underlying stock in the option leg to the total number of shares of the underlying stock in the stock leg does not exceed an eight-to-one ratio. The Exchange notes the definition of a stock-option order in Rule 722 and Rule 1900 was drafted at a time in which only option contracts with a deliverable of 100 shares was contemplated. Therefore, the rules do not address how the eight-to-one ratio would be scaled in the event an option with a non-standard deliverable becomes available for trading. The language of these rules needs to be amended so that it is clear how Rule 722 and Rule 1900 would apply to Mini Options, as well as standard options. Accordingly, the proposed change specifies that the permissible ratios should be calculated and scaled based upon the total number of *shares of the underlying stock* in the options leg to the total number of shares of the underlying stock in the stock leg, instead of by the total number of *option contracts* in the options leg to the total number of shares of the underlying stock in the stock leg. An example of a permitted stock-option order involving Mini Options would be an order in which leg one consists of eighty (80) Mini Options (i.e., 800 shares) and leg two consists of 100 shares of the underlying stock (i.e., eight-to-one ratio). Similarly, an order where leg one consists of eight (8) Mini Options (i.e., 80 shares) and leg two consists of 10 shares of the underlying stock would be permitted.

The proposed rule change provides that market participants may execute stock-option orders involving Mini Options. The proposed change also ensures that the principle behind the permissible ratios (i.e., to provide a meaningful relationship between the legs of complex and stock-option orders) is maintained for Mini Options. Finally, the Exchange notes that reference to the Clearing Corporation in Rule 722(a)(2) and Rule 1900(d)(ii)(A)–(B) is superfluous and unnecessary and therefore deleted. The Exchange also proposes to add Supplementary Material .06 to clarify that if any leg of a complex order or stock-option order is a Mini Option, all options legs of such order must also be Mini Options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[5] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions insecurities, to remove impediments to and to perfect the mechanism for a free and open

[3] Mini Options were approved for trading on September 28, 2012. *See* Securities Exchange Act Release No. 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (Approving SR–ISE–2012–58).

[4] *Id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that investors and other market participants would benefit from the current rule proposal because it would allow market participants to take advantage of legitimate investment strategies and execute stock-option orders in Mini Options. Additionally, the Exchange believes the proposed rule change will avoid investor confusion if both standard options and Mini Options on the same underlying security are permitted to trade as stock-option orders. Also, the proposal to maintain the permissible ratios that are applicable to standard options in proportion for Mini Options ensures that the principle behind the permissible ratios (i.e., to provide a meaningful relationship between the legs of stock-option orders) is maintained for Mini Options, which promotes just and equitable principles of trade. The Exchange believes that describing prior to the commencement of trading how the permissible ratios in the stock-option order rules will be scaled for Mini Options would lessen investor and marketplace confusion.

Finally, the Exchange believes that the proposed rule change is designed to not permit unfair discrimination among market participants as all market participants may participate in stock-option orders involving Mini Options.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, since Mini Options are permitted on multiply-listed classes, other exchanges that have received approval to trade Mini Options will have the opportunity to similarly amend their complex order rules to clarify and accommodate stock-option orders in Mini Option classes. Moreover, because all Members may participate in stock-options orders involving Mini Options, the rule change does not permit unfair discrimination and does not impose a burden on Members.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [7] of the Act and Rule 19b–4(f)(6) [8] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) of the Act [9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii) of the Act,[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In June 2012, the Exchange filed a proposed rule change to amend its rules to list and trade certain mini-options contracts on the Exchange, and represented in that filing that the Exchange's rules that apply to the trading of standard options contracts would apply to mini-options contracts.[11] The Exchange has represented that it intends to launch trading in mini-options contracts on March 18, 2013.[12] The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would minimize confusion among market participants about how complex orders and stock-options orders involving mini-options contracts will trade.[13]

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange to implement the proposed rule change contemporaneously with its launch of mini-options contracts trading on March 18, 2013, thereby mitigating potential investor confusion as to how complex orders and stock options orders involving mini-options contracts will trade. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2013–27 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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 the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *See* Securities Exchange Act Release No. 67284 (June 27, 2012), 77 FR 39545 (July 3, 2012). *See also supra* note 3.

[12] *See* SR–ISE–2013–27, Item 7.

[13] *See id.*

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2013–27, and should be submitted on or before April 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06631 Filed 3–21–13; 8:45 am]

**BILLING CODE 8011–01–P**

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69158; File No. SR–CBOE–2013–034]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Market-Maker Continuous Quoting Obligations

March 18, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

[The Exchange] [sic] proposes to delay the implementation date of changes to Market-Makers' continuous quoting obligations. There is no proposed rule language.

### 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

On July 5, 2012, the Exchange submitted a rule change filing, which became effective on that date, to amend Rule 1.1(ccc), ''Continuous Electronic Quotes,'' to reduce to 90% the percentage of time for which a Market-Maker is required to provide continuous electronic quotes in an appointed option class on a given trading day. That filing also included a proposed rule change to amend Rules 8.13, 8.15A, 8.85, and 8.93 to increase to the lesser of 99% or 100% minus one call-put pair the percentage of series in each class in which Preferred Market-Makers, Lead Market-Makers, Designated Primary Market-Makers, and Electronic Designated Primary Market-Makers, respectively (collectively, ''Market-Makers''), must provide continuous electronic quotes.[3] The proposed rule changes in that filing were set to become operative on August 4, 2012.

The Exchange submitted another rule change filing on August 3, 2012, which became effective and operative upon filing, to delay implementation of these quoting obligation changes to provide Market-Makers with additional time to make necessary system changes to comply with the new quoting obligations. The filing indicated that the Exchange would announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 90 days following the effective date of that rule change, which implementation date would be no later than 150 days following the effective date.[4]

Similarly, the Exchange submitted a rule change filing on November 1, 2012, which became effective and operative upon filing, to further delay implementation of these quoting obligation changes to provide Market-Makers with additional time to make necessary system changes to comply with the new quoting obligations. The filing indicated that the Exchange would announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 120 days following the effective date of that rule change, which implementation date would be no later than 180 days following the effective date.[5]

Since the filing of that last rule change to delay the implementation date of the changes to quoting obligations, the Exchange has filed two additional rule changes that modify the continuous quoting obligations of Market-Makers. First, the Exchange filed a rule change proposing to exclude series that have a time to expiration of nine months or more from Preferred Market Maker's continuous quoting obligation (LEAPS).[6] That rule change was effective on filing but has not yet been implemented by the Exchange. Second, the Exchange filed a rule change proposing to exclude intra-day add-on [sic] on the day during which such series are added for trading from Market-Makers' quoting obligations.[7] That rule change is pending approval by the Commission. Both of those rule filings provided that the Exchange will implement those rule changes in conjunction with the implementation of the rule changes in filing SR–CBOE–2012–064 and would announce an implementation date for all of the Market-Maker quoting obligation changes via Regulatory Circular.

The purpose of this rule change filing is to again delay implementation of the quoting obligation changes in filing SR–CBOE–2012–064 so that the Exchange

[3] Securities Exchange Act Release No. 34–67410 (July 11, 2012), 77 FR 42040 (July 17, 2012) (SR–CBOE–2012–064).

[4] Securities Exchange Act Release No. 34–67644 (August 13, 2012), 77 FR 49846 (August 17, 2012) (SR–CBOE–2012–077).

[5] Securities and Exchange Act Release No. 68218 (November 13, 2012), 77 FR 69667 (November 20, 2012) (SR–CBOE–2012–106).

[6] Securities and Exchange Act Release No. 68691 (January 18, 2013), 78 FR 5548 [sic] (January 25, 2013) (SRCBOE–2013–008).

[7] Securities and Exchange Act Release No 68944 (February 15, 2013), 78 FR 12377 (February 22, 2013) (SR–CBOE–2013–019).

may implement the changes in that filing at the same time as the changes in filings SR–CBOE–2013–008 and SR–CBOE–2013–01 [sic], which implementation date would be after receiving Commission approval of the rule change related to intra-day add-on series. The Exchange believes that implementing these various quoting obligations at the same time would benefit Market-Makers, because it would allow them to make all necessary adjustments to their systems at one time as opposed to continuously, which would otherwise occur with a piecemeal implementation of these rule changes.

The Exchange will announce the implementation date of the proposed rule change in rule filing SR–CBOE–2012–064 (and the other rule changes discussed above) in a Regulatory Circular to be published no later than 120 days following the effective date of this rule filing. The implementation date will be no later than 180 days following the effective date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] 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 delaying the implementation date of these changes to Market-Makers' continuous quoting obligations so that the Exchange may implement them at the same time as other changes to the quoting obligations will allow Market-Makers to adjust their systems at one time rather than multiple times to be consistent with the new quoting obligations. This will provide efficiencies that will benefit investors and the public interest and encourage more efficient order entry practices by Market-Makers. The Exchange believes that this will also promote compliance by Market-Makers with the new quoting obligations, which fosters cooperation between the Market-Makers and the Exchange, which monitors Market-Makers' compliance with quoting obligations. Additionally, the proposed rule change will allow the Exchange to announce an implementation schedule for all of the quoting obligations changes in a fair and orderly manner.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will cause any burden on intramarket competition because it applies to a group of similarly situated market participants—Market-Makers. The Exchange also does not believe the proposed rule change to delay implementation of the quoting obligation changes will cause any burden on intermarket competition, because the result of the proposed rule change is that Market-Makers will continue to be subject to the same continuous quoting obligations for an additional period of time.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

The Exchange has asked the Commission to waive the 30-day operative delay.[15] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposed rule change does not present any new, unique, or substantive issues, but rather is merely delaying the implementation date of an already effective rule change, and that waiver of the 30-day operative delay will allow the Exchange to announce an implementation schedule in an efficient manner. Accordingly, the Commission designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2013–034 on the subject line.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6)(iii). The Exchange has requested that the Commission waive the requirement that the Exchange provide the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change pursuant to Rule 19b–4(f)(6)(iii). The Commission hereby grants this request.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–034. 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–CBOE–2013–034 and should be submitted on or before April 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary*

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**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69159; File No. SR–Phlx–2013–30]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Minimum Price Variation for Mini Options To Be the Same as Permitted for Standard Options on the Same Security

March 18, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 14, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to change Rule 1012 (Series of Options Open for Trading) and Rule 1034 (Minimum Increments) to permit the minimum price variation for Mini Options contracts that deliver 10 shares to be the same as permitted for standard options that deliver 100 shares on the same security.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposal is to change Commentary .13 to Rule 1012 and Rule 1034 to permit the minimum price variation for Mini Options contracts that deliver 10 shares to be the same as permitted for standard options that deliver 100 shares on the same security.

This filing is based on a recent proposal of Chicago Board Options Exchange, Inc. (''CBOE''), with virtually identical rule text in CBOE Rules 6.42 and 5.5.[3]

The Exchange recently amended its rules to allow for the listing of Mini Options that deliver 10 physical shares on SPDR S&P 500 (''SPY''), Apple, Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG'') and Amazon.com Inc. (''AMZN'').[4] Mini Options trading is expected to commence in March 2013. Prior to the commencement of trading Mini Options, the Exchange proposes to establish and permit the minimum price variation for Mini Option contracts to be the same as permitted for standard options on the same security. In addition to giving market participants clarity as to the minimum pricing increments for Mini Options, the filing would harmonize penny pricing between Mini Options and standard options on the same security.

Of the five securities on which Mini Options are permitted, four of them (SPY, AAPL, GLD and AMZN) participate in the Penny Pilot Program.[5] Under the Penny Pilot Program:

• The minimum price variation for AAPL, GLD and AMZN options is $0.01 for all quotations in series that are quoted at less than $3 per contract and $0.05 for all quotations in series that are quoted at $3 per contract or greater; and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69124 (March 12, 2013) (SR–CBOE–2013–016; SR–ISE–2013–08) (approval order).

[4] *See* Securities Exchange Act Release No. 61832 (November 1, 2012), 77 FR 66904 (November 7, 2012) (SR–Phlx–2012–126) (notice of filing and immediate effectiveness establishing Mini Options).

[5] The Penny Pilot was established in January 2007 and was last extended in December 2012. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (approval order establishing Penny Pilot); and 68534 (December 21, 2012), 77 FR 77174 (December 31, 2012) (SR–Phlx–2012–143) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2013).

• The minimum price variation for SPY options is $0.01 for all quotations in all series.[6]

In the lead up to the launch of Mini Options trading on an industry-wide basis, firms with customer bases of potential product users have indicated a preference that premium pricing for Mini Options match what is currently permitted for standard options that deliver 100 physical shares on the same securities. The Exchange understands that firms' systems are configured using the ''root symbol'' of an underlying security and cannot differentiate, for purposes of minimum variation pricing, between contracts on the same security. Mini Options will be loaded into firms' systems using the same ''root symbol'' that is used for standard options on the same security. As a result, it is believed that existing systems will not be able to assign different minimum pricing variations to different contracts on the same security. As a result, firms have indicated their preference that there be matched pricing between Mini Options and standard options on the same security because their systems, which are programmed using ''root symbols,'' would not be able to assign different minimum pricing variations to Mini Options and standard options on the same security.

Because Mini Options are a separate class from standard options on the same security, Mini Options would have to qualify separately for entry into the Penny Pilot Program. This, however, is not possible by product launch (or possibly ever) for a number of reasons. First, there is a six calendar month trading volume criteria for entry into the Penny Pilot Program, which Mini Options cannot satisfy prior to launch. Second, even if Mini Options met the trading volume criteria, replacement classes are only added to the Penny Pilot Program on the second trading day following January 1 and July 1 in a given year. Finally, there is a price test for entry into the Penny Pilot Program which excludes ''high premium'' classes, which are defined as classes priced at $200 per share or higher at the time of selection. As of the date of this filing, three of the five securities (AAPL, AMZN and GOOG) eligible for Mini Options would be excluded as ''high premium'' classes, even though two of those securities (AAPL and AMZN) are in the Penny Pilot Program for standard options. The Exchange notes that GOOG is not in the Penny Pilot Program.[7]

The Exchange, therefore, is proposing to establish a pricing regime for Mini Options separate from the Penny Pilot Program that permits the minimum price variation for Mini Option contracts to be the same as permitted for standard options on the same security, which would encompass penny pricing for Mini Option contracts on securities that participate in the Penny Pilot Program.[8]

As to the Penny Pilot Program, the Exchange believes that there are several good reasons to allow penny pricing for Mini Options on securities that currently participate in the Penny Pilot Program, without requiring Mini Options to separately qualify for the Penny Pilot Program. First, the Penny Pilot Program applies to the most actively-traded, multiply-listed option classes. Likewise, the five securities which may underlie Mini Options were chosen because of the significant liquidity in standard options on the same security. The Exchange also believes that the marketplace and investors will be expecting the minimum price variation for contracts on the same security to be the same. Second, one of the primary goals of the Penny Pilot Program is to narrow the bid-ask spreads of exchange-traded options to reduce the cost of entering and exiting positions. This same goal can similarly be accomplished by permitting penny pricing for Mini Option contracts on securities that already participate in the Penny Pilot Program. Finally, the Exchange believes that penny pricing for Mini Options is desirable for a product that is geared toward retail investors. Mini Options are on high priced securities and are meant to be an investment tool with more affordable and realistic prices for the average retail investor. Penny pricing for Mini Options on securities that are currently in the Penny Pilot Program would benefit the anticipated users of Mini Options by providing more price points. The Exchange notes that it is not requesting penny pricing for all of the five securities eligible for Mini Options trading; but rather is seeking to permit matched penny pricing for Mini Options on those securities for which standard options already trade in pennies.

To effect the current proposed rule changes, the Exchange proposes to add new Commentary .13(d) to Rule 1012 and add new language to Rule 1034. As to Rule 1034, the Exchange proposes adding new subsection (a)(iv) that has an internal cross reference to new proposed subsection (d) of Commentary .13 as the provision that sets forth the minimum price variation for bids and offers for Mini Options. As to Commentary .13 to Rule 1012, the Exchange proposes adding new subsection (d), which would provide as follows:

> The minimum price variation for bids and offers for Mini Options shall be the same as permitted for standard options on the same security. For example, if a security participates in the Penny Pilot Program, Mini Options on the same underlying security may be quoted in the same minimum increments, e.g., $0.01 for all quotations in series that are quoted at less than $3 per contract and $0.05 for all quotations in series that are quoted at $3 per contract or greater, $0.01 for all SPY option series, and Mini Options do not separately need to qualify for the Penny Pilot Program.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with this proposal. The Exchange does not believe that this increased traffic will become unmanageable since Mini Options are limited to a fixed number of underlying securities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[9] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system,

[6] Phlx Rule 1034(a)(i)(B).

[7] The minimum price variation for standard options on GOOG is $0.05 for all quotations in series that are quoted at less than $3 per contract and $0.10 for all quotations in series that are quoted at $3 per contract or greater. *See* Rule 1034(a).

[8] As noted in the Exchange's original Mini Option filing, Mini Options are limited to five securities and any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission. The current proposal is limited to the five securities originally approved to underlie Mini Options. The Exchange anticipates that a similar minimum pricing variation regime would be included in any rule change to expand the Mini Option program. *See* Securities Exchange Act Release No. 68132 (November 1, 2012), 77 FR 66904 (November 7, 2012) (SR–Phlx–2012–126) (notice of filing and immediate effectiveness of proposed rule change establishing Mini Options on Phlx).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that investors and other market participants would benefit from the current rule proposal because it would clarify and establish the minimum price variation for Mini Options prior to the commencement of trading. The Exchange believes that the marketplace and investors will be expecting the minimum price variation for contracts on the same security to be the same. As a result, the Exchange believes that this change would lessen investor and marketplace confusion because Mini Options and standard options on the same security would have the same minimum price variation.

While price protection between Mini Options and standard options on the same security is not required, the Exchange believes that consistency between Mini Options and standard options as to the minimum price variation is desirable and is designed to promote just and equitable principles of trade. Matching the minimum price variation between Mini Options and standard options on the same security would help to eliminate any unnecessary arbitrage opportunities that could result from having contracts on the same underlying security traded in different minimum price increments. Similarly, matched minimum pricing would hopefully generate enhanced competition among liquidity providers. The Exchange believes that matched pricing for Mini Options and standard options on the same security would attract additional liquidity providers who would make markets in Mini Options and standard options on the same security. In addition to the possibility of more liquidity providers, the Exchange believes that the ability to quote Mini Options and standard options on the same security in the same minimum increments would hopefully result in more efficient pricing via arbitrage and possible price improvement in both contracts on the same security. The Exchange also believes that allowing penny pricing for Mini Options on securities that currently participate in the Penny Pilot Program (without Mini Options having to qualify separately for entry into the Penny Pilot Program) will benefit the marketplace and investors because penny pricing in Mini Options may also accomplish one of the primary goals of the Penny Pilot Program, which is to narrow the bid-ask spreads of exchange-traded options to reduce the cost of entering and exiting positions. Finally, the proposed rule would be beneficial from a logistical perspective since firms' existing systems are configured using the ''root symbol'' of an underlying security and would not be able to assign different minimum pricing variations to Mini Options and standard options on the same security.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, since Mini Options are permitted on multiply-listed classes, other exchanges that have received approval to trade Mini Options will have the opportunity to similarly establish the minimum price variation for Mini Options prior to the anticipated launch on or about March 18, 2013. The Exchange also believes that the proposed rule change will enhance competition by allowing products on the same security to be priced in the same minimum price increments.

*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: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may coincide with the anticipated launch of trading in Mini Options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Waiver of the operative delay will allow the Exchange to implement its proposal consistent with the commencement of trading in Mini Options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–30 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–30. 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

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–30 and should be submitted on or before April 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06628 Filed 3–21–13; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69154; File No. SR–BOX–2013–14]**

## Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Minimum Price Variation for Mini Options To Be the Same as Permitted for Standard Options on the Same Underlying Security

March 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rules 5050 (Series of Options Contracts Open for Trading) and 7050 (Minimum Trading Increments) to permit the minimum trading increment for Mini Options to be the same as the minimum trading increment permitted for standard options on the same underlying security. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend BOX Rule 5050 (Series of Options Contracts Open for Trading) and 7050 (Minimum Trading Increments) to permit the minimum trading increment for Mini Options to be the same as the minimum trading increment permitted for standard options on the same underlying security. This is a competitive filing that is based on a proposal recently submitted by International Securities Exchange (''ISE'') and approved by the Commission.[3]

The Exchange proposes to amend its rules to permit the minimum trading increment for Mini Options to be the same as the minimum trading increment permitted for standard options on the same underlying security. Mini Options overlie 10 equity or ETF shares, rather than the standard 100 shares.[4] Mini Options are currently approved on the following five (5) underlying securities: SPDR S&P 500 ETF (''SPY''), Apple Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG''), and Amazon.com, Inc. (''AMZN''). Of the five securities on which Mini Options are permitted, four of them (SPY, AAPL, GLD and AMZN) participate in the Penny Pilot Program.[5] Under the Penny Pilot Program, with the exception of three classes,[6] the minimum price variation for all participating options classes is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. Therefore, the minimum trading increment for AAPL, GLD, and AMZN is $0.01 for option series under $3 and $0.05 for options quoted at $3 or greater, while the minimum trading increment for SPY, which is not subject to a price test, is $0.01 across all option series. The Exchange notes that GOOG is not in the Penny Pilot Program and therefore, standard options in GOOG have a minimum increment of $0.05 and $0.10 per contract depending on the price at which the standard option on GOOG is quoted.

This proposed rule change will permit the minimum trading increment for Mini Options to be identical to the minimum trading increment applicable to standard options on the same underlying security. The Exchange believes having different trading increments for Mini Options than those permitted for standard options on the same underlying security would be detrimental to the success of this new product offering and would also lead to investor confusion. The Exchange notes that the Commission approved Mini Options on SPY, AAPL, GLD, GOOG and AMZN because of their high price and current volume levels and because of the level of retail investor

[3] *See* Securities Exchange Act Release No. 69124 (March 12, 2013) (Order Approving SR–ISE–2013–08).

[4] *See* Securities Exchange Act Release No. 68771 (January 30, 2013), 78 FR 8208 (February 5, 2013) (Notice of Filing and Immediate Effectiveness of SR–BOX–2013–07). The Exchange expects to begin trading Mini Options on March 18, 2013.

[5] The Penny Pilot Program has been in effect on the Exchange since its inception in May 2012. *See* Securities Exchange Act Release Nos. 66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (File No.10–206, In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission), and 67328 (June 29, 2012) 77 FR 40123 (July 6, 2012) (SR–BOX–2012–007). The Penny Pilot has been extended and is currently in place through June 30, 2013. *See* Securities Exchange Act Release No. 68425 (December 13, 2012), 77 FR 75234 (December 19, 2012) (Approving SR–BOX–2012–021).

[6] The three classes are the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 ETF (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''). QQQQ, SPY and IWM are quoted in $0.01 increments for all options series.

participation in trading options on these underlying securities. Mini Options are a natural extension to the options overlying these securities and therefore should retain the most important characteristic, *i.e.,* trading increments. The Exchange believes that by reducing the minimum trading increments for Mini Options, the proposed rule change will provide market participants with meaningful trading opportunities in this product. Further, quoting and trading in smaller increments will enable market participants to trade Mini Options with greater precision as to price. Providing these more refined increments will permit the Exchange's market makers the opportunity to provide better fills (meaning less spread than the current wider minimum increments rules allow) to customers. Therefore, the Exchange proposes to amend its rules to permit the listing and trading of Mini Options in the same increment permitted for standard options on the same underlying security.

With this proposed rule change, although Mini Options would be trading in narrower increments, they would not be considered part of the Penny Pilot Program.

The Exchange's proposal to quote and trade certain option classes that are outside of the Penny Pilot Program in $0.01 increments is not novel. Specifically, the Commission has permitted ISE to set the minimum increment for all Foreign Currency Options traded on the Exchange at $0.01 regardless of the price at which the option is quoted.[7] The Commission has also previously approved a proposal by NASDAQ OMX PHLX, Inc. permitting that exchange to also trade its foreign currency options in $0.01 increments.[8]

In support of this proposed rule change, the Exchange proposes to amend BOX Rules 5050 and 7050. For BOX Rule 7050, the Exchange proposes to add new subsection (c) to provide that the minimum trading increment for Mini Options shall be determined in accordance with new subsection (d) to IM–5050–10 to BOX Rule 5050. Proposed subsection (d) to IM–5050–10 provides that the minimum trading increment for Mini Options shall be the same as the minimum trading increment permitted for standard options on the same underlying security.

With regard to the impact of this proposal on system capacity, the Exchange represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with this proposal. The Exchange does not believe that this increased traffic will become unmanageable since Mini Options are limited to a fixed number of underlying securities.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[9] in general, and Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the proposed rule change will assure that standard options and Mini Options on the same underlying security will trade in similar increments and therefore provide market participants meaningful trading opportunities and enable them to trade Mini Options with greater precision as to price. The Exchange also believes the proposed rule change will avoid investor confusion if both standard options and Mini Options on the same underlying security are permitted to trade in similar trading increments. The Exchange further believes that investors and other market participants will benefit from this proposed rule change because it proposes to clarify and establish the minimum trading increment for Mini Options prior to the commencement of trading. The Exchange believes that investors generally will be expecting the minimum trading increment for Mini Options to be the same as the minimum trading increment for standard options on the same underlying security. This proposed rule change will therefore lessen investor confusion because Mini Options and standard options on the same underlying security will have the same minimum trading increment.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by ISE that was recently approved by the Commission.[11] The Exchange believes that the proposed rule change will in fact relieve any burden on, or otherwise promote, competition. Mini Options are currently approved for trading on multiple options exchanges and all of these exchanges will have the opportunity to establish minimum trading increment for Mini Options.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may coincide

[7] See Securities Exchange Act Release No. 57019 (December 20, 2007), 72 FR 73937 (December 28, 2007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 710, Minimum Trading Increments) (SR–ISE–2007–120).

[8] See Securities Exchange Act Release No. 56933 (December 7, 2007), 72 FR 71185 (December 14, 2007) (Approving SR–PHLX–2007–70).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra,* note 3.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

with the anticipated launch of trading in Mini Options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[14] Waiver of the operative delay will allow the Exchange to implement its proposal consistent with the commencement of trading in Mini Options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2013–14 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2013–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–14 and should be submitted on or before April 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–06570 Filed 3–21–13; 8:45 am]

BILLING CODE 8011–01–P

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review; National Women's Business Council

**ACTION:** Notice 30 Day Reporting Requirements Submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before April 22, 2013. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

*Copies:* Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: *Agency Clearance Officer,* Curtis Rich, *Curtis.rich@sba.gov* Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Emily Bruno, Research Director, National Women Business Council (NWBC) *Emily.bruno@nwbc.gov* and Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Curtis Rich, Agency Clearance Officer, (202) 205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* ''Focus Group Research: Young Women Entrepreneurs''.

*Frequency:* On Occasion.

*Description of Respondents:* Young Women Entrepreneurs in a range of industries and sectors across the United States.

*Responses:* 444.

*Annual Burden:* 261.

**Anie J. Borja,**

*Executive Director.*

[FR Doc. 2013–06659 Filed 3–21–13; 8:45 am]

BILLING CODE P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13515 and #13516]**

### Navajo Nation Disaster #AZ–00026

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Navajo Nation (FEMA–4104–DR), dated 03/05/2013.

*Incident:* Severe Freeze.

*Incident Period:* 12/15/2012 through 01/21/2013.

*Effective Date:* 03/05/2013.

*Physical Loan Application Deadline Date:* 05/06/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 12/05/2013.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 03/05/2013, Private Non-Profit organizations that provide essential services of governmental nature may file

disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Areas:* Navajo Nation and Associated Lands.

| The Interest Rates are: | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations With Credit Available Elsewhere ..... | 2.875 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.875 |
| For Economic Injury: | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 2.875 |

The number assigned to this disaster for physical damage is 135157 and for economic injury is 135167.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2013–06660 Filed 3–21–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2012–0006]**

### Social Security Ruling, SSR 13–2p; Titles II and XVI: Evaluating Cases Involving Drug Addiction and Alcoholism (DAA); Correction

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Ruling; Correction.

**SUMMARY:** The Social Security Administration published a document in the **Federal Register** on February 20, 2013. (78 FR 11939).

On page 11940, in the first column, under the ''CITATIONS'' section, replace the period after 1614(a) with a comma, and remove the additional space between 416.927 and the comma.

On page 11941, in the ''DAA Evaluation Process'' chart, in step 6 b, add a period after ''material''.

On page 11942, in the second column, under section e. i., first bullet, add a space between ''20'' and ''CFR''.

On page 11943, footnote 19, replace ''20 CFR 404.1527(e) and 416.927(e)'' with the correct reference which is ''20 CFR 404.1527(d) and 416.927(d)''.

On page 11943, footnote 20, replace ''20 CFR 404.1527(f) and 416.927(f)'' with the correct reference which is ''20 CFR 404.1527(e) and 416.927(e)''.

On page 11944, first column, question 8. ''What evidence do we need in cases involving DAA?'', a., italicize the subheading ''General'', and in the first sentence add a period at the end of the sentence.

On page 11944, second column, under c. i., third sentence, hyphenate ''nonmedical'' to read ''non-medical''.

On page 11944, third column, under c. ii, third sentence, delete ''the'' before ''well''.

On page 11944, third column, under d. i., first sentence, hyphenate ''nonmedical'' to read ''non-medical''.

On page 11944, footnote 22, replace ''404.928'' with ''404.1528''.

On page 11945, second column, c. iii., second sentence, remove the extra space after ''abstinence'' and before the period.

On page 11946, second column, first bullet, replace the semi-colon with a period.

On page 11946, second column, under ''15. How should adjudicators consider Federal district and circuit court decisions about DAA?'', first sentence, replace ''20 CFR 404.1585 and 416.985'' with ''20 CFR 404.985 and 416.1485'', and under a., italicize the subheading ''General''.

Dated: March 19, 2013.

**Paul Kryglik,**

*Director, Office of Regulations and Reports Clearance, Social Security Administration.*

[FR Doc. 2013–06594 Filed 3–21–13; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 8249]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Maya: Hidden Worlds Revealed''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Maya: Hidden Worlds Revealed,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Science Museum of Minnesota in Saint Paul, Minnesota from on or about June 21, 2013, until on or about January 5, 2014; at the Denver Museum of Nature and Science in Denver, Colorado from on or about February 14, 2014 until on or about September 1, 2014; at the Museum of Science, Boston in Boston, Massachusetts from on or about October 17, 2014 until on or about May 3, 2015; and at the San Diego Natural History Museum in San Diego, California from on or about June 12, 2015 until on or about January 3, 2016; and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 15, 2013.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2013–06650 Filed 3–21–13; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice 8248]**

### In the Matter of the Designation of Ansar al-Dine Also Known as Ansar Dine Also Known as Ansar al-Din Also Known as Ancar Dine Also Known as Ansar ul-Din Also Known as Ansar Eddine Also Known as Defenders of the Faith as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter ''INA'') (8 U.S.C. 1189), exist with respect to Ansar al-Dine, also known as Ansar Dine, also known as Ansar al-Din, also known as Ancar Dine, also known as Ansar ul-Din, also known as Ansar Eddine, also known as Defenders of the Faith.

Therefore, I hereby designate the aforementioned organization and its aliases as a Foreign Terrorist Organization pursuant to section 219 of the INA.

This determination shall be published in the **Federal Register**.

Dated: March 11, 2013.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2013–06648 Filed 3–21–13; 8:45 am]

BILLING CODE 4710–10–P

## DEPARTMENT OF STATE

**[Public Notice 8250]**

### In the Matter of the Review of the Designation of Hizballah (Hizballah and Other Aliases) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. § 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2008 determination to maintain the designation of the aforementioned organization as a foreign terrorist organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a foreign terrorist organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: March 14, 2013.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2013–06636 Filed 3–21–13; 8:45 am]

BILLING CODE 4710–10–P

## DEPARTMENT OF STATE

**[Public Notice 8247]**

### In the Matter of the Designation of Ansar al-Dine, Also Known as Ansar Dine, Also Known as Ansar al-Din, Also Known as Ancar Dine, Also Known as Ansar ul-Din, Also Known as Ansar Eddine, Also Known as Defenders of the Faith, as a Specially Designated Global Terrorist pursuant to Section 1(b) of Executive, Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the entity known as Ansar al- Dine, also known as Ansar Dine, also known as Ansar al-Din, also known as Ancar Dine, also known as Ansar ul-Din, also known as Ansar Eddine, also known as Defenders of the Faith, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: March 11, 2013.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2013–06638 Filed 3–21–13; 8:45 am]

BILLING CODE 4710–10–P

## DEPARTMENT OF STATE

**[Public Notice 8245]**

### Waiver of Restriction on Assistance to the Central Government of Cambodia

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L.112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Cambodia and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register.**

Dated: June 27, 2012.

**Thomas R. Nides,**

*Deputy Secretary for Management and Resources.*

**Editorial Note:** This document was received at the Office of the Federal Register March 19, 2013.

[FR Doc. 2013–06634 Filed 3–21–13; 8:45 am]

BILLING CODE 4710–30–P

## DEPARTMENT OF STATE

**[Public Notice 8246]**

### Waiver of Restriction on Assistance to the Central Government of Vietnam

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Vietnam, and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register.**

Dated: December 4, 2012.

**Thomas R. Nides,**

*Deputy Secretary for Management and Resources.*

**Editorial Note:** This document was received at the Office of the Federal Register March 19, 2013.

[FR Doc. 2013–06635 Filed 3–21–13; 8:45 am]

BILLING CODE 4710–30–P

## DEPARTMENT OF STATE

**[Public Notice 8244]**

### Waiver of Restriction on Assistance to the Central Government of Burma

Pursuant to Section 7031(b)(3) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), and Department of

State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7031(b)(1) of the Act with respect to Burma and I hereby waive this restriction.

This determination and the accompanying Memorandum of Justification shall be reported to the Congress, and the determination shall be published in the **Federal Register**.

Dated: December 4, 2012.

**Thomas R. Nides,**

*Deputy Secretary for Management and Resources.*

**Editorial Note:,** This document was received at the Office of the Federal Register March 19, 2013.

[FR Doc. 2013–06637 Filed 3–21–13; 8:45 am]

**BILLING CODE 4710–30–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2013–11]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before April 11, 2013.

**ADDRESSES:** You may send comments identified by docket number FAA–2012–0396 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, or Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email *andrea.copeland@faa.gov;* (202) 267–8081.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 14, 2013.

**Lirio Liu,**

*Director, Office of Rulemaking.*

### Petition For Exemption

*Docket No.:* FAA–2012–0396.

*Petitioner:* Fokker50Freighter STC Corp.

*Section of 14 CFR Affected:* § 25.841(a) & (b)(6).

*Description of Relief Sought:* Request relief to operate its Fokker Model F27 Mark 050 airplanes as modified by supplemental type certificate ST01916LA with increased operating altitude from 20,000 feet pressure altitude to 25,000 feet pressure altitude. This relief will result in an increase in cabin pressure altitude from 8,000 to 11,300 feet.

[FR Doc. 2013–06679 Filed 3–21–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2013–10]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before April 11, 2013.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2013–0180 using any of the following methods:

- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to

*http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW; Washington, DC 20591; email *andrea.copeland@faa.gov;* (202) 267–8081. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 14, 2013.

**Lirio Liu,**

*Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2013–0180.

*Petitioner:* Ameristar.

*Section of 14 CFR Affected:* 14 CFR 121.1115.

*Description of Relief Sought:* Petitioner seeks an exemption to Section 121.1115 to continue to operate its Boeing 737–200 airplane beyond the compliance date for meeting the requirement to incorporate in its maintenance program an Airworthiness Limitations Section approved under Appendix H to part 25 or § 26.21 (Limit of Validity).

[FR Doc. 2013–06671 Filed 3–21–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2013–0011]**

### Agency Information Collection Activities: Request for Comments for a New Information Collection.

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by May 21, 2013.

**ADDRESSES:** You may submit comments identified by DOT Docket ID 2013–0011 by any of the following methods:

*Web Site:* For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Fax:* 1–202–493–2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

*Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Shane D. Boone, business phone: 202–493–3064, Nondestructive Evaluation Research Program, Federal Highway Administration, Department of Transportation, 6300 Georgetown Pike, McLean, VA 22101. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Feasibility of Element-Level Bridge Inspection for Non-National Highway System Bridges.

*Background:* The *''Moving Ahead for Progress in the 21st Century Act''* or the *''MAP–21''* legislation, Section 1111, modified 23 U.S.C. 144 to include a requirement for each State and appropriate Federal agency to report element level bridge inspection data to the Secretary, as each bridge is inspected, for all highway bridges on the National Highway System (NHS). The data is to be reported to the Federal Highway Administration (FHWA) not later than 2 years after the date of enactment of MAP–21. Additionally, MAP–21 included a requirement for a study on the benefits, cost-effectiveness, and feasibility of requiring element level data collection for bridges not on the NHS. The goal of this project shall be to complete a study of the benefits, cost-effectiveness, and feasibility of requiring element-level bridge inspection data collection for bridges not on the National Highway System. A proposed methodology for completing this research shall be established through outreach to key stakeholders. The methodology is to also define the types of analyses to be used to evaluate benefits, cost-effectiveness and feasibility.

*Respondents:* State transportation agencies, Association of State Highway and Transportation Officials (AASHTO), National Association of County Engineers (NACE), toll authorities (state, local, private), FHWA Offices of Policy, Bridge Technology, and selected FHWA Divisions and other Federal bridge-owning agencies, and selected individual local agencies. Specific AASHTO subcommittees to be contacted include the Subcommittee on Bridges and Structures and the Subcommittee on Maintenance.

*Frequency:* One time per participant.

*Estimated Average Burden per Response:* Approximately 2 hours to collect the necessary information and write a response.

*Estimated Total Annual Burden Hours:* Approximately 200 hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: March 15, 2013.

**Michael Howell,**

*Information Collection Officer.*

[FR Doc. 2013–06619 Filed 3–21–13; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2013–0009]**

### Agency Information Collection Activities: Request for Comments for a New Information Collection

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by May 21, 2013.

**ADDRESSES:** You may submit comments identified by DOT Docket ID 2013–0009 by any of the following methods:

*Web Site:* For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Fax:* 1–202–493–2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

*Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Bruce Bradley, 202–493–0564, Department of Transportation, Federal Highway Administration, Office of Real Estate Services, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* FHWA Excellence in Right-of-Way Awards and Utility Relocation and Accommodation Awards.

*Background:* In 1995, the Federal Highway Administration established the biennial Excellence in Right-of-Way Awards Program to recognize partners, projects, and processes that use FHWA funding sources to go beyond regulatory compliance and achieve right-of-way excellence. Excellence in Right-of-Way awardees have contributed to outstanding innovations that enhance the right-of-way professional's ability to meet the challenges associated with acquiring real property for Federal-aid projects. Similarly, FHWA established the Excellence in Utility Relocation and Accommodation Awards Program to honor the use of innovative practices and outstanding achievements in reducing the cost or shortening the time required to accommodate or relocate utilities associated with highway improvement projects. The goal of the program is to showcase exemplary and innovative projects, programs, initiatives, and practices that successfully integrate the consideration of utilities in the planning, design, construction, and maintenance of transportation facilities.

*Award:* Anyone can nominate a project, process, person or group that has used Federal Highway Administration funding sources to make an outstanding contribution to transportation and the right-of-way or utility fields. The nominator is responsible for submitting via email, fax, or mail an application form that summarizes the outstanding accomplishments of the entry. FHWA will use the collected information to evaluate, showcase, and enhance the public's knowledge on addressing right-of-way challenges on transportation projects and on relocating and accommodating utilities associated with highway improvement projects. Nominations will be reviewed by an independent panel of judges from varying backgrounds. It is anticipated that awards will be given every two years. The winners are presented plaques at an awards ceremony.

*Respondents:* Anyone who has used Federal Highway funding sources in the fifty states, the District of Columbia and Puerto Rico.

*Frequency:* The information will be collected biennially.

*Estimated Average Burden per Response:* 6 hours per respondent per application.

*Estimated Total Annual Burden Hours:* It is expected that the respondents will complete approximately 50 applications for an estimated total of 600 annual burden hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: March 15, 2013.

**Michael Howell,**

*Information Collection Officer.*

[FR Doc. 2013–06617 Filed 3–21–13; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in Utah

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation of Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

**SUMMARY:** This notice announces actions taken by the FWHA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the proposed I–15; MP 0 to MP 16 project in Washington County in the State of Utah. These actions grant approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the FHWA actions on the highway project will be barred unless the claim is filed on or before August 19, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Cox, Area Engineer, Region 4, FHWA Utah Division, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84129; telephone: 801–955–3516; email: *david.cox@dot.gov.* The FHWA Utah Division Office's normal business hours are 7:30 a.m. to 4:30 p.m. (Mountain Standard Time), Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA has taken final agency action subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the I–15; MP 0 to MP 16 project in the State of Utah. The I–15; MP 0 to MP 16 project proposes to provide transportation improvements to I–15 between MP 0 and MP 16 in Washington County, Utah. The project consists of the following improvements: Constructing one additional general purpose lane on I–15 in both the northbound and southbound directions between Southern Parkway and SR–9; constructing auxiliary lanes between the Port-of-Entry and Southern Parkway, between Brigham Road and Dixie Drive, and between Washington Parkway and SR–9; removing the existing roundabouts and constructing a Single Point Interchange (SPI) at the Brigham Road Interchange; replacing the I–15 bridges over the Virgin River; converting the existing diamond interchange to a diverging diamond interchange (DDI) at the St. George Boulevard Interchange;

constructing an I–15 overpass at Mall Drive; reconfiguring the Red Hills Parkway/Green Springs Drive intersection to a thru-turn configuration; and improving the SR–9 Interchange by improving the southbound exit deceleration coming into the loop ramp, upgrading the loop ramp geometry, creating a three lane exit ramp northbound, creating a two lane entrance ramp southbound, and creating additional lanes on SR–9 between the I–15 Interchange and the Coral Canyon Interchange just east of I–15 on SR–9. The actions by the FHWA and the laws under which such actions were taken are described in the Environmental Assessment (EA) and in the Finding of No Significant Impact (FONSI) issued on January 24, 2013.

This notice applies to all FHWA decisions as of the issuance date of this notice and all laws under which such actions were taken. Laws generally applicable to such actions include but are not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351; Federal-Aid Highway Act [23 U.S.C. 109].

2. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d); Migratory Bird Treaty Act [16 U.S.C. 703–712].

3. Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11].

4. Noise: Federal-Aid Highway Act of 1970 [Pub. L. 91–605, 84 Stat. 1713]

5. Executive Orders: E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

Issued on: March 7, 2013.

**James C. Christian,**

*Division Administrator, Federal Highway Administration.*

[FR Doc. 2013–06620 Filed 3–21–13; 8:45 am]

BILLING CODE 4910–RY–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2008–0224]**

### Parts and Accessories Necessary for Safe Operation; Exemption Renewal for Greyhound Lines, Inc.

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemption; request for comments.

**SUMMARY:** FMCSA renews Greyhound Lines, Inc.'s (Greyhound) exemption which allows the placement of video event recorders at the top of the windshields on its buses. Greyhound may continue to use the video event recorders to increase safety through (1) Identification and remediation of risky driving behaviors such as distracted driving and drowsiness; (2) enhanced monitoring of passenger behavior; and (3) enhanced collision review and analysis. The Agency has concluded that granting this exemption renewal will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. However, the Agency requests comments on this issue, especially from anyone who believes this standard will not be maintained.

**DATES:** This decision is effective March 21, 2013. Comments must be received on or before April 22, 2013.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) number FMCSA-by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the FDMS published in the **Federal Register** published on December 29, 2010 (73 FR 82132) or you may visit *http://edocket/access.gpo.gov/2008/pdf/E8-785.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian J. Routhier, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–1225, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. 31136(e) and 31315(b)(1), FMCSA may renew an exemption from the Federal Motor Carrier Safety Regulations for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Greyhound has requested a two-year extension for its exemption from 49 CFR 393.60(e). The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

#### Basis for Renewing Exemption

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. On March 19, 2008, Greyhound applied for an exemption from 49 CFR 393.60(e)(1) to allow it to install video event

recorders on some or all of its bus fleet. On March 19, 2009, FMCSA published a notice of final disposition in the **Federal Register** granting the exemption (74 FR 11807). On March 22, 2011, FMCSA published a notice of final disposition renewing this exemption until March 20, 2013.The renewal outlined in this notice extends the exemption through March 20, 2015, and requests public comment.

FMCSA is not aware of any evidence showing that the installation of video event recorders on Greyhound's buses, in accordance with the conditions of the original exemption, has resulted in any degradation in safety. The Agency believes that extending the exemption for a period of two years will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because: (1) The video event recorders will not obstruct drivers' views of the roadway, highway signs and surrounding traffic due to the fact that the panoramic windshields installed on Greyhound's buses encompass a large percentage of the front of buses and extend well above the driver's sight lines; (2) larger windshield wipers installed on Greyhound's buses increase the swept area well beyond that which is recommended by SAE International's guidelines for commercial vehicles; and (3) placement of video event recorders just below the larger swept area of the wipers will be well outside of the driver's useable sight lines. Finally, Greyhound installed DriveCam video event recorders on 90 of its buses operated by their BoltBus division and experienced a 27% reduction in collisions in 2011.

## Request for Comments

FMCSA requests comments from parties with data concerning the safety record of CMVs operated by Greyhound and equipped with video event recorders by April 22, 2013. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b)(1), FMCSA will take immediate steps to revoke the Greyhound exemption.

Issued on: March 18, 2013.

**Anne S. Ferro,**

*Administrator.*

[FR Doc. 2013–06613 Filed 3–21–13; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2008–0312]**

### Parts and Accessories Necessary for Safe Operation; Exemption Renewal for DriveCam, Inc.

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemption; request for comments.

**SUMMARY:** FMCSA renews DriveCam, Inc.'s (DriveCam) exemption which allows the placement of video event recorders at the top of the windshields on commercial motor vehicles (CMVs). Motor carriers may continue to use the video event recorders mounted in the windshield area to increase safety through (1) Identification and remediation of risky driving behaviors such as distracted driving and drowsiness; (2) enhanced monitoring of passenger behavior for CMVs in passenger service; and (3) enhanced collision review and analysis. The Agency has concluded that granting this exemption renewal will maintain a level of safety that is equivalent to or greater than the level of safety achieved without the exemption. However, the Agency requests comments and information on the exemption, especially from anyone who believes this standard will not be maintained.

**DATES:** This decision is effective April 16, 2013. Comments must be received on or before April 22, 2013.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) number FMCSA–2012–XXXX by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the FDMS published in the **Federal Register** published on December 29, 2010 (73 FR 82132) or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian J. Routhier, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–1225; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 31136(e) and 31315(b)(1), FMCSA may renew an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' DriveCam has requested a two year extension of the current exemption from 49 CFR 393.60(e)(1). The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## Basis for Renewing Exemption

DriveCam applied for an exemption from 49 CFR 393.60(e)(1) to allow the use of video event recorders on all CMVs. On April 15, 2009, FMCSA published a notice of final disposition

granting the exemption (74 FR 17549). On April 18, 2011, FMCSA published a notice of final disposition renewing this exemption until April 16, 2013. The renewal outlined in this notice extends the exemption through April 16, 2015, and requests public comment.

FMCSA is not aware of any evidence showing that the installation of video event recorders on CMVs, in accordance with the conditions of the original exemption, has resulted in any degradation in safety. FMCSA continues to believe that the potential safety gains from the use of video event recorders to improve driver behavior will improve the overall level of safety to the motoring public.

The exemption is renewed subject to the requirements that video event recorders installed in commercial motor vehicles be mounted not more than 5mm (2 inches) below the upper edge of the area swept by the windshield wipers, and located outside the driver's sight lines to the road and highway signs and signals. The exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

The Agency believes that extending the exemption for another two years will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because (1) Based on the technical information available, there is no indication that the video event recorders obstruct drivers' views of the roadway, highway signs and surrounding traffic; (2) trucks and buses generally have an elevated seating position which greatly improves the forward visual field of the driver, and any impairment of available sight lines is minimal; and (3) the location within the top two inches of the area swept by the windshield wiper and out of the driver's normal sightline is reasonable and enforceable at roadside. In addition, the Agency believes that the use of video event recorders by fleets to deter unsafe driving behavior is likely to improve the overall level of safety to the motoring public.

Without the exemption, FMCSA and the motor carrier industry would be unable to continue to test this innovative safety management control system.

**Request for Comments**

FMCSA requests comments from parties with data concerning the safety record of CMVs equipped with video event recorders by April 22, 2013. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the DriveCam exemption.

Issued on: March 18, 2013.

**Anne S. Ferro,**

*Administrator.*

[FR Doc. 2013–06610 Filed 3–21–13; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2006–26367]**

### Motor Carrier Safety Advisory Committee (MCSAC): Public Meeting

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of Meeting of Motor Carrier Safety Advisory Committee (MCSAC).

**SUMMARY:** FMCSA announces that its Motor Carrier Safety Advisory Committee will meet from Monday–Wednesday, April 8–10, 2013, in Alexandria, VA. On Monday and Tuesday, April 8 and 9, 2013, the MCSAC will complete its deliberations on Task 13–1 concerning entry-level driver training (ELDT). The MCSAC will receive a briefing from its Compliance, Safety and Accountability (CSA) subcommittee concerning the subcommittee's preliminary work, to date. The MCSAC will also receive briefings from the Agency on its Motor Carrier Safety Assistance Program and the requirements for States to adopt and enforce compatible regulations and FMCSA exemptions allowing motor carriers to use windshield-mounted driver video monitoring systems. On Wednesday, April 10, 2013, the MCSAC's CSA Subcommittee will convene. Meetings are open to the public for their entirety and there will be a public comment period at the end of each day.

*Times and Dates:* The meeting will be held Monday–Tuesday, April 8–9, 2013, from 9 a.m. to 5 p.m., Eastern Daylight Time (E.D.T.), and on Wednesday, April 10, 2013, from 9 a.m. to 4 p.m., E.D.T. The meetings will be held at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314 in the Washington and Jefferson Rooms on the 2nd floor. The Hilton Alexandria Old Town is located across the street from the King Street Metro station.

Copies of all MCSAC Task Statements and an agenda for the entire meeting will be made available in advance of the meeting at *http://mcsac.fmcsa.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

**Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Elizabeth Turner at (617) 494–2068, *elizabeth.turner@dot.gov,* by Tuesday, April 2, 2013.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*MCSAC*

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) required the Secretary of Transportation to establish the MCSAC. The MCSAC provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations, and operates in accordance with the Federal Advisory Committee Act (FACA, 5 U.S.C. App 2).

**II. Meeting Participation**

Oral comments from the public will be heard during the last half-hour of the meetings each day. Should all public comments be exhausted prior to the end of the specified period, the comment period will close. Members of the public may submit written comments on the topics to be considered during the meeting by Tuesday, April 2, 2013, to Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200

New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., E.T. Monday through Friday, except Federal holidays.

Issued on: March 19, 2013.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2013–06607 Filed 3–21–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 30186]**

### Tongue River Railroad Company, Inc.—Rail Construction and Operation—In Custer, Powder River and Rosebud Counties, Mont.

**AGENCY:** *Lead:* Surface Transportation Board; *Cooperating:* U.S. Army Corps of Engineers, U.S. Bureau of Land Management, U.S. Department of Agriculture, Montana Department of Natural Resources and Conservation (acting as lead agency for other Montana State agencies).

**ACTION:** Notice of Availability of the Final Scope of Study for the Environmental Impact Statement.

**SUMMARY:** On October 16, 2012, Tongue River Railroad Company, Inc. (TRRC) filed a revised application with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10901 in Docket No. FD 30186. TRRC intended to construct and operate [1] an approximately 83-mile rail line between Miles City, Montana, and two ending points, one near the site of the previously planned Montco Mine near Ashland, Montana, and another at the proposed Otter Creek Mine in the Otter Creek area east of Ashland, Montana. On November 1, 2012, the Board issued a decision requesting additional information from TRRC. On December 17, 2012, TRRC filed a supplemental application that supersedes the October 16, 2012 application. As discussed in the supplemental application, TRRC modified its proposal by identifying its preferred routing for the proposed line as the Colstrip Alterative between Colstrip, Montana, and Ashland/Otter Creek, Montana. On January 8, 2013, the Board issued a decision accepting TRRC's supplemental application and later denied a request to reconsider that decision and reject the supplemental application in a decision served on February 26, 2013. The purpose of the proposed line is to transport low sulfur, sub-bituminous coal from proposed mine sites in Rosebud and Powder River Counties, Montana. Because the construction and operation of this project has the potential to result in significant environmental impacts, the Board's Office of Environmental Analysis (OEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*).

To help determine the scope of the EIS, and as required by the Board's regulations at 49 CFR 1105.10(a)(2), OEA published in the **Federal Register** on October 22, 2012, a Notice of Intent to Prepare an Environmental Impact Statement, Notice of Availability of the Draft Scope of Study, Notice of Scoping Meetings, and Request for Comments. OEA also prepared and distributed to the public a postcard that introduced TRRC's proposed rail line, announced OEA's intent to prepare an EIS, and gave notice of scoping meetings to residents of Powder River, Custer, and Rosebud Counties. In addition, OEA sent letters to elected officials, federal, state, and local agencies, tribal organizations, and other potentially interested organizations providing similar information. OEA held ten public scoping meetings in Lame Deer, Forsyth, Ashland, and Miles City, Montana, on November 12, 13, 14, 15, and 16, 2012. On November 30, 2012, OEA extended the scoping comment period from December 6, 2012 to January 11, 2013 in response to a number of requests for an extension and because the Board's November 1, 2012 decision had required TRRC to file additional information by December 17, 2012.

The U.S. Army Corps of Engineers (Corps), the U.S. Bureau of Land Management (BLM), the U.S. Department of Agriculture (USDA) and the Montana Department of Natural Resources Conservation (DNRC), acting as lead agency for other Montana State agencies, are participating as cooperating agencies in the preparation of the EIS. OEA is also consulting with tribes and other agencies, including the Northern Cheyenne Tribe, the U.S. Environmental Protection Agency (USEPA), and the Montana Department of Environmental Quality (MDEQ).

After review and consideration of all comments received, this notice sets forth the Final Scope of the EIS. The Final Scope reflects additions and changes to the Draft Scope as a result of comments received during the scoping comment period. The Final Scope also summarizes and addresses the principal environmental concerns raised by the comments on the Draft Scope and explains if and how these issues will be addressed in the EIS.

**FOR FURTHER INFORMATION CONTACT:** Ken Blodgett, Office of Environmental Analysis, Surface Transportation Board, 395 E Street SW., Washington, DC 20423, or call OEA's toll-free number for the project at 1–866–622–4355. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. For further information about the Board's environmental review process and this EIS, please visit the Board's Web site at *www.stb.dot.gov* or the Board-sponsored project Web site at *www.tonguerivereis.com.*

*Background:* In 1986, the Board's predecessor agency, the Interstate Commerce Commission (ICC), gave approval to TRRC's predecessor to build and operate an 89-mile rail line between Miles City, Montana, and two termini located near Ashland, Montana, a proceeding known as *Tongue River I.*[2] The purpose of the line was to serve proposed new coal mines in the Ashland area. In 1996, the Board authorized TRRC to build a contiguous 41-mile rail line from Ashland to Decker, Montana, in *Tongue River II.*[3] In 2007, the Board authorized TRRC to build and operate the Western Alignment, a 17.3-mile alternate route for a portion of the route already approved in *Tongue River II* in a proceeding known as *Tongue River III.*[4] The ICC/Board's environmental staff, now OEA, prepared EISs in all three proceedings.

Petitions for review of *Tongue River II* and *Tongue River III* were filed in the United States Court of Appeals for the Ninth Circuit, and, in 2011, the court affirmed in part, and reversed and remanded in part, those decisions for additional environmental review.[5]

[1] TRRC has stated that the proposed line would be constructed by TRRC and would be operated by BNSF Railway Company (BNSF).

[2] *Tongue River R.R.—Rail Constr. and Operation—In Custer, Powder River and Rosebud Cntys., Mont.* (*Tongue River I*), FD 30186 (ICC served Sept. 4, 1985), *modified* (ICC served May 9, 1986), *pet. for judicial review dismissed, N. Plains Res. Council* v. *ICC,* 817 F.2d 758 (9th Cir.), *cert. denied,* 484 U.S. 976 (1987).

[3] *Tongue River R.R.—Rail Constr. and Operation—Ashland to Decker, Mont.* (*Tongue River II*), 1 S.T.B. 809 (1996), *pet. for reconsid. denied* (STB served Dec. 31, 1996).

[4] *Tongue River R.R.—Rail Constr. and Operation—Ashland to Decker, Mont.* (*Tongue River III*), FD 30186 (Sub-No. 3) (STB served Oct. 9, 2007), *pet. for reconsid. denied* (STB served Mar. 13, 2008).

[5] *See N. Plains Res. Council* v. *STB,* 668 F.3d 1067 (9th Cir. 2011).

Although the *Tongue River I* proceeding was not before the court, the Board determined that the court's decision required the Board to revisit the environmental analysis for *Tongue River I* because the Board had conducted a cumulative impacts analysis for the entire line in *Tongue River III* and had made the resulting mitigation conditions applicable to the entire line in its *Tongue River III* decision. TRRC subsequently informed the Board that it no longer intended to build the *Tongue River II* and *Tongue River III* portions of the railroad.

On June 18, 2012, the Board issued a decision dismissing the *Tongue River II* and *Tongue River III* proceedings and reopening *Tongue River I*.[6] As explained in more detail in that decision (which is available on the Board's Web site at www.stb.dot.gov), the Board required TRRC to file a revised application that presents the railroad's current plans to build a rail line between Miles City and Ashland, Montana. In addition, the Board decided to conduct a new environmental review rather than a supplemental environmental review based on the three prior environmental reviews that began in the 1980s. The Board found that a new EIS (including a new scoping process) is appropriate given the passage of time since *Tongue River I* was decided, the railroad's failure to begin construction of any part of this proposed railroad and other changes that have taken place, the nature of the court's partial remand, and the fact that most of the Board's more recent environmental analysis pertains to *Tongue River II* or *Tongue River III,* neither of which the railroad still proposes to build. The Board also stated that a new EIS will encourage and facilitate public participation.[7]

In its revised application filed on October 16, 2012, TRRC proposed to go forward with the *Tongue River I* project, although in modified form.[8] After reviewing the submission, the Board, in a decision served on November 1, 2012, clarified that the Board's review in this proceeding would include not only the new environmental review of the entire construction project, but also an examination of the transportation merits supporting the entire *Tongue River I* line.[9] The November 1, 2012 decision also directed TRRC to supplement the revised application to provide a sufficient record for the Board's review, including additional evidence and argument in support of the transportation merits. Finally, the decision established a new procedural schedule for filings on the transportation merits appropriate for this proceeding and required that TRRC publish notices consistent with that decision. On December 17, 2012, TRRC filed a supplemental application intended to supersede the October 16, 2012 filing. TRRC explained that, in its October 16, 2012 application, it had proposed the construction of a line between Miles City, Montana, and Ashland/Otter Creek, Montana, following a line similar to that approved by the ICC in *Tongue River I* in 1986. However, TRRC identified a different routing, known as the Colstrip Alignment, as its preferred alignment in its December 17, 2012 supplemental application.[10] The supplemental application was accepted by the Board in a decision issued on January 8, 2013. On January 7, 2013, Northern Plains Resource Council and Rocker Six Cattle Company filed a petition to reconsider that decision and reject TRRC's supplemental application, which the Board denied on February 26, 2013. The Board also extended the procedural schedule for filing comments on the transportation merits. Under the Board's revised schedule, comments on the transportation merits of the supplemental application will be due by April 2, 2013, and a reply by TRRC will be due by May 16, 2013.

*Environmental Review Process:* The NEPA process is intended to assist the Board and the public in identifying and assessing the potential environmental impacts of a proposed action before a decision on the proposed action is made. OEA is responsible for ensuring that the Board complies with NEPA and related environmental statutes.

ICF International, OEA's independent third-party contractor, is assisting in the environmental review process, pursuant to 49 CFR 1105.10(d). OEA is directing and supervising the preparation of the EIS. The Corps, BLM, USDA, and Montana DNRC, acting as lead agency for other Montana State agencies, are cooperating agencies, pursuant to 40 CFR 1501.6. The Board will decide whether or not to grant authority to TRRC to construct and operate the proposed rail line pursuant to 49 U.S.C. 10901. The Corps will decide whether or not to issue permits pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1251–1376, as amended) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). BLM will decide whether or not to issue a right-of-way (ROW) grant for BLM-administered lands under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1737). Portions of some of the alternatives under consideration would cross the USDA Livestock and Range Research Laboratory (LARRL) located near Miles City, Montana. The crossing of LARRL land would require an easement from USDA. Montana DNRC, acting as lead agency for other Montana State agencies, will ensure the State's environmental concerns are addressed in a manner consistent with the Montana Environmental Policy Act (MEPA). In addition, portions of some of the alternatives being considered would cross state lands and require an easement from the State of Montana. The EIS will include the information necessary for the Board, the Corps, BLM, USDA and Montana DNRC to make their final decisions under the authorities discussed above. OEA is also working closely with tribes and other agencies, including the Northern Cheyenne Tribe, USEPA, and MDEQ, the state agency responsible for preparing documentation for the proposed Otter Creek Mine, pursuant to MEPA.

As part of the NEPA review, OEA is gathering and analyzing environmental information and data that will be used to compare the potential environmental effects of possible rail alignments and the ''no action'' alternative in the EIS. This includes conducting aerial and on-the-ground environmental surveys. To complete this survey work, OEA must first get permission from landowners to access properties located along each of the alternatives under consideration. OEA has already begun this process of requesting access by sending letters to landowners and hopes to receive positive responses from landowners. If OEA is unable to secure property access from landowners, OEA's ability to gather information by on-the-ground surveys may be limited.

After issuance of this Final Scope, OEA and the cooperating agencies will prepare a Draft EIS (DEIS) for the proposed line. The DEIS will identify

[6] *Tongue River R.R.—Rail Constr. & Operation—In Custer, Powder River & Rosebud Cntys., Mont.,* FD 30186 *et al.* (STB served June 18, 2012).

[7] *Id.* at 9–10.

[8] Although the decision granting *Tongue River I* authorized the construction of an 89-mile line, TRRC described the line in its October 16, 2012 filing as being approximately 83 miles in length, based on refinements that would straighten and shorten the alignment.

[9] The Board's review of construction applications is governed by 49 U.S.C. 10901, its regulations at 49 CFR 1150.1–1150.10, and the requirements of NEPA and related environmental laws.

[10] The ICC had examined a variation on the Colstrip Alignment as a potential route in *Tongue River I.* The Colstrip Alignment was also identified as a potential alternative alignment at the scoping meetings held by the Board in November 2012 in the project area.

the potential environmental impacts from the proposed rail line and alternatives, and address those environmental issues identified during the scoping process and detailed in this Final Scope. It will also discuss a reasonable range of alternatives to the proposed action, including a no-action alternative, and recommend environmental mitigation measures, as appropriate.

The DEIS will be made available upon its completion for public review and comment and review and comment by other agencies. A Final EIS (FEIS) will then be prepared that will respond to the public and other agency comments received on the DEIS and include further analysis by OEA and the cooperating agencies, if needed. In reaching their final decisions in this case, the Board and the cooperating agencies will take into account the full environmental record, including the DEIS, the FEIS, and all public and agency comments received.

*Purpose and Need:* TRRC has stated that the principal purpose of the construction and operation of the proposed rail line is to transport low sulfur, sub-bituminous coal from mine sites developed in Rosebud and Powder River Counties, Montana, including proposed mines in the Otter Creek area.[11] In its December 17, 2012 supplemental application and in response to an information request from OEA,[12] TRRC has stated that U.S. domestic electric utilities, specifically those in Montana and possibly the Midwest, represent the prime demand potential for Otter Creek coal. In addition, TRRC states that additional coal tonnages could be transported to export markets, which TRRC identifies as markets in Asia and Europe, through U.S. ports along the Atlantic, Pacific, Great Lakes or Gulf Coasts. Because, TRRC reasons, the construction and operation of the proposed rail line is several years in the future and the coal market is highly volatile, it is impossible for TRRC to define its target markets with greater specificity.

The proposed project involves an application by TRRC for a license or approval from the Board. The proposed project is not a federal government-proposed or sponsored project. Thus, the project's purpose and need should be informed by both the private applicant's goals and the agency's enabling statute here, 49 U.S.C. 10901.[13] Section 10901 provides that the Board must approve a construction application unless it finds that the construction is ''inconsistent with the public convenience and necessity.''

*Proposed Action and Alternatives:* NEPA regulations require federal agencies to consider a reasonable range of feasible alternatives to the proposed action. The President's Council on Environmental Quality (CEQ), which oversees the implementation of NEPA, has stated in *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* that ''[R]easonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense * * *.''[14] In this EIS, OEA will consider a full range of feasible alternatives that meet the purpose and need of the project, as well as the no-action alternative.

Major elements of the proposed project would include a single track constructed of continuous-welded rail; a 200-foot-wide ROW; one passing siding with 8,500 foot clear length; and three set-out tracks between 500 feet and 4,000 feet in length to provide for temporary storage of cars requiring repair and for storage and clearing of maintenance equipment. TRRC anticipates that train traffic on the proposed rail line would consist of 26 round trips per week, or 3.7 loaded 150 car unit coal trains daily on average, with 7.4 trains per day total (empty and loaded).[15] The proposed rail line would carry approximately 20 million tons of coal annually. The EIS will analyze and compare the potential impacts of (1) Construction and operation of the proposed rail line, (2) a reasonable range of feasible alternative routes, and (3) the no-action alternative (denial of the application).

*Alternatives To Be Carried Forward In The EIS:* Based on analysis conducted to date, OEA has determined that the reasonable and feasible alternatives that will be analyzed in detail in the EIS are:

*Tongue River Alternative*—This alternative (TRRC's original preferred alignment) would follow the Tongue River between Miles City, Montana, and two terminus points south of Ashland, Montana, see Final Scope Figures 1 and 2 (all figures are available for viewing on the Board's Web site at *www.stb.dot.gov* and on the Board-sponsored project Web site at *www.tonguerivereis.com*). It would begin at the existing BNSF rail line between the Miles City Fish Hatchery and Spotted Eagle Lake, proceeding south along the west side of the Tongue River and crossing through the LARRL. Approximately 10 miles north of Ashland, Montana, this alternative would cross the Tongue River and continue south. After crossing Otter Creek approximately 3 miles southeast of Ashland, it would branch into two spurs. One spur would follow the Tongue River Valley approximately 7 miles south to Terminus Point 1 near the site of the previously planned Montco Mine Terminus 1). The other spur would follow the Otter Creek approximately 5 miles south to Terminus Point 2 at the proposed Otter Creek Mine (Otter Creek Spur).

*Colstrip Alternative*—This alternative would extend from the existing BNSF line, known as the Colstrip Subdivision, at Colstrip, Montana towards Ashland, see Final Scope Figures 1 and 2. TRRC would upgrade the existing BNSF line to current main line standards. The Colstrip Subdivision connects with the Forsyth Subdivision at Nichols Wye, approximately 6 miles west of Forsyth and approximately 50 miles west of Miles City. This alternative would cross Cow Creek and Rosebud Creek as it heads south and east, following the Greenleaf Creek Valley to the Rosebud Creek/Tongue River divide. From there it would descend into the Tongue River Valley and join the Tongue River Alternative at the Tongue River crossing north of Ashland. This alternative is TRRC's preferred alignment based on its supplemental application.

*Tongue River Road Alternative*—This alternative would depart Miles City along the Tongue River Alternative route, and continue along that alternative to a point just north of Pumpkin Creek, see Final Scope Figures 1 and 2. There it would cross the Tongue River, turn south and continue along the east side of the river to rejoin the Tongue River Alternative about 10 miles north of Ashland.

*Moon Creek Alternative*—This alternative would start at the BNSF main line approximately 8 miles southwest of Miles City, and run south and southeast along the east side of Moon Creek to the divide separating the Tongue River and Yellowstone River drainages, see Final Scope Figures 1 and 2. From there, the alternative would descend to the Tongue River Valley floor and join the Tongue River Alternative about 14 miles south of Miles City. This alternative would cross the LARRL through its far southwest corner.

[11] TRRC supplemental application at 6.

[12] OEA's information request and TRRC's response are available both on the Board's Web site, *www.stb.dot.gov*, and on the Board-sponsored project Web site, *www.tonguerivereis.com*.

[13] *See Alaska Survival* v. *STB,* 705 F.3d 1073, 1084–85 (9th Cir. 2013).

[14] *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,* 46 FR 18026 (1981), Question 2a.

[15] TRRC supplemental application, Exhibit D at 2.

*Other Alternatives Under Consideration:* The following additional alternatives and variations were identified and developed during the preparation of this Final Scope as a result of comments received from the public during the scoping comment period and an additional review of the project area for potential alternatives conducted by OEA.[16] OEA is considering whether or not to carry these alternatives forward for more detailed analysis in the EIS. If any of the following alternatives are eliminated from detailed study, the DEIS will explain the reasons why they were eliminated in accordance with 40 CFR 1502.14(a).

As noted above, TRRC has stated that it no longer intends to build the portions of the rail line approved in *Tongue River II* and *Tongue River III.* However, because the Board has approved a route from Ashland, Montana to Decker, Montana in the past, and several commenters suggested that we consider routes going south from Ashland during scoping, OEA will examine the two southern alignments described below to determine whether or not to carry these alternatives forward for more detailed analysis in the EIS.

*Decker 1 Alternative*—Several scoping comments suggested that OEA consider routes going south from the Ashland, Montana area to the Decker, Montana area in this EIS. This alternative would depart from Terminus Point 2 at the proposed Otter Creek Mine, and follow the Otter Creek approximately 5 miles north along the same route used for the Otter Creek Spur and then travel southwest generally paralleling the Tongue River through Terminus Point 1, see Final Scope Figures 1 and 3. It would run along the eastern side of the Tongue River and pass through the Wolf Mountains Battlefield National Historic Landmark. From there it would cross to the west side of the Tongue River and continue to its connection with the BNSF rail line via the Spring Creek Railroad Spur near Decker, Montana. This alternative is identical to the alignment from Ashland to Decker including the Western Alignment that was approved in *Tongue River III.*

*Decker 2 Alternative*—In addition to the Decker 1 Alternative, a new alternative heading south from Ashland to Decker, not considered in previous Tongue River proceedings, was developed in an effort to consider a southern route that would avoid the Wolf Mountains Battlefield National Historic Landmark (as shown on existing maps). This alternative would be almost identical to the Decker 1 Alternative. However, it would cross from the east to the west side of the Tongue River just north of Birney. It would pass west of the Wolf Mountains Battlefield National Historic Landmark and, with the exception of a short segment approximately 3 miles north of the Tongue River Dam, this alternative would continue on the west side of the Tongue River for the remainder of its course, see Final Scope Figures 1 and 3.

*Alternative Variations:* Alternative variations are short sections of rail alignments that could be used to replace segments of the alternatives discussed in the previous section. Two potential alternative variations that will be considered in the EIS have been developed to date.

*Ashland East Variation*—The Ashland East Variation was developed in response to a scoping comment from the Northern Cheyenne Tribe requesting an alternative as far as possible from the eastern Reservation boundary and the Tongue River, see Final Scope Figures 1 and 4. It could be used to replace segments of the Tongue River Alternative, Tongue River Road Alternative, Moon Creek Alternative, and/or the Colstrip Alternative. Starting at its northern end, this variation would connect to the Colstrip Alternative where it begins to curve to the south, at a location just east of its crossing with the Tongue River Road. The Ashland East Variation would connect to the Tongue River Alternative approximately 0.8 miles east of the intersection of Greenleaf Road and Tongue River Road. From there, the Ashland East Variation would continue east for approximately 3 miles before curving to the south. This variation would generally parallel the Tongue River, but would be offset to the east at distances ranging from approximately 2 miles to 4 miles. To lower the grade for the Otter Creek crossing, it would include a gradual westward bulge which would be located approximately 2 miles from Ashland at its closest point. The variation would pass approximately 2 miles east of Ashland before connecting to the Otter Creek Spur, and either Terminus 1 Variation or Terminus 1 through a wye track approximately 2.5 miles northwest of Terminus Point 2.

*Terminus 1 Variation*—The Terminus 1 Variation was designed in response to scoping comments from the Northern Cheyenne Tribe requesting an alternative as far as possible from the eastern Reservation boundary and the Tongue River, see Final Scope Figures 1 and 4. This variation would start at a point approximately 1.8 miles southeast of the proposed Terminus Point 1. From there, it would travel northeast, largely paralleling the spur leading to Terminus Point 1 before joining with the Ashland East Variation. The Terminus 1 Variation connects to the Ashland East Variation and from there could connect to any of the northern alternatives (i.e., Tongue River, Colstrip, Tongue River Road and Moon Creek alternatives) and could also connect to the southern alternatives (i.e., Decker 1 and 2 alternatives).

*Alternatives Considered But Eliminated From Detailed Study:* Based on analysis conducted to date, OEA has determined that the following two alternatives are not reasonable and feasible and will not be carried forward for detailed analysis in the EIS.

*212 to 59 to Gillette Alternative*—This route was developed in response to a scoping comment requesting that an alternative be considered that would transport the coal east by rail along Highway 212, before turning south at Highway 59 and connecting to the existing rail line near Gillette, Wyoming. The total length of this alternative is approximately 138 miles. OEA has determined that this is not a reasonable and feasible alternative based on the challenges that would be posed by the undulating terrain and the costs and environmental impacts that would be associated with the significantly longer length of the route.

*Otter Creek Alternative*—This route was developed in response to a scoping comment requesting that an alternative be considered that would follow the Otter Creek south and connect with the existing BNSF mainline somewhere between Sheridan and Gillette, Wyoming. The route would run south up the Otter Creek drainage through Custer National Forest to the Montana-Wyoming border, at which point it would turn to the southwest and continue for approximately 30 miles before reaching the existing BNSF mainline near the town of Clearmont, Wyoming. OEA has determined that this is not a reasonable and feasible alternative based on the excessive changes in elevation and the steep grade along the route.

*Public Participation, Agency Consultation and Government-to-Government Consultation:* As part of the

[16] OEA has also revisited other alternatives that were eliminated from detailed study in the *Tongue River I* EIS and has determined that the issues raised at that time, such as challenging grade or large amounts of cut and fill, are still valid. Moreover, OEA received no comments during the scoping comment period requesting that the Board reconsider any of the alternatives previously eliminated in the *Tongue River I* EIS. Therefore, these alternatives will continue to be treated as not reasonable and feasible, and they will not receive any detailed analysis in this EIS.

environmental review process to date, OEA has conducted broad outreach to inform the public, federally recognized tribes, and agencies about the proposed action and to facilitate participation in the NEPA process. OEA consulted with, and will continue to consult with federal, state, and local agencies, tribes, affected communities and all interested parties to gather and disseminate information about the proposal. As part of that process, OEA has initiated government-to-government consultation with federally-recognized Tribal Governments to seek, discuss, and consider the views of the tribes regarding the proposed action and alternatives. In addition, OEA intends to hold meetings in the vicinity of the project area to address potential project impacts to cultural resources during the EIS process.

*Defining the Project Area:* A challenging issue presented by TRRC's proposal is how to define the project area. The vast majority of scoping comments addressing the destination of the coal presumed that coal carried on TRRC's proposed line would eventually be carried to ports proposed for development in the Pacific Northwest, and then onto electric utilities in Asia. According to TRRC, some coal may be used for electricity generation within Montana, it may move some coal to the Midwest, and it may export some coal to Asia and to Europe via ports widely spread throughout the country. The coal market, TRRC asserts, is so volatile that more accurate predictions are impossible.

In most rail construction and operation proposals, the applicant-railroad defines the potential market areas that it intends to transport goods to and from. OEA then is able to assess potential environmental impacts within a defined geographic area. Here, the potential geographic area is vast. Commenters from Washington State are concerned about impacts from increased coal train traffic, including the potential addition of TRRC coal trains, within their state. Commenters from Oregon, including Senator Ron Wyden and the Oregon Department of Environmental Quality, have similar concerns that their state would suffer adverse impacts from potential increased coal train traffic, specifically through the Columbia River Gorge. Government officials and residents of Billings and Missoula, Montana are concerned with the potential for congestion and pollution that additional train traffic associated with the TRRC proposal could bring to their communities.

In preparing the EIS, OEA will use modeling and other available information to project economically reasonable and feasible transportation movements. OEA will define a project area in the EIS that will inform the public, enable all interested parties to participate in the environmental review process, and disclose the potential impacts of TRRC's proposal to the Board so that it can take the requisite hard look at the environmental effects before making a fully informed decision in this case.

*Summary of Scoping Comments:* OEA received more than 2,500 comments on the Draft Scope, of which most of the comments were form letters that contained the same general content as other letters already received. Of the remaining public comments, more than 500 were written comments, and approximately 150 were oral comments delivered during the public scoping meetings. Comments were submitted by federal, state, and local agencies, tribes, interested groups, elected officials, and individual citizens. In preparing this Final Scope, OEA considered all of the comments received. The Final Scope of Study reflects changes to the Draft Scope as a result of these comments. Additional changes from the Draft to the Final Scope were made for clarification or because of additional analysis conducted by OEA. In developing additions and modifications to the Final Scope, OEA has summarized and considered the comments by first dividing them into two broad categories: procedural issues and environmental resource issues.

**Procedural Issues**

• *Reopening the Scoping Process.* Commenters requested that the Board issue a new Notice of Intent and reopen the public scoping period as a result of the changes that were made to TRRC's preferred alternative in its December 17, 2012 supplemental application. Because TRRC's new preferred alignment, the Colstrip Alternative, was specifically identified as a potential alternative in the Draft Scope of Study and OEA held scoping meetings in Forsyth, Montana, near the Colstrip alternative's connection with the BNSF Forsyth Subdivision main line, OEA has determined that the scoping process provided sufficient notice of this potential alternative and the ability of the public to provide input on it and will not reopen the scoping period. Moreover, OEA had previously extended the comment period on the Draft Scope from December 6, 2012 to January 11, 2013.

• *Programmatic EIS.* Several commenters suggested that OEA prepare a programmatic EIS that evaluates allegedly related proposals, e.g., the proposed coal terminals in Washington State and Oregon. CEQ guidance suggests the preparation of a programmatic EIS when an agency evaluates broad policies, plans, or programs. Here, however, the decision before the Board is whether or not to grant TRRC authority to construct and operate a proposed rail line pursuant to 49 U.S.C. 10901. The Board does not have jurisdiction over the alleged related proposals and thus, has not been asked to approve any such proposals. Moreover, where there is no programmatic plan proposed for the extraction of resources in a region, a programmatic EIS is not required.[17] Therefore, a project-specific EIS is the appropriate approach. OEA will, however, examine any actions in the project area that may impact the same environmental resources as the proposed project as part of its cumulative impacts analysis in the EIS.

• *Public Information.* Commenters requested more detailed maps than those distributed during scoping. All available maps to date can be found on the Board-sponsored project Web site at www.tonguerivereis.com, including the Final Scope Figures referenced in this document. Additional maps may be generated during the preparation of the EIS. Any new or updated maps will be presented to the public in the DEIS and/or FEIS.

• *Cooperating Agencies.* The Northern Cheyenne Tribe requested information during scoping about cooperating agency status and about obtaining funding to facilitate its participation in the NEPA process. A cooperating agency is defined as any federal or state agency or tribe that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed project. 40 CFR 1501.6. As defined by the CEQ regulations, ''special expertise'' means statutory responsibility, agency mission, or related program experience. 40 CFR 1508.26. In addition, ''when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.'' 40 CFR 1501.5.

As previously noted, OEA has invited 4 agencies to be cooperating agencies that have decision-making authority independent of the Board, are agencies from which TRRC must obtain separate approvals or permits, and/or the proposed line would cross that agency's land. The purpose of having these agencies serve as cooperating agencies is

[17] *Kleppe* v. *Sierra Club,* 427 U.S. 390, 408–415 (1976).

to help these agencies fulfill their regulatory responsibilities and functions and to avoid duplicative environmental analysis.

OEA understands the importance of working closely with the Northern Cheyenne Tribe throughout every step of the EIS process. The Northern Cheyenne Tribe has explained to OEA that the tribe is responsible for ensuring that the air quality and water quality on the Northern Cheyenne Reservation comply with the Clean Air and Clean Water Act. Moreover, OEA has already initiated consultation with the Northern Cheyenne Tribe through the EIS process. OEA has concluded, however, that because neither the applicant's preferred alignment nor any of the alternatives summarized above cross the Northern Cheyenne Reservation, and because the Northern Cheyenne Tribe does not need to issue a license or a permit for the proposed rail line; the Northern Cheyenne Tribe does not meet the definition stated above of a cooperating agency. OEA also lacks the ability to provide any funding to the Northern Cheyenne Tribe or any other tribe to facilitate their participation. Nevertheless, OEA has and will continue to consult with the Northern Cheyenne Tribe and other tribes. OEA is committed to working closely with the Northern Cheyenne Tribe and other tribes, will continue to keep the tribes informed and involved, and will continue to seek input from the Northern Cheyenne Tribe and other tribes throughout the EIS process.

• *Government-to-Government Consultation.* Commenters requested that OEA engage affected tribes in government-to-government consultation. For example, the Northern Cheyenne Tribe requested that the EIS evaluate water rights associated with the Indian Homestead Act. USEPA requested that OEA engage in meaningful government-to-government consultation with the Northern Cheyenne, the Crow, and several bands of the Sioux Nation. Another commenter recommended that OEA conduct substantial, on-going, in-person consultation with affected federally-recognized tribes and that planning for the DEIS should be conducted in consultative partnership with affiliated tribes, to guarantee essential tribal involvement throughout the EIS process. OEA has contacted the Northern Cheyenne, the Crow, and bands of the Sioux Nation to determine which tribes would like to engage in government-to-government consultation with the Board. OEA expects that government-to-government consultation with interested tribes will help to identify and evaluate potential effects from the TRRC proposal to tribal lands, rights, resources, religious or cultural sites, and subsistence activities.

• *The Board's Procedures and Jurisdiction.* Commenters raised concerns regarding the Board's jurisdiction and the merits of the public need for the proposed project.

○ *Public Convenience and Necessity.* Commenters questioned whether the proposed action would meet the ''public convenience and necessity'' standard in 49 U.S.C. 10901 when the purpose and need of the project is only to serve a privately-owned coal mine. Additionally, commenters felt that the proposed action would not serve the public interest, especially if the coal is exported to foreign markets.

The Board's review of the TRRC proposal consists of two processes—consideration of (1) the transportation merits under 49 U.S.C. 10901 of the Interstate Commerce Act, and (2) the environmental impacts under NEPA and related environmental laws. The comments concerning the ''public convenience and necessity'' and public interest regarding the proposal relate to the transportation merits review by the Board. Under 49 U.S.C. 10901(c) of the Interstate Commerce Act, the Board must approve a proposal to construct or operate a rail line unless it finds that such activities are inconsistent with the ''public convenience and necessity.'' The statute does not define ''public convenience and necessity'' but historically, the Board has evaluated whether there is a public demand or need for the proposed service; whether the applicant is financially able to undertake the construction and provide rail service; and whether the proposal is in the public interest and will not unduly harm existing services. The interests of shippers are accorded substantial importance in assessing the public interest. Safety and environmental concerns are also considered and weighed against transportation concerns in evaluating the public interest. When the environmental review here is completed and the Board decides whether to authorize the proposed line, it will consider arguments raised by commenters that the TRRC proposal is inconsistent with ''the public convenience and necessity.''

○ *Eminent Domain.* Commenters expressed concern over just compensation if the proposed rail line were to traverse their land and the railroad's ability to use eminent domain to acquire land. In Board-approved rail construction cases, it is the railroad's responsibility to acquire land it needs to implement the approved project under state law. If the railroad needs to acquire property associated with a Board-approved line by using condemnation (also known as eminent domain) it must do so in accordance with the State of Montana's railroad condemnation law. The Board plays no role in any eminent domain proceedings and does not approve or disapprove any condemnation of private property under state law.

• *Proposed Action.* Commenters suggested that if the Colstrip Alternative was determined to be infeasible in the previous *Tongue River I* EIS, it would not be feasible today. But while the *Tongue River I* EIS determined that the Colstrip Alternative had a higher grade against load compared to other alternatives considered (0.85 percent versus 0.2 percent), the *Tongue River I* EIS did not determine, at that time, that the Colstrip Alternative was infeasible; rather it was not selected as the preferred alternative because it was a longer route to TRRC's then-identified target markets in the Midwest.

Many commenters raised concerns about the portion of the proposed line from Ashland to the previously planned Montco Mine (i.e., Terminus 1). Commenters suggested that the development of the Montco Mine is not reasonably foreseeable because there is currently no surface mine permit pending. As part of its analysis in the EIS, OEA will consider this issue.

• *Purpose and Need.* Commenters suggested that TRRC's information regarding the purpose and need for the proposed action is based on speculation regarding coal mine feasibility and global and domestic coal markets. Commenters remarked that domestic demand for coal has decreased in favor of natural gas and the most logical destination for the Otter Creek Coal would be to foreign markets. As discussed above, TRRC has indicated a possibility for some portion of the Otter Creek coal to find markets overseas, including markets in Asia and Europe, through ports along the Atlantic, Pacific, Great Lakes, and Gulf Coasts, as well as to coal-fired power plants in the United States. OEA will conduct an analysis to determine if TRRC's projections are reasonable, given the available information, and will present the results of its analysis in the EIS.

**Environmental Resource Issues**

• *Analysis of Transportation Systems.* Commenters requested that the EIS analyze the potential transportation routes for coal export from coal transported on the proposed line. Commenters requested that road traffic

delays be considered at road/rail grade crossings as a result of increased transaction-related rail traffic. Commenters also requested that the EIS evaluate rail line congestion. For the Colstrip Alternative, commenters requested that the EIS consider potential impacts to area roads and public access roads. In addition, commenters requested that the EIS evaluate the ability of the proposed rail line to carry additional resource commodities, such as timber and grain. Commenters requested that the EIS analyze impacts associated with the proposed paving and possible expansion of Tongue River Road.

USEPA commented that the EIS should include analysis of potential impacts of increased transaction-related rail traffic on existing rail lines and the impacts of more frequent coal trains on communities in Montana and beyond. USEPA also requested that the EIS provide details on TRRC's projected daily peak and average train traffic.

The Draft Scope of Study has been revised to reflect that the EIS will evaluate the potential downline rail traffic congestion as well as road traffic congestion at road/rail grade crossings resulting from increased transaction-related rail line traffic. The EIS will describe the existing road/rail grade crossing delay and analyze the potential for an increase in delay related to the proposed rail operations. The EIS will evaluate the potential paving and expansion of Tongue River Road as a cumulative impact. The EIS will consider whether the other issues raised by commenters should be addressed in the EIS, and if so, analyze them as appropriate.

• *Analysis of Safety Impacts.* Commenters requested that the EIS examine potential safety issues, including accidents at grade crossings, fires, livestock loss, and train derailment. Commenters also requested that the EIS examine the potential delay of emergency service vehicles at grade crossings due to the increase in train traffic and potential collisions with trucks transporting hazardous materials. Additionally, commenters requested that the EIS analyze public safety impacts from coal train traffic on the proposed line as well as an increase in coal train traffic on existing rail lines that may move coal from the Otter Creek area. The EIS will evaluate potential impacts of TRRC's preferred route and each alternative on road/rail grade crossing safety and analyze the potential for an increase in accidents related to the proposed new rail operations. The EIS will also describe projected rail operations and analyze the potential for increased probability of accidents, including derailments due to the proposed action. The Draft Scope of Study has been revised to reflect that the EIS will evaluate the potential for disruption and delays to emergency vehicles and evaluate the potential for fires and livestock loss. The EIS will consider whether the other issues raised by commenters should be addressed in the EIS, and if so, analyze them as appropriate.

• *Analysis of Land Use.*

○ *Agricultural Lands.* Several commenters requested that the EIS evaluate the potential impacts to agricultural lands, including ranchlands, access to water and grazing pastures for livestock, impacts to cattle crossings, access to irrigation systems, and access to roads. The Draft Scope of Study has been revised to reflect that the EIS will evaluate impacts to these agricultural lands.

○ *Potential Section 4(f) properties.* The Montana Department of Transportation requested that the EIS identify and evaluate potential impacts to resources protected under the U.S. Department of Transportation (USDOT) regulation known as ''Section 4(f).'' Section 4(f) provides that USDOT agencies cannot approve the use of land from publicly owned parks, recreational areas, refuges, or historical sites except under certain conditions. The Board is an independent agency organizationally housed within USDOT. Its governing statute is the Interstate Commerce Act and not the Department of Transportation Act, 49 U.S.C. 1653(f) (1970). Therefore, the Board is not subject to Section 4(f) requirements. However, the Federal Highway Administration (FHWA) is a USDOT agency subject to the Section 4(f) requirements. An underpass at Interstate 94 would need to be built for the Tongue River Road, Tongue River, and Moon Creek Alternatives (should the Board approve one of these alternatives), which would require approval from FHWA in coordination with the Montana Department of Transportation. Therefore, the Draft Scope of Study has been revised to reflect that the EIS will analyze potential impacts to Section 4(f) properties that may be located near Interstate 94 along the Tongue River Road, Tongue River, and Moon Creek Alternatives.

• *Analysis of Recreation.* Commenters requested that the EIS evaluate potential impacts to recreational activities, including hunting, fishing, and canoeing. Commenters requested that the EIS also evaluate impacts to Montana Fish, Wildlife, and Parks (MFWP) Conservation Easements and Block Management properties. Additionally, many commenters were concerned about impacts to recreation areas near Miles City resulting from increased train operations. The Draft Scope of Study has been revised to reflect that the EIS will evaluate these issues.

• *Analysis of Biological Resources.*

○ *Fisheries.* Commenters requested that the EIS analyze the potential impacts to the Miles City Fish Hatchery, the Tongue River dam, and the Tongue and Yellowstone River ditches. The Final Scope reflects that the EIS will evaluate impacts to the Miles City Fish Hatchery, the Tongue River dam and the Tongue and Yellow River ditches, as appropriate.

○ *Birds.* Commenters requested that potential impacts to birds be analyzed in the EIS. Specifically, the U.S. Fish and Wildlife Service (USFWS) requested that ground and aerial surveys be conducted along the different alternatives' right-of-ways in compliance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Additionally, one commenter requested the EIS examine potential impacts to burrowing owls, short-eared owls, mountain plovers, and ferruginous hawks. The Draft Scope of Study has been revised to reflect that the EIS will include appropriate aerial and ground surveys along the alternatives in compliance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.[18] The EIS will consider whether the other issues raised by commenters should be addressed in the EIS, and if so, analyze them as appropriate.

○ *Wildlife.* Commenters requested that the EIS analyze potential impacts of the proposed action to wildlife migration corridors and breeding grounds along with impacts to wildlife as a result of wildlife-train collisions along the proposed rail line and alternatives. The Draft Scope of Study has been revised to reflect that the EIS will analyze impacts to wildlife migration corridors and breeding grounds, along with impacts to wildlife as a result of wildlife-train collisions along the proposed rail line and alternatives.

○ *Vegetation.* USFWS requested the development and implementation of a comprehensive restoration plan to address temporarily disturbed areas, in particular the native grassland,

[18] As discussed above, OEA's ability to conduct these surveys depends on landowner permission to access properties located along the alternatives under consideration.

sagebrush-steppe, and riparian areas. Commenters also requested that a detailed vegetative habitat mapping survey be conducted. These requests will be considered in the EIS, as appropriate.

○ *Threatened and Endangered Species.* USFWS requested that the EIS evaluate potential impacts to the Black-footed Ferret, Pallid Sturgeon, Interior Least Tern, Whooping Crane, Greater Sage-Grouse (candidate species), and Sprague's Pipit (candidate species). Additionally, USFWS requested that a biological assessment be conducted. The Draft Scope of Study has been revised to reflect that the EIS will evaluate impacts to the Black-footed ferret, Pallid Sturgeon, Interior Least Tern, Whooping Crane, Greater Sage-Grouse (candidate species), and Sprague's Pipit (candidate species) and include a biological assessment for threatened and endangered species.

○ *Noxious Weeds.* Commenters raised concerns associated with the spread of noxious weeds resulting from the construction and operation of the proposed rail line. The Draft Scope of Study has been revised to reflect that the EIS will analyze potential impacts from the spread of noxious weeds.

• *Analysis of Water Resources.*

○ *Groundwater and Surface Water.* USEPA requested that the EIS analyze potential impacts to water quantity such as changes in stream flow, additional uses of surface or groundwater, groundwater depletions, and reductions in groundwater recharge. MFWP requested that the proposed action maintain the connectivity of prairie streams and rivers to minimize impacts to the area fisheries and study the potential alterations to stream and bank morphology as well as potential sediment impacts from erosion and cut and fill operations. Commenters also requested that the EIS examine where the water needed for construction and operation would be sourced and what impact the proposed action would have on water access for area ranchers and farmers. One commenter requested that the EIS evaluate impacts resulting from pollution runoff into any streams listed under Clean Water Act Section 303d in the project area. The Draft Scope of Study has been revised to reflect that the EIS will evaluate these issues.

○ *Floodplains.* One commenter requested that the EIS include a flood analysis of the construction impacts from the proposed rail line and alternatives on Miles City. Commenters requested that the EIS evaluate potential impacts to irrigation structures along the Tongue River. The Draft Scope of Study has been revised to reflect that the EIS will evaluate potential floodplain impacts from the proposed rail line and alternatives on Miles City and that the EIS will evaluate potential impacts to irrigation structures along the Tongue River.

○ *Stream Morphology.* USEPA suggested that the EIS include an analysis of potential impacts to the stream morphology of the Tongue River and Otter Creek, existing and proposed artificial bank stabilization structures, agricultural practices adjacent to the water bodies, constrictions placed on the river channel and floodplain, fluvial geomorphology, bank stabilization and floodplains, and bank destabilization. The Draft Scope of Study has been revised to reflect that the EIS will assess potential impacts to geomorphology of the Tongue River and Otter Creek. The EIS will consider whether the other issues raised by commenters should be addressed in the EIS, and if so, analyze them as appropriate.

○ *Water Quality.* USEPA requested that the EIS utilize existing models to review reasonably foreseeable water quality impacts in the U.S. from coal combustion; summarize existing water quality conditions; evaluate the potential water quality impacts from the proposed rail line and alternatives and potential area mines; and include information about water quality standards, potential discharge from the proposed railroad and potential area mines, and impaired water bodies in the State of Montana and the Northern Cheyenne Reservation. The Draft Scope of Study has been revised to reflect that the EIS will consider USEPA guidance documents concerning non-point source pollution and the USEPA Water Quality Assessment for the Tongue River and will include information concerning State of Montana and Northern Cheyenne Tribe water quality standards. The EIS will consider whether the other issues raised by USEPA should be addressed in the EIS, and if so, analyze them as appropriate.

○ *Wetlands.* The Corps recommended that a Draft 404(b)(1) analysis be performed and included as part of the EIS. USEPA requested that the EIS include an analysis of the potential impacts to wetlands and riparian habitats. The Draft Scope of Study has been revised to reflect that the EIS will include an analysis of the potential impacts to wetlands and riparian habitats and include information to support a Draft 404(b)(1) analysis.

• *Analysis of Navigation.* Commenters requested that the EIS evaluate the impacts of the construction and operation of the railroad on navigability of water bodies. The EIS will include an analysis of potential impacts to navigation.

• *Analysis of Geology and Soils.* Several commenters requested an analysis of alluvial valley floors, soil erosion, prime farmland, and reclamation activities. One commenter expressed concern about atmospheric deposition of rail traffic emissions on soil, including accumulation of Polycyclic Aromatic Hydrocarbons (PAH) and heavy metals. The EIS will evaluate potential mine reclamation activities as cumulative impacts. The Draft Scope of Study has been revised to reflect that the EIS will evaluate the potential atmospheric deposition of rail traffic emissions on soil including the possible accumulation of PAH and heavy metals from the proposed line.

• *Analysis of Air Quality and Visibility.*

○ *Emissions Analysis.* USEPA recommended that the EIS utilize existing models to review reasonably foreseeable air quality impacts in the U.S. from combustion of the coal transported by the proposed line. USEPA also recommended that the EIS discuss practices in use at coal mines in the Powder River Basin for reducing $NO_X$ emissions from blasting activities, utilize far-field and potentially also near-field air quality modeling to assess potential impacts to Class I areas and visibility because of the proximity to the Northern Cheyenne Class I airshed, as well as the proposed railroad and mines' potential contributions to cumulative impacts on air quality-related values (AQRVs), resources that may be adversely affected by a change in air quality, such as visibility in Class I areas and sensitive Class II areas based upon cumulative impact air quality modeling previously conducted by BLM. USEPA recommended that the EIS analyze potential visibility degradation and incremental consumption under EPA's Prevention of Significant Deterioration (PSD) permitting program from the proposed project and cumulative emissions because of the proximity of the project to sensitive receptor areas and because of previously-modeled air quality impacts. The Draft Scope of Study has been revised to reflect that the EIS will examine potential impacts from the proposed line and any coal mines that the proposed line might serve on visibility degradation and impacts to the Northern Cheyenne Class I airshed and Class II sensitive areas, evaluate incremental consumption under EPA's PSD permitting program for cumulative emissions from the mines and other activities in the project area and include relevant information from BLM's

Resource Management Plan air quality study.

One commenter requested that the EIS determine the impacts of million tons of coal being shipped to China and burned with limited or no pollution control devices. While the Board has noted that Supreme Court precedent suggests that an analysis of impacts related to activities over which the Board has no authority to regulate and are not proximately caused by the Board's decision is not required under NEPA,[19] the Draft Scope of Study has been revised to reflect that the EIS will include an appropriate air quality analysis of the combustion of the coal transported by the proposed TRRC line. The EIS will also evaluate the air quality impacts from mining activities at the coal mines that would produce coal to be carried on the proposed TRRC line as cumulative impacts. The EIS will consider whether the other issues raised by commenters should be addressed in the EIS, and if so, analyze them as appropriate.

○ *Agency Consultation.* USEPA recommended that the EIS include design measures for the coal mines that are likely to be imposed by the State of Montana into the analysis and identify these measures as permit-related conditions in the baseline emission inventory. USEPA recommended that OEA consult with BLM and Montana State agencies on the project's air quality analysis, the results of the analysis, identification of available mitigation measures, and any necessary permitting, as appropriate. The Draft Scope of Study has been revised to reflect that the EIS will consider Montana State emission controls required on permitted sources in the baseline cumulative impacts analysis. BLM and Montana State agencies are cooperating agencies, and OEA will consult with them on these issues.

○ *Diesel Emissions.* Several commenters requested that the EIS analyze an increase in air pollution and associated human health effects from the proposed action. Commenters requested that the EIS analyze potential public health impacts, including impacts associated with diesel emissions from locomotives and increased coal train traffic from the mine sites to the destination facilities. USEPA requested that the EIS evaluate the potential human health impacts to potentially affected communities along existing rail lines that may move coal from the Otter Creek area, including potential impacts associated with diesel exhaust. The Draft Scope of Study has been revised to reflect that the EIS will include an appropriate evaluation of the effects on human health from locomotive diesel emissions.

○ *Climate Change.* Several commenters requested that the EIS analyze the potential contributions to climate change resulting from the proposed action. Additionally, commenters requested that the EIS analyze potential air quality impacts, including climate change, resulting from the proposed coal export terminals in the Pacific Northwest. USEPA recommended performing a life cycle greenhouse gas (GHG) emissions analysis. While the Board has noted that Supreme Court precedent suggests that an analysis of impacts related to activities over which the Board has no authority to regulate and are not proximately caused by the Board's decision is not required under NEPA,[20] the Draft Scope of Study has been revised to reflect that the EIS will include a life-cycle analysis of potential GHG emissions. The EIS will consider whether the other issues raised by commenters should be addressed in the EIS, and if so, analyze them as appropriate.

○ *Coal Dust.* Numerous commenters addressed the potential impacts of coal dust to air quality, human health, and visibility. Specifically, one commenter requested that the EIS include an analysis of the potential impacts to the Class I airshed of the Northern Cheyenne Tribe. Commenters requested that the EIS evaluate the potential impacts of coal dust emitted from railcars traveling on the proposed line with and without the use of dust control techniques, including chemical surfactants, and analyze the chemical composition of these surfactants. Commenters also requested that the EIS analyze the potential effects of toxic pollutants, including heavy metals, such as cadmium, resulting from the emission of coal dust along the proposed line. These commenters suggested that the EIS include a study of the potential human health effects from coal dust on communities along the proposed line, and around coal stock piles in various weather conditions. USEPA requested that the EIS analyze potential increases in coal dust that would be associated with transaction-related traffic along the proposed line and additional rail traffic along existing lines that may move coal from the Otter Creek area. MFWP commented on potential effects of coal dust to the Miles City Fish Hatchery. The Draft Scope of Study has been revised to clarify that the EIS will include an appropriate evaluation of impacts from coal dust, including any human health impacts.

• *Analysis of Noise and Vibration.* Several commenters requested that the EIS analyze potential impacts to people and structures along the proposed line and alternatives from potential ground vibrations. Commenters specifically requested a comprehensive vibration study on the Miles City Fish Hatchery. Several commenters requested that the EIS analyze the potential impacts of sound and infrasound (sound below the level of human hearing) from transaction-related rail traffic. One commenter was concerned about the effects of vibration on structures such as bridges, retaining walls, homes, ranch structures, pipelines, and irrigation systems, particularly those areas with underlying clay soils. The Draft Scope of Study has been revised to reflect that the EIS will evaluate potential impacts to the Miles City Fish Hatchery, as appropriate. The EIS will consider whether the other issues raised by commenters should be addressed in the EIS, and if so, analyze them as appropriate.

• *Analysis of Energy Resources.* Commenters requested that the EIS analyze potential impacts to existing and future utility lines underground and overhead and the impact of the construction and operation of the proposed line and Otter Creek Mine's energy needs on the local energy grid. Commenters suggested that the EIS discuss the current and future coal market and the potential switch to natural gas and wind power; analyze whether Asia could be a major destination for Powder River Basin coal; and analyze if China is planning to use inexpensive coal imported from the U.S. as a bridge fuel until it can develop renewable energy. Commenters requested that the EIS evaluate potential impacts from the proposed Young's Creek Mine in Wyoming and possible expansion of the Decker Mines. The Draft Scope of Study has been revised to reflect that the EIS will analyze the potential impact of the proposed action on energy markets and the effect of energy markets on the proposed action, as appropriate. The EIS will consider whether the other issues raised by commenters should be addressed in the EIS, and if so, analyze them as appropriate.

• *Analysis of Socioeconomics and Environmental Justice.* Commenters requested that the EIS analyze any disproportionate adverse impacts on

[19] *Tongue River R.R. Co., Inc.—Constr. And Operation—Western Alignment,* FD 30186 (Sub-No. 3) at 10 n.21 (STB served June 15, 2011).

[20] *Id.*

low-income residents of the Northern Cheyenne Reservation, as well as the Amish Community in the project area. Specifically, commenters requested that the EIS analyze potential impacts to the Northern Cheyenne Reservation's poverty rates, incomes, crime rates, transportation and safety issues, social services, and healthcare. Several commenters requested that the EIS analyze the socioeconomic impacts from an influx of workers in the project area, including demand for local services. Numerous commenters requested that the EIS determine the economic costs to agricultural and tourism operations in the project area. Additionally, several commenters requested that the EIS evaluate the possibility of potential job creation or job loss, especially in mining and law enforcement and as a result of potential coal displacement at the Western Energy mine in Colstrip, Montana. One commenter requested that the EIS analyze potential impacts to the Town of Colstrip due to the change in TRRC's preferred alternative. Numerous commenters requested that the EIS evaluate potential for losses in property values for landowners along the different alternatives. USEPA requested that the EIS include a discussion of potential environmental justice impacts in the air, water, socioeconomics, and traffic analyses, particularly associating specific resource impacts to specific communities, including the Northern Cheyenne and the Crow reservations. The EIS will include an appropriate evaluation of socioeconomic and environmental justice issues.

• *Analysis of Cultural and Historic Resources.* The Northern Cheyenne and other commenters requested that the EIS evaluate the effects of the proposed action on sites and resources of religious and cultural significance to the Northern Cheyenne Tribe. USEPA commented that the Northern Cheyenne Tribe considers the Tongue River and the Tongue River Valley to be places of cultural and spiritual significance. One commenter encouraged OEA to join the December 5, 2012, Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites Memorandum of Understanding (MOU), signed by the Departments of Defense, Interior, Agriculture and Energy and the Advisory Council on Historic Preservation. That MOU outlines a multi-point approach to improve the protection of and tribal access to tribal sacred sites across the country. The commenter recommended that OEA conduct substantial, on-going, in-person consultation with affected federally recognized tribes and that new cultural resource surveys should be conducted in consultative partnership with affiliated tribes. The commenter also requested that the EIS include a Visual Impact Study to assess the potential indirect impacts to tribal and other cultural resources, a cultural resource survey, landscape-level archeological, historical and architectural surveys (including those for historic ranches), an ethnographic study, and an archeological survey within the Area of Potential Effect (APE) for the project in consultation with the tribes, stakeholders, property-owners and relevant local, state, and federal agencies. The Draft Scope of Study has been revised to reflect that the EIS will include an analysis of indirect and visual effects on cultural and historic resources. The EIS will consider whether the other issues raised by commenters should be addressed in the EIS, and if so, analyze them as appropriate.

• *Analysis of Aesthetics.* Commenters requested that the EIS include a Visual Impact Study to accurately gauge impacts to cultural resources, and to specifically consider impacts to the Northern Cheyenne Tribe and Reservation. Commenters requested that the EIS evaluate the potential impacts from industrialization of an agricultural area. One commenter suggested using the BLM Visual Resource Management Manual. The Draft Scope of Study has been revised to reflect that the EIS will evaluate these issues.

• *Analysis of Cumulative Impacts.* Commenters requested that the EIS analyze the potential cumulative impacts from the proposed Otter Creek Mine, coal bed methane and oil and gas development, exports of Powder River Basin coal to Asian coal markets, and the paving of Tongue River Road. Commenters also requested that any potential discharge from existing mines and effects of discharges from existing mines or runoff into the Tongue River and its tributaries be analyzed for its potential impacts to water quality including increases in salinity and sodic water content. USEPA requested that the EIS include information about the timing and duration of potential mining activities at the proposed Otter Creek Mine and the previously planned Montco Mine, as well as the estimated mine acreage that will be disturbed at any one time. The EIS will evaluate the cumulative and incremental impacts of the proposed action when added to other past, present, and reasonably foreseeable future actions in the project area, including an appropriate analysis of the actions raised by commenters on the Draft Scope.

**Final Scope of Study for the EIS**

*Environmental Impacts Analysis*

Proposed New Construction and Operation

The EIS will address activities associated with the construction and operation of the proposed rail line and its potential environmental impacts, as appropriate.

Impact Categories

The EIS will analyze potential direct, indirect, and cumulative impacts [21] of the proposed construction and operation of the TRRC rail line and each reasonable and feasible alternative on the human and natural environment, as well as the no-action alternative. Impact areas addressed will include the following: Transportation systems, safety, land use, recreation, biological resources, water resources (including wetlands and other waters of the U.S.), navigation, geology and soils, air quality, noise, energy resources, socioeconomics, cultural and historic resources, aesthetics (including visual resources) and environmental justice. The EIS will include a discussion of each of these impact areas and will address the potential direct, indirect, and cumulative impacts associated with the proposed action under each reasonable and feasible alternative and the no-action alternative.

**1. Transportation Systems**

The EIS will:

a. Evaluate the potential impacts resulting from TRRC's preferred route and each alternative [22] on the existing rail and road network. This will include analyzing potential impacts for downline rail traffic congestion, as well as road traffic congestion at road/rail grade crossings resulting from increased transaction-related traffic, as appropriate.

b. Describe the existing road/rail grade crossing delay and analyze the potential for an increase in delay related to the proposed rail operations, as appropriate.

[21] NEPA requires the Board to consider direct, indirect, and cumulative impacts. Direct and indirect impacts are both caused by the action. 40 CFR 1508.8(a)–(b). A cumulative impact is the ''incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.'' 40 CFR 1508.7.

[22] The term ''alternative'' in this Final Scope refers to reasonable and feasible alternatives and the no-action alternative.

c. Propose mitigation measures to minimize or eliminate potential project impacts to transportation systems, as appropriate.

**2. Safety**

The EIS will:

a. Evaluate potential impacts of TRRC's preferred route and each alternative on road/rail grade crossing safety and analyze the potential for an increase in accidents related to the proposed new rail operations, as appropriate.

b. Describe projected rail operations and analyze the potential for increased probability of train accidents including derailments, as appropriate.

c. Evaluate the potential for disruption and delays to the movement of emergency vehicles.

d. Evaluate the potential for fires and livestock loss as a result of TRRC's preferred route and each alternative, as appropriate.

e. Propose mitigation measures to minimize or eliminate potential project impacts to safety, as appropriate.

**3. Land Use**

The EIS will:

a. Evaluate potential impacts of TRRC's preferred route and each alternative on existing land use patterns within the project area and identify those land uses, including agricultural, that would be potentially affected by the proposed new rail line.

b. Analyze the potential impacts associated with each alternative to land uses identified within the project area, for example, impacts to ranching and other agricultural usage such as access to water and grazing pastures for livestock, impacts to cattle crossings, access to roads, and access to irrigation systems. Such potential impacts may include incompatibility with existing land use and conversion of land to railroad use.

c. Identify and evaluate potential impacts to resources protected under the USDOT Section 4(f) regulation that may be located near Interstate 94 along the Tongue River Road, Tongue River and Moon Creek Alternatives.

d. Propose mitigation measures to minimize or eliminate potential impacts to land use, as appropriate.

**4. Recreation**

The EIS will:

a. Evaluate existing conditions and the potential impacts of the construction of TRRC's preferred route and each alternative, and their operation, on recreational trails, MFWP Conservation Easements and Block Management properties, recreation areas near Miles City, and other recreational opportunities in the project area.

b. Propose mitigation measures to minimize or eliminate potential project impacts on recreational opportunities, as appropriate.

**5. Biological Resources**

The EIS will:

a. Evaluate the existing biological resources within the project area, including vegetative communities, wildlife, fisheries, wetlands, and federal and state threatened or endangered species (including candidate species), and analyze the potential impacts to these resources resulting from TRRC's preferred route and each alternative. For example, the EIS will include appropriate aerial and ground surveys along TRRC's preferred route and each alternative in compliance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act and a biological assessment for threatened and endangered species. The EIS will evaluate impacts to the Black-footed Ferret, Pallid Sturgeon, Interior Least Tern, Whooping Crane, Greater Sage-Grouse (candidate species), and Sprague's Pipit (candidate species). The EIS will also evaluate potential impacts to the Miles City Fish Hatchery, the Tongue River Dam, and the Tongue and Yellowstone River ditches, as appropriate. The EIS will analyze the impacts of the proposed action and alternatives on wildlife migration corridors and breeding grounds along with impacts to wildlife as a result of wildlife-train collisions along TRRC's preferred route and each alternative.

b. Evaluate the potential for the spread of noxious weeds resulting from TRRC's preferred route and each alternative.

c. Identify and describe any wildlife sanctuaries, refuges, or rearing facilities; national or state parks, forests, or grasslands; critical, unique, or high-value habitats that support threatened or endangered species; and riparian habitats; and evaluate the potential impacts to these resources resulting from TRRC's preferred route and each alternative.

d. Propose mitigation measures to avoid, minimize, or compensate for potential impacts to biological resources, as appropriate.

**6. Water Resources**

The EIS will:

a. Describe the existing surface water and groundwater resources within the project area, including lakes, rivers, streams, stock ponds, wetlands, and floodplains, and analyze the potential impacts on these resources resulting from the construction and operation of TRRC's preferred route and each alternative.

b. Evaluate potential floodplain impacts from the proposed rail line and alternatives on Miles City.

c. Evaluate potential impacts to irrigation structures along the Tongue River.

d. Consider USEPA guidance documents concerning non-point source pollution.

e. Consider the USEPA Water Quality Assessment for the Tongue River.

f. Consider and include information concerning State of Montana and Northern Cheyenne Tribe water quality standards.

g. Assess potential impacts of the project to geomorphology of the Tongue River and Otter Creek.

h. Evaluate potential impacts to water quantity such as changes in stream flow, additional uses of surface or groundwater, groundwater depletions, and reductions in groundwater recharge; describe the connectivity of prairie streams and rivers and study the potential alterations to stream and bank morphology as well as potential sediment impacts from erosion and cut and fill operations; examine the sources for the water needed for the proposed construction and operations and what impact the proposed action will have on water access for area ranchers and farmers; and evaluate impacts resulting from pollution runoff into any 303d listed streams in the project area.

i. Describe the permitting requirements for the railroad's preferred route and each alternative with regard to wetlands, stream and river crossings, water quality, floodplains, and erosion control. Include an analysis of the potential impacts to wetlands and riparian habitats and include information to support a Draft 404(b)(1) analysis.

j. Propose mitigation measures to avoid, minimize, or compensate for potential project impacts to water resources, as appropriate.

**7. Navigation**

The EIS will:

a. Identify existing navigable waterways within the project area and analyze the potential impacts on navigability resulting from TRRC's preferred route and each alternative.

b. Propose mitigation measures to minimize or eliminate potential impacts to navigation, as appropriate.

**8. Geology and Soils**

The EIS will:

a. Describe the geology, soils and seismic conditions found within the

project area, including unique or problematic geologic formations or soils, prime farmland, and hydric soils, and analyze the potential impacts on these resources resulting from construction and operation of TRRC's preferred route and each alternative.

b. Evaluate potential measures that could be employed to avoid or to construct through unique or problematic geologic formations or soils.

c. Evaluate the potential atmospheric deposition of rail traffic emissions on soil, including the possible accumulation of Polycyclic Aromatic Hydrocarbons (PAH) and heavy metals from the proposed line.

d. Propose mitigation measures to minimize or eliminate potential project impacts to geology and soils, as appropriate.

**9. Air Quality**

The EIS will:

a. Evaluate the potential air quality impacts resulting from the proposed new rail line and the proposed operations, as well as combustion of the coal proposed to be transported on the TRRC line, as appropriate.

b. Evaluate the air emissions associated with the proposed action, including coal dust and diesel emissions from locomotives and the potential associated human health effects, as appropriate.

c. Include a life-cycle analysis of potential GHG emissions.

d. Include relevant information from BLM's Resource Management Plan air quality study and other relevant cumulative impact studies, as appropriate.

e. Examine potential impacts of the proposed line and any coal mines that the proposed line might serve on visibility degradation and impacts to the Northern Cheyenne Class I airshed and sensitive Class II areas.

f. Evaluate incremental consumption under EPA's Prevention of Significant Deterioration (PSD) permitting program for cumulative emissions from the mines and other activities in the project area, as appropriate.

g. Consider Montana State emission controls required on permitted sources in the baseline cumulative impacts analysis.

h. Propose mitigation measures to minimize or eliminate potential project-related impacts to air quality, as appropriate.

**10. Noise and Vibration**

The EIS will:

a. Describe the potential noise and vibration impacts during rail line construction resulting from TRRC's preferred route and each alternative.

b. Describe the potential noise and vibration impacts of new rail line operation resulting from TRRC's preferred route and each alternative.

c. Evaluate the potential noise and vibration impacts to the Mile City Fish Hatchery, as appropriate.

d. Propose mitigation measures to minimize or eliminate potential project impacts to sensitive noise and vibration receptors, as appropriate.

**11. Energy Resources**

The EIS will:

a. Describe and evaluate the potential impact of the proposed line on the distribution of energy resources resulting from TRRC's preferred route and each alternative, including petroleum and gas pipelines and overhead electric transmission lines.

b. Describe and evaluate potential impacts of the proposed action on energy markets and the effect of energy markets on the proposed action.

c. Propose mitigation measures to minimize or eliminate potential project impacts to energy resources, as appropriate.

**12. Socioeconomics**

The EIS will:

a. Analyze the socioeconomic effects of the proposed action, including effects of a potential influx of construction workers to the project area as a result of the proposed action and the potential increase in demand for local services.

b. Propose mitigation measures to minimize or eliminate potential project-related adverse impacts to social and economic resources, as appropriate.

**13. Cultural and Historic Resources**

The EIS will:

a. Identify historic buildings, structures, sites, objects, or districts eligible for listing on or listed on the National Register of Historic Places (NRHP) within the Area of Potential Effect (APE) for TRRC's preferred route and each alternative and analyze potential project-related impacts to them.

b. In consultation with federally-recognized tribes participating in the Section 106 process, identify properties of traditional religious and cultural importance to tribes and prehistoric or historic archaeological sites evaluated as potentially eligible, eligible, or listed on the NRHP (archaeological historic properties) within the APE for TRRC's preferred route and each alternative, and analyze potential project-related impacts to them, including indirect visual effects.

c. Propose measures to avoid, minimize, or mitigate potentially adverse project-related impacts to Traditional Cultural Properties (TCPs) and built-environment (e.g., buildings), archaeological historic properties, and cultural and historic resources, as appropriate.

**14. Aesthetics**

The EIS will:

a. Describe the potential visual impacts of the proposed rail line in the project area, including visual impacts to cultural resources, the Northern Cheyenne Reservation, and agricultural areas.

b. Evaluate the need to use the BLM Visual Resource Management Manual.

c. Propose mitigation measures to minimize or eliminate potential project impacts on aesthetics, as appropriate.

**15. Environmental Justice**

The EIS will:

a. Evaluate the potential impacts resulting from construction and operation of TRRC's preferred route and each alternative on minority and low-income populations.

b. Propose mitigation measures to minimize or eliminate potential project impacts on environmental justice populations, as appropriate.

**16. Cumulative Impacts**

The EIS will evaluate the cumulative and incremental impacts of the proposed action when added to other past, present, and reasonably foreseeable future actions in the project area, as appropriate.

Decided: March 19, 2013.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2013–06625 Filed 3–21–13; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 35723]**

### Housatonic Railroad Company, Inc., Maybrook Railroad Company, and Housatonic Transportation Company—Intra-Corporate Family Transaction Exemption

Housatonic Railroad Company, Inc. (HRRC), Maybrook Railroad Company (MRC), and Housatonic Transportation Company (HTC) (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) and 1180.2(d)(6) for an intra-corporate family transaction and a reincorporation in a different State.

Specifically, HRRC will transfer to MRC (but will continue to operate) a segment of railroad line, and HTC, a Delaware corporation, will reincorporate as a Connecticut corporation while remaining in control of HRRC and Coltsville Terminal Company (CTC).

HTC, a noncarrier holding company, is the parent company of wholly owned subsidiaries HRRC, CTC, and a noncarrier subsidiary engaged in warehousing, reloading, and transloading operations. HRRC, a Class III rail carrier, operates rail lines in Connecticut and Massachusetts, including the Berkshire Line, which consists of three contiguous segments owned by MRC, the Connecticut Department of Transportation (CDOT), and HRRC, respectively.[1] Applicants state that MRC is a ''non-operating'' rail carrier that owns rail lines in Connecticut. Applicants indicate that MRC, HTC, CTC, and HRRC are under common ownership and common control and are members of the Housatonic corporate family.

According to applicants, HTC seeks to become a Connecticut corporation in lieu of continuing as a Delaware corporation. After its reincorporation in Connecticut, HTC will remain in control of HRRC and CTC.

Applicants also seek to transfer to MRC ownership of the portion of the Berkshire Line now owned by HRRC. Applicants state that HRRC would continue to operate the line through retained perpetual and exclusive common carrier freight operating rights pursuant to an operating agreement between HRRC and MRC.

Applicants anticipate consummating the proposed transaction on or after April 6, 2013, the effective date of the exemption (30 days after the exemption was filed).

Applicants state that the purpose of the intra-corporate transaction is to streamline administration and enhance the financial condition of HTC and HRRC by consolidating ownership of the privately owned portion of the Berkshire Line, by relieving HRRC of the burden of the payment of a mortgage obligation secured by the property to be transferred, and by reducing administration expenses. Applicants state that HTC has no property, assets, or activities in Delaware and currently is qualified as a foreign corporation in Connecticut, thus creating unnecessary corporate administration, expenses, and taxes.

The line transfer is a transaction within a corporate family exempted from prior review and approval under 49 CFR 1180.2(d)(3). Applicants state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family. The reincorporation of HTC is the type of transaction specifically exempted from prior review and approval under 49 CFR 1180.2(d)(6).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because applicants state that all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than March 29, 2013 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35723, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on counsel for applicants, Edward J. Rodriguez, 8 Davis Road West, P.O. Box 687, Old Lyme, CT 06371.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: March 15, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Derrick A. Gardner,**

*Clearance Clerk.*

[FR Doc. 2013–06561 Filed 3–21–13; 8:45 am]

**BILLING CODE 4915–01–P**

[1] The Berkshire Line is an approximately 86.3-mile line located between Berkshire Junction in Danbury, Conn., and Pittsfield, Mass. Currently, MRC owns the 13.65-mile segment between Berkshire Junction and a point in New Milford, Conn., called Boardman's Bridge; CDOT owns a 36.35-mile segment between Boardman's Bridge and the Massachusetts state line at North Canaan, Conn./Sheffield, Mass.; and HRRC owns the 36.3-mile portion between Sheffield and Pittsfield, Mass.

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. EP 290 (Sub-No. 5) (2013–2)]**

### Quarterly Rail Cost Adjustment Factor

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Approval of rail cost adjustment factor.

**SUMMARY:** The Board has approved the second quarter 2013 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2013 RCAF (Unadjusted) is 1.006. The second quarter 2013 RCAF (Adjusted) is 0.438. The second quarter 2013 RCAF–5 is 0.414.

**DATES:** *Effective Date:* April 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: March 19, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2013–06662 Filed 3–21–13; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

March 19, 2013.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before April 22, 2013 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–2102.

*Type of Review:* Revision of a currently approved collection.

*Title:* Form 13930—Central Withholding Agreement; Form 13920—Directed Withholding and Deposit Verification Form.

*Form:* 13920; 13930.

*Abstract:* Form 13930 will be used by an individual who wishes to have a Central Withholding Agreement (CWA). IRC Section 1441(a) requires withholding on certain payments of Non Resident Aliens (NRAs). Section 1.1441–4(b)(3) of the Income Tax Regulations provides that the withholding can be considered for adjustment if a CWA is applied for and granted. Form 13920 is used by withholding agents to verify to IRS that required deposits were made and give the amount of such deposits.

*Affected Public:* Private Sector: Businesses and other for-profits, Not-for-profit institutions; Individuals or households.

*Estimated Total Burden Hours:* 11,900.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2013–06644 Filed 3–21–13; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities; Information Collection Renewal; Submission for OMB Review: Privacy of Consumer Financial Information

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Privacy of Consumer Financial Information (Regulation P).'' The OCC is also giving notice that it has sent the collection to OMB for review.

**DATES:** You should submit written comments by April 22, 2013.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0216, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0216, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** You can request additional information or a copy of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval of the following information collection titled ''Privacy of Consumer Financial Information (Regulation P).'' There have been no changes to the requirements of the regulations; however, the regulations have been transferred to the Bureau of Consumer Financial Protection (CFPB) pursuant to title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1955, July 21, 2010 (Dodd-Frank Act) and republished as CFPB regulations (76 FR 79028 (December 21, 2011)). The burden estimates have been revised to remove the burden for national banks and Federal savings associations with over $10 billion in total assets and any affiliates thereof, which is now carried by CFPB pursuant to section 1025 of the Dodd-Frank Act. The OCC retains supervisory and enforcement authority for national banks and Federal savings associations with total assets of $10 billion or less that are not an affiliate of an insured depository institution with over $10 billion in total assets.

*Title:* Privacy of Consumer Financial Information (Regulation P) (12 CFR part 1016).

*OMB Control No.:* 1557–0216.

*Description:*

The Gramm-Leach-Bliley Act (Act) (Pub. L. 106–102) requires this information collection. The CFPB's regulation implements the Act's notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties.

The information collection requirements in part 1016 are as follows:

*§ 1016.4(a)—Disclosure (institution)—Initial privacy notice to consumers requirement*—A national bank or Federal savings association must provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to customers and consumers.

*§ 1016.5(a)—Disclosure (institution)—Annual privacy notice to customers requirement*—A national bank or Federal savings association must provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship.

*§ 1016.8—Disclosure (institution)—Revised privacy notices*—If a national bank or Federal savings association wishes to disclose information in a way that is inconsistent with the notices previously given to a consumer, the national bank or Federal savings association must provide consumers with a clear and conspicuous revised notice of the national bank's or Federal savings association's policies and procedures and a new opt out notice.

*§ 1016.7(a)—Disclosure (institution)—Form of opt out notice to consumers; opt out methods—Form of opt out notice*—If a national bank or Federal savings association is required to provide an opt-out notice under § 1016.10(a), it must provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice must state:

- That the national bank or Federal savings association discloses or reserves the right to disclose nonpublic personal information about its consumer to a nonaffiliated third party;
- That the consumer has the right to opt out of that disclosure; and
- A reasonable means by which the consumer may exercise the opt out right.

A national bank or Federal savings association provides a reasonable means to exercise an opt out right if it:

- Designates check-off boxes on the relevant forms with the opt out notice;
- Includes a reply form with the opt out notice;
- Provides electronic means to opt out; or
- Provides a toll-free number to opt out.

*§§ 1016.10(a)(2) and 1016(c)—Consumers must take affirmative actions to exercise their rights to prevent financial institutions from sharing their information with nonaffiliated parties*—

- Opt out—Consumers may direct that the national bank or Federal savings association not disclose nonpublic personal information about them to a nonaffiliated third party, other than permitted by §§ 1016.13–1016.15.
- Partial opt out—Consumer also may exercise partial opt out rights by selecting certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

*§§ 1016.7(h) and 1016(i)—Reporting (consumer)—Consumers may exercise continuing right to opt out—Consumer may opt out at any time*—A consumer may exercise the right to opt out at any time. A consumer's direction to opt out is effective until the consumer revokes it in writing or, if the consumer agrees, electronically. When a customer relationship terminates, the customer's opt out direction continues to apply.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit; individuals.

*Estimated Annual Number of Institution Respondents:* Initial Notice, 3; Annual Notice and Change in Terms, 1,793; Opt-out Notice, 897.

*Estimated Average Time per Response per Institution:* Initial Notice, 80 hours; Annual Notice and Change in Terms, 8 hours; Opt-out Notice, 8 hours.

*Estimated Subtotal Annual Burden Hours for Institutions:* 21,760 hours.

*Estimated Annual Number of Consumer Respondents:* 2,526,802.

*Estimated Average Time per Consumer Response:* 0.25 hours.

*Estimated Subtotal Annual Burden Hours for Consumers:* 631,701 hours.

*Estimated Total Annual Burden Hours:* 653,461 hours.

*Comments:* The OCC issued a 60-day **Federal Register** notice on January 14, 2013. 78 FR 2720. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 18, 2013.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. 2013–06585 Filed 3–21–13; 8:45 am]

BILLING CODE 4810–33–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

**[Docket ID OCC–2011–0028]**

## FEDERAL RESERVE SYSTEM

**[OP–1438]**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Interagency Guidance on Leveraged Lending

**AGENCY:** The Office of the Comptroller of the Currency (OCC), Department of the Treasury; Board of Governors of the Federal Reserve System (Board); and the Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final guidance.

**SUMMARY:** The OCC, Board, and the FDIC (collectively, the ''agencies'') are issuing final guidance on leveraged lending. This guidance outlines for agency-supervised institutions high-level principles related to safe-and-sound leveraged lending activities, including underwriting considerations, assessing and documenting enterprise value, risk management expectations for credits awaiting distribution, stress-testing expectations, pipeline portfolio management, and risk management expectations for exposures held by the institution. This guidance applies to all financial institutions supervised by the OCC, Board, and FDIC that engage in leveraged lending activities. The number of community banks with substantial involvement in leveraged lending is small; therefore, the agencies generally expect community banks to be largely unaffected by this guidance.

**DATES:** This guidance is effective on March 22, 2013. The compliance date for this guidance is May 21, 2013.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Louise A. Francis, Commercial Credit Technical Expert, (202) 649–6670, *louise.francis@occ.treas.gov;* or Kevin Korzeniewski, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, 400 7th Street SW., MS 7W–2, Washington, DC 20219.

*Board:* Carmen Holly, Supervisory Financial Analyst, Policy Section, (202) 973–6122, *carmen.d.holly@frb.gov;* Robert Cote, Senior Supervisory Financial Analyst, Risk Section, (202) 452–3354, *robert.f.cote@frb.gov;* or Benjamin W. McDonough, Senior Counsel, Legal Division, (202) 452–2036, *benjamin.w.mcdonough@frb.gov;* Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

*FDIC:* Thomas F. Lyons, Senior Examination Specialist, Division of Risk Management Supervision, (202) 898–6850, *tlyons@fdic.gov;* or Gregory S. Feder, Counsel, Legal Division, (202) 898–8724, *gfeder@fdic.gov;* 550 17th Street NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On March 30, 2012, the agencies requested public comment on the joint Proposed Guidance on Leveraged Lending (the proposed guidance) with the comment period closing on June 8, 2012.[1] The agencies have reviewed the public comments, and are now issuing final guidance (final guidance) that includes certain modifications discussed in more detail in section II of this **SUPPLEMENTARY INFORMATION.**

As addressed in the final guidance, the agencies expect financial institutions to properly evaluate and monitor underwritten credit risks in leveraged loans, to understand the effect of changes in borrowers' enterprise values on credit portfolio quality, and to assess the sensitivity of future credit losses to these changes in enterprise values.[2] Further, in underwriting such credits, financial institutions should ensure borrowers are able to repay credits when due, and that borrowers have sustainable capital structures, including bank borrowings and other debt, to support their continued operations through economic cycles. Financial institutions also should be able to demonstrate they understand the risks and the potential impact of stressful events and circumstances on borrowers' financial condition. Recent financial crises underscore the need for financial institutions to employ sound underwriting, to ensure the risks in leveraged lending activities are appropriately incorporated in the allowance for loan and lease losses and capital adequacy analyses, monitor the sustainability of their borrowers' capital structures, and incorporate stress-testing into their risk management of leveraged loan portfolios and distribution pipelines. Financial institutions unprepared for such stressful events and circumstances can suffer acute threats to their financial condition and viability. This final guidance is intended to be consistent with sound industry practices and to expand on recent interagency issuances on stress-testing.[3]

## II. Discussion of Public Comments Received

The agencies received 16 comment letters on the proposed guidance. Comments were submitted by bank holding companies, commercial banks, financial trade associations, financial advisory firms, and individuals. Generally, most comments expressed support for the proposed guidance; however, several comments recommended changes to and clarification of certain provisions in the proposed guidance.

The comments highlighted the following as primary issues of concern or interest or areas that could benefit from further explanation:

- The potential effect of the proposed guidance on community and mid-sized financial institutions;
- Definition of leveraged lending;
- Proposed exclusions for ''fallen angels'' and asset-based loans, and investment grade borrowers;
- Reporting requirements of deal sponsors;
- Proposed alternatives to the de-levering expectations;
- Effect of covenant-lite and payment-in-kind (PIK)-toggle loan structures;
- Methods used to determine enterprise value;
- Potential overall management information systems (MIS) burden presented by the proposed guidance; and
- Fiduciary responsibility of a financial institution for loans that it originates.

In response to these comments, the agencies have clarified and modified certain aspects of the guidance as discussed in the following section of this Supplemental Information.

### *A. Terminology*

One purpose of the final guidance is to update and replace guidance issued in April 2001, titled ''Interagency Guidance on Leveraged Financing'' (2001 guidance). The 2001 guidance covered broad risk management issues associated with leveraged finance activities. This final guidance focuses on leveraged lending activities conducted by financial institutions. Therefore, to promote clarity and consistency, the agencies have used the term ''leveraged lending'' in the final guidance in place of all references to ''leveraged finance'' that appeared in the proposed guidance. This change is intended to focus the applicability and scope of the final guidance on specific types of leveraged lending transactions; those leveraged loans originated by financial institutions.

### *B. Scope*

Several comment letters expressed concern about the potential effect of the proposed guidance on community banks and mid-sized institutions. The comments stressed that small financial institutions also can have exposure to leveraged loans. All of the comments expressed concern that the definition of leveraged lending used in the proposed guidance would encompass a significant number of portfolio loans originated by financial institutions, particularly small and mid-sized banks, including, but not limited to, traditional asset-based lending portfolios. One comment expressed concern that the guidance could be misinterpreted to require community banks to document and bear the burden of proof as to why certain transactions are not considered leveraged lending. Another comment noted that community banks with an insignificant amount of leveraged lending should not have to follow the same risk management framework as financial institutions with significant amounts of leveraged lending, as defined in the proposed guidance. Some comments suggested that the proposed guidance should exclude financial institutions under a certain asset or capital size, or exclude transactions under a certain dollar threshold.

In response to these comments, the agencies have decided to apply the final guidance to all financial institutions that originate or participate in leveraged lending transactions. However, the agencies agree with comments that a financial institution that originates a small number of less complex leveraged loans should not be expected to have policies and procedures commensurate with those of a larger financial

[1] *See* 77 FR 19417 ''Proposed Guidance on Leveraged Lending'' dated March 30, 2012 at *https://www.federalregister.gov/articles/2012/03/30/2012-7620/proposed-guidance-on-leveraged-lending.*

[2] For purposes of this final guidance, the term ''financial institution'' or ''institution'' includes national banks, federal savings associations, and federal branches and agencies supervised by the OCC; state member banks, bank holding companies, savings and loan holding companies, and all other institutions for which the Federal Reserve is the primary federal supervisor; and state nonmember banks, foreign banks having an insured branch, state savings associations, and all other institutions for which the FDIC is the primary federal supervisor.

[3] *See* interagency guidance ''Supervisory Guidance on Stress-Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets,'' Final Supervisory Guidance, 77 FR 29458 (May 17, 2012), at *http://www.gpo.gov/fdsys/pkg/FR-2012-05-17/html/2012-11989.htm,* and the joint ''Statement to Clarify Supervisory Expectations for Stress-Testing by Community Banks,'' May 14, 2012, by the OCC at *http://www.occ.gov/news-issuances/news-releases/2012/nr-ia-2012-76a.pdf;* the Federal Reserve at *www.federalreserve.gov/newsevents/press/bcreg/bcreg20120514b1.pdf;* and the FDIC at *http://www.fdic.gov/news/news/press/2012/pr12054a.pdf.* See also FDIC Final Rule, Annual Stress Test, 77 FR 62417 (Oct. 15, 2012) (to be codified at 12 CFR part 325, subpart C).

institution with a more complex leveraged loan origination business. Therefore, the final guidance addresses mainly the latter type of leveraged lending. However, any financial institution that participates in rather than originates leveraged lending transactions should follow applicable supervisory guidance regarding purchased participations. To clarify the supervisory expectations for these types of loans, the agencies have incorporated the section on ''Participations Purchased'' from the 2001 guidance into the final guidance.

Although the agencies elected to adopt a definition of leveraged lending that encompasses all business lines, the agencies do not intend for this guidance to apply to small portfolio commercial and industrial loans, or traditional asset-based lending loans. The agencies have added language to the final guidance to clarify these concerns.

*C. Definition*

The agencies received five comments regarding the proposed definition of a leveraged lending transaction. A number of comments expressed concern over a perceived ''bright line'' approach to defining leveraged loans and proposed that institutions should be able to set their own definitions based on the characteristics of their portfolios. The agencies agree that various industries have a range of acceptable leverage levels and that financial institutions should do their own analysis to define leveraged lending. The proposed guidance addressed this issue by providing common definitions of leveraged lending and directing an institution to define leveraged lending in its internal policies. The proposed guidance also indicated that numerous definitions of leveraged lending exist throughout the financial services industry. However, the proposed guidance stated that institutions' policies should include criteria to define leveraged lending in a manner sufficiently detailed to ensure consistent application across all business lines and that are appropriate to the institution. Therefore, the agencies believe the definition of leveraged lending described in the proposed guidance was appropriate, and have retained that definition in the final guidance.

In addition, the agencies received comments on using earnings before interest, taxes, depreciation, and amortization (EBITDA) as a measure to define leverage. Some comments expressed concern that small banks focus on the balance sheet measure of leverage (total debt to tangible net worth) rather than the cash flow measure of leverage presented in the proposed guidance definition. Other comments viewed the ratio as a ''bright line'' and suggested that financial institutions should develop their own definition and leverage measure based on an institution's business lines. The agencies agree that each financial institution should establish its metrics for defining leveraged loans and include those indicators in its credit policies. However, the EBITDA-based leverage measure presented in the proposed guidance represented the supervisory measure that may be used as an important factor to be considered in defining leveraged loans based on each institution's credit products and characteristics. The agencies believe that having a consistent definition for supervisory purposes will help to ensure a consistent application of the guidance. Accordingly, the agencies are retaining this definition from the proposed guidance in the final guidance.

*D. Information and Reporting*

The agencies received a number of comments about the discussion in portions of the proposed guidance on management information systems (MIS) that financial institutions should implement. Comments stated it would be burdensome for small financial institutions to implement the same reporting mechanisms as large financial institutions. Another comment suggested that smaller as well as mid-sized institutions should discuss the risks with their regulators to implement appropriate procedures.

To clarify supervisory expectations for MIS requirements, the final guidance notes that information and reporting should be tailored to the size and scope of each financial institution's leveraged lending activities. The agencies would expect a global, complex financial institution with significant origination volumes or exposures to leveraged lending to have more complex MIS than a community bank with only a few exposures. Moreover, the final guidance notes that each institution should consider appropriate, cost-effective measures for monitoring leveraged lending given the size and scope of that institution's leveraged lending activities.

*E. Additional Comments*

One comment requested that the definition of leveraged lending be modified so as not to include ''fallen angels.'' These are loans that do not meet the definition of leverage loans at origination, but migrate into the definition at a later date due to changes in the borrower's financial condition. The comment suggested that the inclusion of these loans in the definition would skew reporting and tracking of the portfolio, duplicate monitoring activities, and increase costs without any benefit to financial institutions or to the regulators. The agencies agree that ''fallen angels'' should not be included as leveraged lending transactions, but should be captured within the financial institution's broader risk management framework. Therefore, the agencies have stated in the final guidance that a loan should be designated as leveraged only at the time of origination, modification, extension, or refinance.

One comment suggested that the sponsor evaluation standards in the proposed guidance are administratively burdensome and that financial assessments of deal sponsors by lenders should be limited to those sponsors that provide a financial guaranty. The agencies agree that the ability to obtain financial reports on sponsors may be limited in the absence of a formal guaranty. Accordingly, the final guidance removes the statement that an institution generally should develop guidelines for evaluating deal sponsors and instead focuses on deal sponsors that are relied on as a secondary source of repayment. In those instances, the final guidance notes that a financial institution should document the sponsor's willingness and ability to support the credit.

Some comments also suggested exclusions for both asset-based loans and ''investment-grade'' borrowers. As stated previously, the agencies acknowledge that traditional asset-based lending is a distinct product line and is not included in the definition of a leveraged loan unless the loan is part of the entire debt structure of a leveraged obligor; therefore, the agencies have clarified this point in the final guidance. In terms of a borrower's creditworthiness, the agencies do not believe it would be appropriate to exclude high-quality borrowers from the guidance. Prudent portfolio management of leveraged loans, which is a goal of this guidance, covers all loans, including those made to the most creditworthy borrowers. Importantly, the agencies strongly support the efforts of financial institutions to make loans available to creditworthy borrowers, particularly in small and mid-sized institutions that extend prudent commercial and industrial loans. All loans and borrowers except those excluded in the final guidance will be subject to the definitions as outlined in the guidance.

The agencies also received comments concerning the ability of borrowers to repay 50 percent of the total debt exposure over a five-to-seven year period. Some comments viewed this measure as a restrictive ''bright line'' while others proposed alternatives.

The measure in the proposed guidance was meant as a general guide to reflect that institutions should establish, in their policies, expectations and measures for reducing leverage over a reasonable period of time. The final guidance retains the expectation of reasonable de-levering, and the agencies have revised the *Underwriting Standards* section of the final guidance to state that institutions should consider reasonable de-levering abilities of borrowers, such as whether base case cash flow projections show the ability to fully amortize senior secured debt or repay a significant portion of total debt over the medium term. In addition, the agencies have revised the *Risk Rating Leveraged Loans* section of the final guidance to include the measure as an example, stating that in the context of risk rating of leveraged loans, supervisors commonly assume that the ability to fully amortize senior secured debt or the ability to repay at least 50 percent of total debt over a five-to-seven year period provides evidence of adequate repayment capacity.

One comment referred to covenant-lite and PIK-toggle loan structures, and recommended that the agencies impose tighter controls around loans with such features. The agencies believe these types of structures may have a place in the overall leveraged lending product set; however, the agencies recognize the additional risk in these structures. Accordingly, although the final guidance does not have a different treatment for such arrangements, the agencies will closely review such loans as part of the overall credit evaluation of an institution.

One comment suggested that the agencies impose more conservative guidelines for determining enterprise value. The comment recommended that the agencies require financial institutions to use business appraisers and to follow Internal Revenue Service (IRS) appraisal guidelines when the institution is estimating the enterprise value of a firm. The intent of the agencies is not to impose real property appraisal and valuation standards to enterprise valuation methods or to require a formal business appraisal for all loans relying on enterprise value as a source of repayment. The goal of the final guidance is to clarify those methods considered credible for determining enterprise value based on common practices in the industry. These methods, if conducted properly, produce reliable results. Accordingly, the final guidance does not require that an evaluation be conducted by a business appraiser in determining enterprise value. The agencies' expectation is that a financial institution's internal policies should address the source and method of any enterprise value estimate.

The agencies received four comments regarding the burden imposed by the proposed guidance, stating that implementation will add to the high costs that financial institutions already face. One comment noted there was no cost benefit analysis provided with the proposed guidance. To address these concerns, the final guidance emphasizes that an institution needs to have sound risk management policies and procedures commensurate with its origination activity in and exposures to leveraged lending. Moreover, the final guidance notes that a financial institution's risk management framework for leveraged lending should be consistent with the institution's risk appetite, and complexity of exposures. The agencies believe the implementation of any additional systems or processes needed to promote safe-and-sound leveraged lending should be considered a component of an institution's overall credit risk management program.

One comment noted that financial institutions in a credit transaction do not have fiduciary responsibilities to loan participants when underwriting and syndicating leveraged loans. The agencies agree and have not included a reference to fiduciary responsibility in the final guidance.

## III. Administrative Law Matters

### *A. Paperwork Reduction Act Analysis*

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the agencies reviewed the final guidance. The agencies may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the information collection displays a currently valid Office of Management and Budget (OMB) control number. The OCC and FDIC have submitted this collection to OMB for review and approval under 44 U.S.C. 3506 and 5 CFR part 320. The Board reviewed the final guidance under the authority delegated to it by OMB. While this final guidance is not being adopted as a rule, the agencies have determined that certain aspects of the guidance constitute collections of information under the PRA. These aspects are the provisions that state that a financial institution should have (i) Underwriting policies for leveraged lending, including stress-testing procedures for leveraged credits; (ii) risk management policies, including stress-testing procedures for pipeline exposures; and, (iii) policies and procedures for incorporating the results of leveraged credit and pipeline stress tests into the firm's overall stress-testing framework. The frequency of information collection is estimated to be annual.

Respondents are financial institutions with leveraged lending activities as defined in the guidance.

*Report Title:* Guidance on Leveraged Lending.

*Frequency of Response:* Annual.

*Affected Public:* Financial institutions with leveraged lending.

*OCC:*

*OMB Control Number:* To be assigned by OMB.

*Estimated number of respondents:* 25.

*Estimated average time per respondent:* 1,350.4 hours to build; 1,705.6 hours for ongoing use.

*Estimated total annual burden:* 33,760 hours to build; 42,640 hours for ongoing use.

*Board:*

*Agency information collection number:* FR 4203.

*OMB Control Number:* To be assigned by OMB.

*Estimated number of respondents:* 41.

*Estimated average time per respondent:* 1,064.4 hours to build; 754.4 hours for ongoing use.

*Estimated total annual burden:* 43,640 hours to build; 30,930 hours for ongoing use.

*FDIC:*

*OMB Control Number:* To be assigned by OMB.

*Estimated number of respondents:* 9.

*Estimated average time per respondent:* 986.7 hours to build; 529.3 hours for ongoing use.

*Estimated total annual burden:* 8,880 hours to build; 4,764 hours for ongoing use.

The estimated time per respondent is an average that varies by agency because of differences in the composition of the financial institutions under each agency's supervision (for example, size distribution of institutions) and volume of leveraged lending activities.

The agencies received two comments in response to the information collection requirements under the PRA. Both comments mentioned how substantially burdensome the guidance will be to implement. The agencies recognize that the amount of time

required of any institution to comply with the guidance may be higher or lower than the estimates, but believe that the numbers stated are reasonable averages.

One comment also noted the absence of a cost-benefit analysis and questioned whether the additional information systems required undermines the utility of the information collection. In response to the general comments about burden, the agencies have made various modifications to the proposed guidance, including clarifying the application of the guidance to community banks and other smaller institutions that are involved in leveraged lending. In the **SUPPLEMENTARY INFORMATION** section, the agencies also highlighted their expectations that MIS and other reporting activities would be tailored to the size and the scope of an institution's leveraged lending activities. In addition, the implementation of any new systems would be part of an institution's overall credit risk management program. These comments are discussed in more detail in the general comment summary in Section II of the **SUPPLEMENTARY INFORMATION.**

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the Federal banking agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(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; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments on these questions should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–NEW, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–NEW, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira submission@omb.eop.gov.*

FDIC: Interested parties are invited to submit written comments. All comments should refer to the name of the collection, ''Guidance on Leveraged Lending.'' Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *Email: comments@fdic.gov.*
- *Mail:* Gary Kuiper (202) 898–3877, Federal Deposit Insurance Corporation, 550 17th Street NW., NYA–5046, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

As the final guidance discusses the importance of stress-testing as part of an institution's risk management practices for leveraged lending activity, the agencies note that they expect to review an institution's policies and procedures for stress-testing as part of their supervisory processes. To the extent they collect information during an examination about a financial institution's stress-testing results, confidential treatment may be afforded to the records under exemption 8 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(8).

*B. Regulatory Flexibility Act Analysis*

The final guidance is not a rulemaking action. Thus, the Regulatory Flexibility Act (5 U.S.C. 603(b)) does not apply to the guidance. However, the agencies have considered the potential impact of the guidance on small banking organizations. For the reasons discussed in sections I and II of this Supplementary Information, the agencies are issuing the guidance to emphasize the importance of properly underwriting leveraged lending transactions and incorporating those exposures into stress and capital tests for institutions with significant exposures to these credits.

The agencies received comments about the potential burden of this guidance on small banking organizations. The final guidance is intended for banking organizations supervised by the agencies with substantial exposures to leveraged lending activities, including national banks, federal savings associations, state nonmember banks, state member banks, bank holding companies, and U.S. branches and agencies of foreign banking organizations. Given the average dollar size of leveraged lending transactions, most of which exceed $50 million, and the agencies' observations that leveraged loans tend to be held primarily by very large or global financial institutions, the vast majority of smaller institutions should not be affected by this guidance as they have limited exposure to leveraged credits.

Interagency Guidance on Leveraged Lending

The text of the guidance is as follows:

*Purpose*

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (collectively the ''agencies'') are issuing this leveraged lending guidance to update and replace the April 2001 Interagency guidance [1] regarding sound practices for leveraged finance activities (2001 guidance).[2] The 2001 guidance addressed expectations for the content of credit policies, the need for well-defined underwriting standards, the importance of defining an institution's risk appetite for leveraged transactions,

[1] OCC Bulletin 2001–18; *http://www.occ.gov/news-issuances/bulletins/2001/bulletin-2001–18.html;* Board SR Letter 01–9, ''Interagency Guidance on Leveraged Financing'' April 9, 2001; *http://www.federalreserve.gov/boarddocs/srletters/2001/sr0109.html;* and, FDIC Press Release PR–28–2001; *http://www.fdic.gov/news/news/press/2001/pr2801.html.*

[2] For the purpose of this guidance, references to leveraged finance, or leveraged transactions encompass the entire debt structure of a leveraged obligor (including loans and letters of credit, mezzanine tranches, senior and subordinated bonds) held by both bank and non-bank investors. References to leveraged lending and leveraged loan transactions and credit agreements refer to all debt with the exception of bond and high-yield debt held by both bank and non-bank investors.

and the importance of stress-testing exposures and portfolios.

Leveraged lending is an important type of financing for national and global economies, and the U.S. financial industry plays an integral role in making credit available and syndicating that credit to investors. In particular, financial institutions should ensure they do not unnecessarily heighten risks by originating poorly underwritten loans.[3] For example, a poorly underwritten leveraged loan that is pooled with other loans or is participated with other institutions may generate risks for the financial system. This guidance is designed to assist financial institutions in providing leveraged lending to creditworthy borrowers in a safe-and-sound manner.

Since the issuance of the 2001 guidance, the agencies have observed periods of tremendous growth in the volume of leveraged credit and in the participation of unregulated investors. Additionally, debt agreements have frequently included features that provided relatively limited lender protection including, but not limited to, the absence of meaningful maintenance covenants in loan agreements or the inclusion of payment-in-kind (PIK)-toggle features in junior capital instruments, which lessened lenders' recourse in the event of a borrower's subpar performance. The capital structures and repayment prospects for some transactions, whether originated to hold or to distribute, have at times been aggressive. Moreover, management information systems (MIS) at some institutions have proven less than satisfactory in accurately aggregating exposures on a timely basis, with many institutions holding large pipelines of higher-risk commitments at a time when buyer demand for risky assets diminished significantly.

This guidance updates and replaces the 2001 guidance in light of the developments and experience gained since the time that guidance was issued. This guidance describes expectations for the sound risk management of leveraged lending activities, including the importance for institutions to develop and maintain:

- Transactions structured to reflect a sound business premise, an appropriate capital structure, and reasonable cash flow and balance sheet leverage. Combined with supportable performance projections, these elements of a safe-and-sound loan structure should clearly support a borrower's capacity to repay and to de-lever to a sustainable level over a reasonable period, whether underwritten to hold or distribute;
- A definition of leveraged lending that facilitates consistent application across all business lines;
- Well-defined underwriting standards that, among other things, define acceptable leverage levels and describe amortization expectations for senior and subordinate debt;
- A credit limit and concentration framework consistent with the institution's risk appetite;
- Sound MIS that enable management to identify, aggregate, and monitor leveraged exposures and comply with policy across all business lines;
- Strong pipeline management policies and procedures that, among other things, provide for real-time information on exposures and limits, and exceptions to the timing of expected distributions and approved hold levels; and,
- Guidelines for conducting periodic portfolio and pipeline stress tests to quantify the potential impact of economic and market conditions on the institution's asset quality, earnings, liquidity, and capital.

*Applicability*

This guidance updates and replaces the existing 2001 guidance and forms the basis of the agencies' supervisory focus and review of supervised financial institutions, including any subsidiaries or affiliates. Implementation of this guidance should be consistent with the size and risk profile of an institution's leveraged activities relative to its assets, earnings, liquidity, and capital. Institutions that originate or sponsor leveraged transactions should consider all aspects and sections of the guidance.

In contrast, the vast majority of community banks should not be affected by this guidance as they have limited involvement in leveraged lending. Community and smaller institutions that are involved in leveraged lending activities should discuss with their primary regulator the implementation of cost-effective controls appropriate for the complexity of their exposures and activities.[4]

*Risk Management Framework*

Given the high risk profile of leveraged transactions, financial institutions engaged in leveraged lending should adopt a risk management framework that has an intensive and frequent review and monitoring process. The framework should have as its foundation written risk objectives, risk acceptance criteria, and risk controls. A lack of robust risk management processes and controls at a financial institution with significant leveraged lending activities could contribute to supervisory findings that the financial institution is engaged in unsafe-and-unsound banking practices. This guidance outlines the agencies' minimum expectations on the following topics:

- Definition of Leveraged Lending
- General Policy Expectations
- Participations Purchased
- Underwriting Standards
- Valuation Standards
- Pipeline Management
- Reporting and Analytics
- Risk Rating Leveraged Loans
- Credit Analysis
- Problem Credit Management
- Deal Sponsors
- Credit Review
- Stress-Testing
- Conflicts of Interest
- Reputational Risk
- Compliance

*Definition of Leveraged Lending*

The policies of financial institutions should include criteria to define leveraged lending that are appropriate to the institution.[5] For example, numerous definitions of leveraged lending exist throughout the financial services industry and commonly contain some combination of the following:

- Proceeds used for buyouts, acquisitions, or capital distributions.
- Transactions where the borrower's Total Debt divided by EBITDA (earnings before interest, taxes, depreciation, and amortization) or Senior Debt divided by EBITDA exceed 4.0X EBITDA or 3.0X EBITDA, respectively, or other defined

[3] For purposes of this guidance, the term ''financial institution'' or ''institution'' includes national banks, federal savings associations, and federal branches and agencies supervised by the OCC; state member banks, bank holding companies, savings and loan holding companies, and all other institutions for which the Federal Reserve is the primary federal supervisor; and state nonmember banks, foreign banks having an insured branch, state savings associations, and all other institutions for which the FDIC is the primary federal supervisor.

[4] The agencies do not intend that a financial institution that originates a small number of less complex, leveraged loans should have policies and procedures commensurate with a larger, more complex leveraged loan origination business. However, any financial institution that participates in leveraged lending transactions should follow applicable supervisory guidance provided in the ''Participations Purchased'' section of this document.

[5] This guidance is not meant to include asset-based loans unless such loans are part of the entire debt structure of a leveraged obligor. Asset-based lending is a distinct segment of the loan market that is tightly controlled or fully monitored, secured by specific assets, and usually governed by a borrowing formula (or ''borrowing base'').

levels appropriate to the industry or sector.[6]

• A borrower recognized in the debt markets as a highly leveraged firm, which is characterized by a high debt-to-net-worth ratio.

• Transactions when the borrower's post-financing leverage, as measured by its leverage ratios (for example, debt-to-assets, debt-to-net-worth, debt-to-cash flow, or other similar standards common to particular industries or sectors), significantly exceeds industry norms or historical levels.[7]

A financial institution engaging in leveraged lending should define it within the institution's policies and procedures in a manner sufficiently detailed to ensure consistent application across all business lines. A financial institution's definition should describe clearly the purposes and financial characteristics common to these transactions, and should cover risk to the institution from both direct exposure and indirect exposure via limited recourse financing secured by leveraged loans, or financing extended to financial intermediaries (such as conduits and special purpose entities (SPEs)) that hold leveraged loans.

*General Policy Expectations*

A financial institution's credit policies and procedures for leveraged lending should address the following:

• Identification of the financial institution's risk appetite including clearly defined amounts of leveraged lending that the institution is willing to underwrite (for example, pipeline limits) and is willing to retain (for example, transaction and aggregate hold levels). The institution's designated risk appetite should be supported by an analysis of the potential effect on earnings, capital, liquidity, and other risks that result from these positions, and should be approved by its board of directors;

• A limit framework that includes limits or guidelines for single obligors and transactions, aggregate hold portfolio, aggregate pipeline exposure, and industry and geographic concentrations. The limit framework should identify the related management approval authorities and exception tracking provisions. In addition to notional pipeline limits, the agencies expect that financial institutions with significant leveraged transactions will implement underwriting limit frameworks that assess stress losses, flex terms, economic capital usage, and earnings at risk or that otherwise provide a more nuanced view of potential risk;[8]

• Procedures for ensuring the risks of leveraged lending activities are appropriately reflected in an institution's allowance for loan and lease losses (ALLL) and capital adequacy analyses;

• Credit and underwriting approval authorities, including the procedures for approving and documenting changes to approved transaction structures and terms;

• Guidelines for appropriate oversight by senior management, including adequate and timely reporting to the board of directors;

• Expected risk-adjusted returns for leveraged transactions;

• Minimum underwriting standards (see ''Underwriting Standards'' section below); and,

• Effective underwriting practices for primary loan origination and secondary loan acquisition.

*Participations Purchased*

Financial institutions purchasing participations and assignments in leveraged lending transactions should make a thorough, independent evaluation of the transaction and the risks involved before committing any funds.[9] They should apply the same standards of prudence, credit assessment and approval criteria, and in-house limits that would be employed if the purchasing organization were originating the loan. At a minimum, policies should include requirements for:

• Obtaining and independently analyzing full credit information both before the participation is purchased and on a timely basis thereafter;

• Obtaining from the lead lender copies of all executed and proposed loan documents, legal opinions, title insurance policies, Uniform Commercial Code (UCC) searches, and other relevant documents;

• Carefully monitoring the borrower's performance throughout the life of the loan; and,

• Establishing appropriate risk management guidelines as described in this document.

*Underwriting Standards*

A financial institution's underwriting standards should be clear, written and measurable, and should accurately reflect the institution's risk appetite for leveraged lending transactions. A financial institution should have clear underwriting limits regarding leveraged transactions, including the size that the institution will arrange both individually and in the aggregate for distribution. The originating institution should be mindful of reputational risks associated with poorly underwritten transactions, as these risks may find their way into a wide variety of investment instruments and exacerbate systemic risks within the general economy. At a minimum, an institution's underwriting standards should consider the following:

• Whether the business premise for each transaction is sound and the borrower's capital structure is sustainable regardless of whether the transaction is underwritten for the institution's own portfolio or with the intent to distribute. The entirety of a borrower's capital structure should reflect the application of sound financial analysis and underwriting principles;

• A borrower's capacity to repay and ability to de-lever to a sustainable level over a reasonable period. As a general guide, institutions also should consider whether base case cash flow projections show the ability to fully amortize senior secured debt or repay a significant portion of total debt over the medium term.[10] Also, projections should include one or more realistic downside scenarios that reflect key risks identified in the transaction;

• Expectations for the depth and breadth of due diligence on leveraged transactions. This should include

[6] Cash should not be netted against debt for purposes of this calculation.

[7] The designation of a financing as ''leveraged lending'' is typically made at loan origination, modification, extension, or refinancing. ''Fallen angels'' or borrowers that have exhibited a significant deterioration in financial performance after loan inception and subsequently become highly leveraged would not be included within the scope of this guidance, unless the credit is modified, extended, or refinanced.

[8] Flex terms allow the arranger to change interest rate spreads during the syndication process to adjust pricing to current liquidity levels.

[9] Refer to other joint agency guidance regarding purchased participations: OCC Loan Portfolio Management Handbook, *http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/lpm.pdf,* Loan Participations, Board ''*Commercial Bank Examination Manual,'' http://www.federalreserve.gov/boarddocs/supmanual/cbem/cbem.pdf,* section 2045.1, Loan Participations, the Agreements and Participants; and FDIC Risk Management Manual of Examination Policies, section 3.2 (Loans), *http://www.fdic.gov/regulations/safety/manual/section3-2.html#otherCredit,* Loan Participations, (last updated Feb. 2, 2005).

[10] In general, the base case cash flow projection is the borrower or deal sponsor's expected estimate of financial performance using the assumptions that are deemed most likely to occur. The financial results for the base case should be better than those for the conservative case but worse than those for the aggressive or upside case. A financial institution may make adjustments to the base case financial projections, if necessary. The most realistic financial projections should be used when measuring a borrower's capacity to repay and de-lever.

standards for evaluating various types of collateral, with a clear definition of credit risk management's role in such due diligence;

• Standards for evaluating expected risk-adjusted returns. The standards should include identification of expected distribution strategies, including alternative strategies for funding and disposing of positions during market disruptions, and the potential for losses during such periods;

• The degree of reliance on enterprise value and other intangible assets for loan repayment, along with acceptable valuation methodologies, and guidelines for the frequency of periodic reviews of those values;

• Expectations for the degree of support provided by the sponsor (if any), taking into consideration the sponsor's financial capacity, the extent of its capital contribution at inception, and other motivating factors. Institutions looking to rely on sponsor support as a secondary source of repayment for the loan should be able to provide documentation, including, but not limited to, financial or liquidity statements, showing recently documented evidence of the sponsor's willingness and ability to support the credit extension;

• Whether credit agreement terms allow for the material dilution, sale, or exchange of collateral or cash flow-producing assets without lender approval;

• Credit agreement covenant protections, including financial performance (such as debt-to-cash flow, interest coverage, or fixed charge coverage), reporting requirements, and compliance monitoring. Generally, a leverage level after planned asset sales (that is, the amount of debt that must be serviced from operating cash flow) in excess of 6X Total Debt/EBITDA raises concerns for most industries;

• Collateral requirements in credit agreements that specify acceptable collateral and risk-appropriate measures and controls, including acceptable collateral types, loan-to-value guidelines, and appropriate collateral valuation methodologies. Standards for asset-based loans that are part of the entire debt structure also should outline expectations for the use of collateral controls (for example, inspections, independent valuations, and payment lockbox), other types of collateral and account maintenance agreements, and periodic reporting requirements; and,

• Whether loan agreements provide for distribution of ongoing financial and other relevant credit information to all participants and investors.

Nothing in the preceding standards should be considered to discourage providing financing to borrowers engaged in workout negotiations, or as part of a pre-packaged financing under the bankruptcy code. Neither are they meant to discourage well-structured, standalone asset-based credit facilities to borrowers with strong lender monitoring and controls, for which a financial institution should consider separate underwriting and risk rating guidance.

*Valuation Standards*

Institutions often rely on enterprise value and other intangibles when (1) Evaluating the feasibility of a loan request; (2) determining the debt reduction potential of planned asset sales; (3) assessing a borrower's ability to access the capital markets; and, (4) estimating the strength of a secondary source of repayment. Institutions may also view enterprise value as a useful benchmark for assessing a sponsor's economic incentive to provide financial support. Given the specialized knowledge needed for the development of a credible enterprise valuation and the importance of enterprise valuations in the underwriting and ongoing risk assessment processes, enterprise valuations should be performed by qualified persons independent of an institution's origination function.

There are several methods used for valuing businesses. The most common valuation methods are assets, income, and market. Asset valuation methods consider an enterprise's underlying assets in terms of its net going-concern or liquidation value. Income valuation methods consider an enterprise's ongoing cash flows or earnings and apply appropriate capitalization or discounting techniques. Market valuation methods derive value multiples from comparable company data or sales transactions. However, final value estimates should be based on the method or methods that give supportable and credible results. In many cases, the income method is generally considered the most reliable.

There are two common approaches employed when using the income method. The ''capitalized cash flow'' method determines the value of a company as the present value of all future cash flows the business can generate in perpetuity. An appropriate cash flow is determined and then divided by a risk-adjusted capitalization rate, most commonly the weighted average cost of capital. This method is most appropriate when cash flows are predictable and stable. The ''discounted cash flow'' method is a multiple-period valuation model that converts a future series of cash flows into current value by discounting those cash flows at a rate of return (referred to as the ''discount rate'') that reflects the risk inherent therein. This method is most appropriate when future cash flows are cyclical or variable over time. Both income methods involve numerous assumptions, and therefore, supporting documentation should fully explain the evaluator's reasoning and conclusions.

When a borrower is experiencing a financial downturn or facing adverse market conditions, a lender should reflect those adverse conditions in its assumptions for key variables such as cash flow, earnings, and sales multiples when assessing enterprise value as a potential source of repayment. Changes in the value of a borrower's assets should be tested under a range of stress scenarios, including business conditions more adverse than the base case scenario. Stress tests of enterprise values and their underlying assumptions should be conducted and documented at origination of the transaction and periodically thereafter, incorporating the actual performance of the borrower and any adjustments to projections. The institution should perform its own discounted cash flow analysis to validate the enterprise value implied by proxy measures such as multiples of cash flow, earnings, or sales.

Enterprise value estimates derived from even the most rigorous procedures are imprecise and ultimately may not be realized. Therefore, institutions relying on enterprise value or illiquid and hard-to-value collateral should have policies that provide for appropriate loan-to-value ratios, discount rates, and collateral margins. Based on the nature of an institution's leveraged lending activities, the institution should establish limits for the proportion of individual transactions and the total portfolio that are supported by enterprise value. Regardless of the methodology used, the assumptions underlying enterprise-value estimates should be clearly documented, well supported, and understood by the institution's appropriate decision-makers and risk oversight units. Further, an institution's valuation methods should be appropriate for the borrower's industry and condition.

*Pipeline Management*

Market disruptions can substantially impede the ability of an underwriter to consummate syndications or otherwise sell down exposures, which may result in material losses. Accordingly, financial institutions should have strong

risk management and controls over transactions in the pipeline, including amounts to be held and those to be distributed. A financial institution should be able to differentiate transactions according to tenor, investor class (for example, pro-rata and institutional), structure, and key borrower characteristics (for example, industry).

In addition, an institution should develop and maintain:

- A clearly articulated and documented appetite for underwriting risk that considers the potential effects on earnings, capital, liquidity, and other risks that result from pipeline exposures;
- Written policies and procedures for defining and managing distribution failures and ''hung'' deals, which are identified by an inability to sell down the exposure within a reasonable period (generally 90 days from transaction closing). The financial institution's board of directors and management should establish clear expectations for the disposition of pipeline transactions that have not been sold according to their original distribution plan. Such transactions that are subsequently reclassified as hold-to-maturity should also be reported to management and the board of directors;
- Guidelines for conducting periodic stress tests on pipeline exposures to quantify the potential impact of changing economic and market conditions on the institution's asset quality, earnings, liquidity, and capital;
- Controls to monitor performance of the pipeline against original expectations, and regular reports of variances to management, including the amount and timing of syndication and distribution variances, and reporting of recourse sales to achieve distribution;
- Reports that include individual and aggregate transaction information that accurately risk rates credits and portrays risk and concentrations in the pipeline;
- Limits on aggregate pipeline commitments;
- Limits on the amount of loans that an institution is willing to retain on its own books (that is, borrower, counterparty, and aggregate hold levels), and limits on the underwriting risk that will be undertaken for amounts intended for distribution;
- Policies and procedures that identify acceptable accounting methodologies and controls in both functional as well as dysfunctional markets, and that direct prompt recognition of losses in accordance with generally accepted accounting principles;
- Policies and procedures addressing the use of hedging to reduce pipeline and hold exposures, which should address acceptable types of hedges and the terms considered necessary for providing a net credit exposure after hedging; and,
- Plans and provisions addressing contingent liquidity and compliance with the Board's Regulation W (12 CFR part 223) when market illiquidity or credit conditions change, interrupting normal distribution channels.

*Reporting and Analytics*

The agencies expect financial institutions to diligently monitor higher risk credits, including leveraged loans. A financial institution's management should receive comprehensive reports about the characteristics and trends in such exposures at least quarterly, and summaries should be provided to the institution's board of directors. Policies and procedures should identify the fields to be populated and captured by a financial institution's MIS, which should yield accurate and timely reporting to management and the board of directors that may include the following:

- Individual and portfolio exposures within and across all business lines and legal vehicles, including the pipeline;
- Risk rating distribution and migration analysis, including maintenance of a list of those borrowers who have been removed from the leveraged portfolio due to improvements in their financial characteristics and overall risk profile;
- Industry mix and maturity profile;
- Metrics derived from probabilities of default and loss given default;
- Portfolio performance measures, including noncompliance with covenants, restructurings, delinquencies, non-performing amounts, and charge-offs;
- Amount of impaired assets and the nature of impairment (that is, permanent, or temporary), and the amount of the ALLL attributable to leveraged lending;
- The aggregate level of policy exceptions and the performance of that portfolio;
- Exposures by collateral type, including unsecured transactions and those where enterprise value will be the source of repayment for leveraged loans. Reporting should also consider the implications of defaults that trigger pari passu treatment for all lenders and, thus, dilute the secondary support from the sale of collateral;
- Secondary market pricing data and trading volume, when available;
- Exposures and performance by deal sponsors. Deals introduced by sponsors may, in some cases, be considered exposure to related borrowers. An institution should identify, aggregate, and monitor potential related exposures;
- Gross and net exposures, hedge counterparty concentrations, and policy exceptions;
- Actual versus projected distribution of the syndicated pipeline, with regular reports of excess levels over the hold targets for the syndication inventory. Pipeline definitions should clearly identify the type of exposure. This includes committed exposures that have not been accepted by the borrower, commitments accepted but not closed, and funded and unfunded commitments that have closed but have not been distributed;
- Total and segmented leveraged lending exposures, including subordinated debt and equity holdings, alongside established limits. Reports should provide a detailed and comprehensive view of global exposures, including situations when an institution has indirect exposure to an obligor or is holding a previously sold position as collateral or as a reference asset in a derivative;
- Borrower and counterparty leveraged lending reporting should consider exposures booked in other business units throughout the institution, including indirect exposures such as default swaps and total return swaps, naming the distributed paper as a covered or referenced asset or collateral exposure through repo transactions. Additionally, the institution should consider positions held in available-for-sale or traded portfolios or through structured investment vehicles owned or sponsored by the originating institution or its subsidiaries or affiliates.

*Risk Rating Leveraged Loans*

Previously, the agencies issued guidance on rating credit exposures and credit rating systems, which applies to all credit transactions, including those in the leveraged lending category.[11]

The risk rating of leveraged loans involves the use of realistic repayment assumptions to determine a borrower's ability to de-lever to a sustainable level within a reasonable period of time. For example, supervisors commonly assume that the ability to fully amortize senior

[11] Board SR Letter 98–25 ''Sound Credit Risk Management and the Use of Internal Credit Risk Ratings at Large Banking Organizations;'' OCC Comptroller's Handbooks ''Rating Credit Risk'' and ''Leveraged Lending'', and FDIC Risk Management Manual of Examination Policies, ''Loan Appraisal and Classification.''

secured debt or the ability to repay at least 50 percent of total debt over a five-to-seven year period provides evidence of adequate repayment capacity. If the projected capacity to pay down debt from cash flow is nominal with refinancing the only viable option, the credit will usually be adversely rated even if it has been recently underwritten. In cases when leveraged loan transactions have no reasonable or realistic prospects to de-lever, a substandard rating is likely. Furthermore, when assessing debt service capacity, extensions and restructures should be scrutinized to ensure that the institution is not merely masking repayment capacity problems by extending or restructuring the loan.

If the primary source of repayment becomes inadequate, the agencies believe that it would generally be inappropriate for an institution to consider enterprise value as a secondary source of repayment unless that value is well supported. Evidence of well-supported value may include binding purchase and sale agreements with qualified third parties or thorough asset valuations that fully consider the effect of the borrower's distressed circumstances and potential changes in business and market conditions. For such borrowers, when a portion of the loan may not be protected by pledged assets or a well-supported enterprise value, examiners generally will rate that portion doubtful or loss and place the loan on nonaccrual status.

*Credit Analysis*

Effective underwriting and management of leveraged lending risk is highly dependent on the quality of analysis employed during the approval process as well as ongoing monitoring. A financial institution's policies should address the need for a comprehensive assessment of financial, business, industry, and management risks including, whether

- Cash flow analyses rely on overly optimistic or unsubstantiated projections of sales, margins, and merger and acquisition synergies;
- Liquidity analyses include performance metrics appropriate for the borrower's industry; predictability of the borrower's cash flow; measurement of the borrower's operating cash needs; and ability to meet debt maturities;
- Projections exhibit an adequate margin for unanticipated merger-related integration costs;
- Projections are stress tested for one or more downside scenarios, including a covenant breach;
- Transactions are reviewed at least quarterly to determine variance from plan, the related risk implications, and the accuracy of risk ratings and accrual status. From inception, the credit file should contain a chronological rationale for and analysis of all substantive changes to the borrower's operating plan and variance from expected financial performance;
- Enterprise and collateral valuations are independently derived or validated outside of the origination function, are timely, and consider potential value erosion;
- Collateral liquidation and asset sale estimates are based on current market conditions and trends;
- Potential collateral shortfalls are identified and factored into risk rating and accrual decisions;
- Contingency plans anticipate changing conditions in debt or equity markets when exposures rely on refinancing or the issuance of new equity; and,
- The borrower is adequately protected from interest rate and foreign exchange risk.

*Problem Credit Management*

A financial institution should formulate individual action plans when working with borrowers experiencing diminished operating cash flows, depreciated collateral values, or other significant plan variances. Weak initial underwriting of transactions, coupled with poor structure and limited covenants, may make problem credit discussions and eventual restructurings more difficult for an institution as well as result in less favorable outcomes.

A financial institution should formulate credit policies that define expectations for the management of adversely rated and other high-risk borrowers whose performance departs significantly from planned cash flows, asset sales, collateral values, or other important targets. These policies should stress the need for workout plans that contain quantifiable objectives and measureable time frames. Actions may include working with the borrower for an orderly resolution while preserving the institution's interests, sale of the credit in the secondary market, or liquidation of collateral. Problem credits should be reviewed regularly for risk rating accuracy, accrual status, recognition of impairment through specific allocations, and charge-offs.

*Deal Sponsors*

A financial institution that relies on sponsor support as a secondary source of repayment should develop guidelines for evaluating the qualifications of financial sponsors and should implement processes to regularly monitor a sponsor's financial condition. Deal sponsors may provide valuable support to borrowers such as strategic planning, management, and other tangible and intangible benefits. Sponsors may also provide sources of financial support for borrowers that fail to achieve projections. Generally, a financial institution rates a borrower based on an analysis of the borrower's standalone financial condition. However, a financial institution may consider support from a sponsor in assigning internal risk ratings when the institution can document the sponsor's history of demonstrated support as well as the economic incentive, capacity, and stated intent to continue to support the transaction. However, even with documented capacity and a history of support, the sponsor's potential contributions may not mitigate supervisory concerns absent a documented commitment of continued support. An evaluation of a sponsor's financial support should include the following:

- The sponsor's historical performance in supporting its investments, financially and otherwise;
- The sponsor's economic incentive to support, including the nature and amount of capital contributed at inception;
- Documentation of degree of support (for example, a guarantee, comfort letter, or verbal assurance);
- Consideration of the sponsor's contractual investment limitations;
- To the extent feasible, a periodic review of the sponsor's financial statements and trends, and an analysis of its liquidity, including the ability to fund multiple deals;
- Consideration of the sponsor's dividend and capital contribution practices;
- The likelihood of the sponsor supporting a particular borrower compared to other deals in the sponsor's portfolio; and,
- Guidelines for evaluating the qualifications of a sponsor and a process to regularly monitor the sponsor's performance.

*Credit Review*

A financial institution should have a strong and independent credit review function that demonstrates the ability to identify portfolio risks and documented authority to escalate inappropriate risks and other findings to their senior management. Due to the elevated risks inherent in leveraged lending, and depending on the relative size of a financial institution's leveraged lending business, the institution's credit review function should assess the performance

of the leveraged portfolio more frequently and in greater depth than other segments in the loan portfolio. Such assessments should be performed by individuals with the expertise and experience for these types of loans and the borrower's industry. Portfolio reviews should generally be conducted at least annually. For many financial institutions, the risk characteristics of leveraged portfolios, such as high reliance on enterprise value, concentrations, adverse risk rating trends, or portfolio performance, may dictate more frequent reviews.

A financial institution should staff its internal credit review function appropriately and ensure that the function has sufficient resources to ensure timely, independent, and accurate assessments of leveraged lending transactions. Reviews should evaluate the level of risk, risk rating integrity, valuation methodologies, and the quality of risk management. Internal credit reviews should include the review of the institution's leveraged lending practices, policies, and procedures to ensure that they are consistent with regulatory guidance.

*Stress-Testing*

A financial institution should develop and implement guidelines for conducting periodic portfolio stress tests on loans originated to hold as well as loans originated to distribute, and sensitivity analyses to quantify the potential impact of changing economic and market conditions on its asset quality, earnings, liquidity, and capital.[12] The sophistication of stress-testing practices and sensitivity analyses should be consistent with the size, complexity, and risk characteristics of the institution's leveraged loan portfolio. To the extent a financial institution is required to conduct enterprise-wide stress tests, the leveraged portfolio should be included in any such tests.

*Conflicts of Interest*

A financial institution should develop appropriate policies and procedures to address and to prevent potential conflicts of interest when it has both equity and lending positions. For example, an institution may be reluctant to use an aggressive collection strategy with a problem borrower because of the potential impact on the value of an institution's equity interest. A financial institution may encounter pressure to provide financial or other privileged client information that could benefit an affiliated equity investor. Such conflicts also may occur when the underwriting financial institution serves as financial advisor to the seller and simultaneously offers financing to multiple buyers (that is, stapled financing). Similarly, there may be conflicting interests among the different lines of business within a financial institution or between the financial institution and its affiliates. When these situations occur, potential conflicts of interest arise between the financial institution and its customers. Policies and procedures should clearly define potential conflicts of interest, identify appropriate risk management controls and procedures, enable employees to report potential conflicts of interest to management for action without fear of retribution, and ensure compliance with applicable laws. Further, management should have an established training program for employees on appropriate practices to follow to avoid conflicts of interest, and provide for reporting, tracking, and resolution of any conflicts of interest that occur.

*Reputational Risk*

Leveraged lending transactions are often syndicated through the financial and institutional markets. A financial institution's apparent failure to meet its legal responsibilities in underwriting and distributing transactions can damage its market reputation and impair its ability to compete. Similarly, a financial institution that distributes transactions which over time have significantly higher default or loss rates and performance issues may also see its reputation damaged.

*Compliance*

The legal and regulatory issues raised by leveraged transactions are numerous and complex. To ensure potential conflicts are avoided and laws and regulations are adhered to, an institution's independent compliance function should periodically review the institution's leveraged lending activity. This guidance is consistent with the principles of safety and soundness and other agency guidance related to commercial lending.

In particular, because leveraged transactions often involve a variety of types of debt and bank products, a financial institution should ensure that its policies incorporate safeguards to prevent violations of anti-tying regulations. Section 106(b) of the Bank Holding Company Act Amendments of 1970 [13] prohibits certain forms of product tying by financial institutions and their affiliates. The intent behind Section 106(b) is to prevent financial institutions from using their market power over certain products to obtain an unfair competitive advantage in other products.

In addition, equity interests and certain debt instruments used in leveraged transactions may constitute ''securities'' for the purposes of federal securities laws. When securities are involved, an institution should ensure compliance with applicable securities laws, including disclosure and other regulatory requirements. An institution should also establish policies and procedures to appropriately manage the internal dissemination of material, nonpublic information about transactions in which it plays a role.

Dated: February 19, 2013.

**Thomas J. Curry,**

*Comptroller of the Currency.*

Board of Governors of the Federal Reserve System, March 8, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

Dated at Washington, DC, this 11th day of March, 2013.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2013–06567 Filed 3–21–13; 8:45 am]

**BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Community Volunteer Income Tax Assistance (VITA) Matching Grant Program—Availability of Application Packages

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

**ACTION:** Notice.

**SUMMARY:** This document provides notice of the availability of the application package for the 2014 Community Volunteer Income Tax

[12] *See* interagency guidance ''Supervisory Guidance on Stress-Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets,'' Final Supervisory Guidance, 77 FR 29458 (May 17, 2012), at *http://www.gpo.gov/fdsys/pkg/FR-2012-05-17/html/2012-11989.htm,* and the joint ''Statement to Clarify Supervisory Expectations for Stress-Testing by Community Banks,'' May 14, 2012, by the OCC at *http://www.occ.gov/news-issuances/news-releases/2012/nr-ia-2012-76a.pdf;* the Board at *www.federalreserve.gov/newsevents/press/bcreg/bcreg20120514b1.pdf;* and the FDIC at *http://www.fdic.gov/news/news/press/2012/pr12054a.pdf.* See also FDIC Final Rule, Annual Stress Test, 77 FR 62417 (Oct. 15, 2012) (to be codified at 12 CFR part 325, subpart. C).

[13] 12 U.S.C. 1972.

Assistance (VITA) Matching Grant Program.

**DATES:** Application packages are available electronically from the IRS on May 1, 2013 by visiting: IRS.gov (key word search—''VITA Grant'') or through Grants.gov. The deadline for submitting an application to the IRS for the Community VITA Matching Grant Program is May 31, 2013. All applications must be submitted through Grants.gov.

**ADDRESSES:** Internal Revenue Service, Grant Program Office, 401 West Peachtree St. NW., Suite 1645, Stop 420–D, Atlanta, GA 30308.

**FOR FURTHER INFORMATION CONTACT:** Grant Program Office via their email address at *Grant.Program.Office@irs.gov.*

**SUPPLEMENTARY INFORMATION:** Authority for the Community Volunteer Income Tax Assistance (VITA) Matching Grant Program is contained in the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10, signed April 15, 2011.

Dated: March 12, 2013.

**Deborah Matthews,**

*Acting Chief, Grant Program Office, IRS, Stakeholder Partnerships, Education & Communication.*

[FR Doc. 2013–06563 Filed 3–21–13; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Tax Counseling for the Elderly (TCE) Program Availability of Application Packages

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

**ACTION:** Notice.

**SUMMARY:** This document provides notice of the availability of Application Packages for the 2014 Tax Counseling for the Elderly (TCE) Program.

**DATES:** Application Packages are available electronically from the IRS on May 1, 2013 by visiting: IRS.gov (key word search—''TCE'') or through Grants.gov. The deadline for submitting an application package to the IRS for the Tax Counseling for the Elderly (TCE) Program is May 31, 2013. All applications must be submitted through Grants.gov.

**ADDRESSES:** Internal Revenue Service, Grant Program Office, 5000 Ellin Road, NCFB C4–110, SE:W:CAR:SPEC:FO:GPO, Lanham, Maryland 20706.

**FOR FURTHER INFORMATION CONTACT:** Grant Program Office via their email address at *tce.grant.office@irs.gov.*

**SUPPLEMENTARY INFORMATION:** Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year. Because applications are being solicited before the FY 2014 budget has been approved, cooperative agreements will be entered into subject to the appropriation of funds.

Dated: March 12, 2013.

**Deborah Matthews,**

*Acting Chief, Grant Program Office, IRS, Stakeholder Partnerships, Education & Communication.*

[FR Doc. 2013–06562 Filed 3–21–13; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0616]**

### Proposed Information Collection (Application for Furnishing Long-Term Care Service to Beneficiaries of Veterans Affairs, and Residential Care Home Program) Activity: Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine non-Federal nursing home qualification to provide care to Veteran patients.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before May 21, 2013.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov.* Please refer to ''2900–0616'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor (202) 461–5870 or Fax (202) 273–9387.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:*

a. Application for Furnishing Long-Term Care Services to Beneficiaries of Veterans Affairs, VA Form 10–1170.

b. Residential Care Home Program—Sponsor Application, VA Form 2407.

*OMB Control Number:* 2900–0616.

*Type of Review:* Revision of a currently approved collection.

*Abstract:*

a. VA Form 10–1170 is completed by community agencies wishing to provide long term care to Veterans receiving VA benefits.

b. VA Form 10–2407 is an application used by a residential care facility or home that wished to provide residential home care to Veterans. It serves as the agreement between VA and the residential care home that the home will

submit to an initial inspection and comply with requirements for residential care. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:*

a. VA Form 10–1170—83 hours.

b. VA Form 2407—42 hours.

*Estimated Average Burden per Respondent:*

a. VA Form 10–1170—10 minutes.

b. VA Form 2407—5 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:*

a. VA Form 10–1170—500.

b. VA Form 2407—500.

Dated: March 19, 2013.

By direction of the Secretary.

**William F. Russo,**

*Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2013–06642 Filed 3–21–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0703]**

## Proposed Information Collection (Dependents' Educational Assistance (DEA) Election Request) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine dependents of veterans beginning date to start their DEA benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before May 21, 2013.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0703'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Dependents' Educational Assistance (DEA) Election Request, VA Form Letter 22–909.

*OMB Control Number:* 2900–0703.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA must notify eligible dependents of veterans' receiving DEA benefits of their option to elect a beginning date to start such benefits. VA will use the data collected on VA Form Letter 22–909 to determine the appropriate amount of benefit payable to the claimant.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 184 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One-time.

*Estimated Annual Responses:* 735.

Dated: March 19, 2013.

By direction of the Secretary.

**William F. Russo,**

*Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2013–06643 Filed 3–21–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

## Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of Amendment of System of Records; correction.

**SUMMARY:** The Department of Veterans Affairs (VA) published a notice in the **Federal Register** on October 31, 2012 (77 FR 65938), to amend its system of records entitled ''Patient Medical Record—VA'' (24VA19) as set forth in the **Federal Register** at 74 FR 60040. That notice contained several errors that are corrected by this document.

**DATES:** *Effective Date:* This correction is effective March 22, 2013.

**FOR FURTHER INFORMATION CONTACT:** Stephania H. Putt, Veterans Health Administration (VHA), Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (704) 245–2492.

**SUPPLEMENTARY INFORMATION:** On October 31, 2012, VA published an amendment to a system of records entitled ''Patient Medical Records—VA'' (24VA19), which revised the System Number (the new number is 24VA10P2), Categories of Individuals Covered by the Systems, Categories of Records in the System; and Routine Uses of Records Maintained in the System. Recently, it was brought to our attention that the number ''(8)'' assigned to the new Caregivers' category, under the heading ''Categories of Individuals Covered by the System,'' already was in use. Therefore, we are adding Caregivers as category number ''(9)''. Under the heading ''Categories of Records in the System,'' paragraph (iii), first sentence, we inadvertently left out ''minimum data set''. We are adding ''minimum data set'' right after the word ''registry''. And under the heading, ''Routine Uses of Records Maintained in the System,'' we incorrectly numbered two new routine uses as 53 and 54. Routine uses numbers 53 and 54 already are used, so the new routine uses numbers should be ''59'' and ''60''. This document corrects those errors.

In FR Doc. 2012–26801 published on October 31, 2012 (77 FR 65939), make the following corrections:

On page 65938, third column, third paragraph, remove ''fifty-three (53)'' and add, in its place, ''fifty-nine (59)'' and in the same column, fourth paragraph, remove ''fifty-four (54)'' and add, in its place, ''sixty (60)''.

On page 65939, first column, remove ''(8): Caregivers.'' and add, in its place, ''(9): Caregivers.''. On the same page, in

paragraph (iii), first sentence, insert ''minimum data set,'' immediately after the word ''registry,''. On the same page, renumber paragraphs number ''53'' and ''54'' as paragraphs ''59'' and ''60'', respectively.

Dated: March 19, 2013.

**Robert C. McFetridge,**

*Director, Regulation Policy and Management.*

[FR Doc. 2013–06664 Filed 3–21–13; 8:45 am]

BILLING CODE 8320–01–P

# FEDERAL REGISTER

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Part II

## Department of Homeland Security

Coast Guard

33 CFR Parts 101, 104, 105, *et al.*

Transportation Worker Identification Credential (TWIC)—Reader Requirements; Proposed Rule

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 101, 104, 105 and 106**

**[Docket No. USCG–2007–28915]**

**RIN 1625–AB21**

## Transportation Worker Identification Credential (TWIC)—Reader Requirements

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this Notice of Proposed Rulemaking (NPRM), the Coast Guard proposes to require owners and operators of certain vessels and facilities regulated by the Coast Guard to use electronic readers designed to work with the Transportation Worker Identification Credential (TWIC) as an access control measure. This NPRM also proposes additional requirements associated with electronic TWIC readers, including recordkeeping requirements for those owners and operators required to use an electronic TWIC reader, and security plan amendments to incorporate TWIC requirements. The TWIC program, including the proposed TWIC reader requirements in this rule, is an important component of the Coast Guard's multi-layered system of access control requirements and other measures designed to enhance maritime security.

This rulemaking action, once final, would build upon existing Coast Guard regulations designed to ensure that only individuals who hold a TWIC are granted unescorted access to secure areas at those locations. The Coast Guard has already promulgated regulations pursuant to the Maritime Transportation Security Act of 2002 (MTSA) that require mariners and other individuals to obtain a TWIC and present it for inspection by security personnel prior to gaining access to such secure areas. By requiring certain vessels and facilities to perform TWIC inspections using electronic TWIC readers, this rulemaking would further enhance security at those locations. This rulemaking would also implement the Security and Accountability For Every Port Act of 2006 electronic TWIC reader requirements.

**DATES:** Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before May 21, 2013 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 21, 2013.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2007–28915 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

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

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

*Collection of Information Comments:* If you have comments on the collection of information discussed in this NPRM, you must also send comments to OMB's Office of Information and Regulatory Affairs (OIRA). To ensure that your comments to OIRA are received on time, the preferred methods are by email at *oira_submission@omb.eop.gov* (include the docket number and ''Attention: Desk Officer for Coast Guard, DHS'' in the subject line of the email) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Lieutenant Commander Loan T. O'Brien, Coast Guard, telephone 202–372–1133. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

AHP Analytical Hierarchy Process
ANPRM Advanced Notice of Proposed Rulemaking
ASP Alternative Security Program
CAC Card Authentication Certificate
CCL Canceled Card List
CDC Certain Dangerous Cargoes
CFR Code of Federal Regulations
CGAA 2010 Coast Guard Authorization Act of 2010 (Pub. L. 111–281)
CHUID Card Holder Unique Identifier
CI/KR Critical Infrastructure/Key Resources
COTP Captain of the Port
DHS Department of Homeland Security
DPEA Draft Programmatic Environmental Assessment
FASC–N Federal Agency Smart Credential–Number
FONSI Finding of No Significant Impact
FSP Facility Security Plan
HSI Homeland Security Institute
ICE Test Initial Capability Evaluation Test
IPT Integrated Product Team
MARSEC Maritime Security
MERPAC Merchant Marine Personnel Advisory Committee
MISLE Marine Information for Safety and Law Enforcement
MODU Mobile Offshore Drilling Unit
MSRAM Maritime Security Risk Analysis Model
MTSA Maritime Transportation Security Act of 2002
NIST National Institute of Standards and Technology
NMSAC National Maritime Security Advisory Committee
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
NVIC Navigation and Vessel Inspection Circular
OCS Outer Continental Shelf
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OSV Offshore Supply Vessel
PAC–D Policy Advisory Council Decision
PACS Physical Access Control System
PIN Personal Identification Number
QTL Qualified Technology List
RUA Recurring Unescorted Access
SAFE Port Act Security and Accountability For Every Port Act of 2006
SBA Small Business Administration
SSI Sensitive Security Information
TSA Transportation Security Administration
TSAC Towing Safety Advisory Committee
TSI Transportation Security Incident
TWIC Transportation Worker Identification Credential
TWIC 1 Final Rule Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License, 72 FR 3492 (Jan. 25, 2007)
TWIC 1 NPRM Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Proposed Rules, 71 FR 29396 (May 22, 2006)
VSP Vessel Security Plan

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## I. Public Participation and Request for Comments

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

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2007–28915), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, email address, or phone number in the body of your document so that we can contact you if we have any questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and use ''USCG–2007–28915'' as your search term. Locate this NPRM in the search results, click the corresponding ''Comment Now'' box, and follow the instructions. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

### *B. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* and use ''USCG–2007–28915'' as your search term. The menu options on the left side of the Web page enable you to filter the results for public submissions and other types of documents. If you do not have access to the Internet, you may view the docket online by visiting 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### *C. Privacy Act*

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

### *D. Public Meetings*

We intend to hold one or more public meetings regarding the proposals in this NPRM. A notice with the specific date and location of each meeting will be published in the **Federal Register** as soon as this information is known.

## II. Executive Summary

This section provides a concise description of the major proposals and policy decisions in this NPRM. We also provide a summary of the costs and benefits of this NPRM in this section.

### *A. Purpose of the Regulatory Action*

1. Need for the Regulatory Action

This regulatory action is necessary to improve the security of the nation's vessels and port facilities and to comply with statutory requirements. As authorized by the Maritime Transportation Security Act of 2002 [1] (MTSA), the Transportation Security Administration (TSA) established the TWIC program to address identity management shortcomings and vulnerabilities identified in the nation's transportation system and to comply

[1] Public Law 107–295, 116 Stat. 2064 (Nov. 2, 2002).

with the MTSA statutory requirements. On January 25, 2007, the Department of Homeland Security (DHS), through the Coast Guard and TSA, promulgated regulations that require mariners and other individuals granted unescorted access to secure areas of MTSA-regulated vessels or facilities to undergo a security threat assessment by TSA and obtain a TWIC.[2] This rulemaking, which would require owners and operators of certain types of vessels and facilities to use electronic TWIC readers, is necessary to advance the goals of the TWIC program. This rulemaking applies only to MTSA-regulated vessels and facilities. As described more fully below in this Executive Summary, we conducted a risk-based analysis of MTSA-regulated vessels and facilities to categorize them into one of three risk groups. Risk Group A is comprised of vessels and facilities that present the highest risk of being involved in a transportation security incident (TSI).[3] Vessels and facilities in Risk Group A would have new TWIC reader requirements under this rule. Vessels and facilities in Risk Groups B and C present progressively lower risks, and would continue to follow existing regulatory requirements for visual TWIC inspection.

The TWIC program, including the proposed TWIC reader requirements in this rule, is an important component of the Coast Guard's multi-layered system of access control requirements and other measures designed to enhance maritime security. Under this multi-layered system, owners and operators of MTSA-regulated vessels or facilities are required to submit for Coast Guard approval a comprehensive security plan detailing the access control and other security policies and procedures implemented on each vessel and facility. Security plans must identify and mitigate vulnerabilities. They accomplish this task by detailing the following items: (1) Security organization of the vessel or facility; (2) personnel training; (3) drills and exercises; (4) records and documentation; (5) response to changes in Maritime Security (MARSEC)[4] Level; (6) procedures for interfacing with other facilities and/or vessels; (7) Declarations of Security; (8) communications; (9) security systems and equipment maintenance; (10) security measures for access control; (11) security measures for restricted areas; (12) security measures for handling cargo; (13) security measures regarding vessel stores and bunkers; (14) security measures for monitoring; (15) security incident procedures; (16) audits and security plan amendments; (17) Security Assessment Reports and other security reports; and (18) TWIC procedures.[5] Coast Guard inspectors conduct routine and unannounced inspections and spot-checks to ensure proper implementation of approved security plans. The multi-layered security system also includes measures that consider broader security issues at U.S. ports and waterways, the coastal zone, the open ocean, and foreign ports.

The TWIC program's initial requirement on mariners and other individuals to obtain a TWIC provides security benefits in the maritime sector. Prior to this requirement, mariners and other individuals could access secure areas of MTSA-regulated vessels and facilities after presenting any number of identification cards, such as State-issued driver's licenses, mariner credentials, passports, and union identification cards. To detect invalid credentials, it was necessary for security personnel to become familiar with the appearance and security features of every type of acceptable credential. Moreover, since some government-issued credentials are used for purposes other than security, applicants for those credentials do not necessarily submit biographic and biometric information and undergo a security threat assessment or criminal background check. For example, a State-issued driver's license is a generally accepted form of government-issued identification in many places because it: (1) Is laminated or otherwise secure against tampering; (2) bears the individual's name and photograph; and (3) bears the name of the issuing authority. Nonetheless, while issuance of a driver's license is conditioned upon the applicant's successful completion of a course on driving instruction, road test, written test, eye examination, and other criteria specific to driving a motor vehicle, the applicant is not necessarily fingerprinted and screened against law enforcement databases for felony criminal activity or terrorist group affiliation. These are inherent shortcomings of an access control system that would permit access based on a patchwork of generic credentials issued to individuals who have undergone no security screening as a precondition to obtaining those credentials. In contrast, issuance of a TWIC is specifically conditioned on these security-related criteria.

Since April 15, 2009, TWIC has been the single credential used throughout the maritime sector. Accordingly, security personnel only need to become familiar with the appearance and security features of one credential. Moreover, unlike other government-issued credentials, TWIC is specifically designed for maritime transportation security. TWIC's purpose is to promote a vetted maritime workforce by establishing security-related eligibility criteria, and by requiring each TWIC-holder to undergo TSA's security threat assessment as part of the process of applying for and obtaining a TWIC.

While the existing security benefits of the TWIC program are substantial, electronic TWIC readers would provide greater security benefits because the TWIC card is designed to contain several enhanced security features that can only be utilized through the use of an electronic TWIC reader. One of these features is the set of two fingerprint templates from two different fingers embedded in each TWIC card. The Coast Guard is proposing to require the use of electronic TWIC readers, which would match the TWIC-holder's fingerprint to one of the embedded fingerprint templates. An electronic TWIC reader would provide a more reliable form of identity verification than the current visual comparison of the TWIC-holder's face to the photograph on the TWIC. Because a TWIC reader, when properly functioning, engages the security features of the card and cross-references with TSA's Canceled Card List (CCL), which the owner or operator would be required to update at least weekly, it is also more reliable than visual inspection for ensuring that a TWIC is not counterfeit or expired, or has not been reported lost, stolen, damaged, or revoked. When TWIC readers or TWICs are damaged or malfunctioning, the proposed rule would permit owners and operators to revert to visual inspection of the TWICs for 7 days if certain conditions are met.

Despite the enhanced reliability that TWIC readers would offer, not all vessels and facilities face security risks that justify the costs and other burdens that would result from a universal TWIC

[2] Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License, 72 FR 3492 (Jan. 25, 2007).

[3] A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area, as defined in 46 U.S.C. 70101 (49 CFR 1572.103).

[4] ''MARSEC Level'' means the level set to reflect the prevailing threat environment to the marine elements of the national transportation system, including ports, vessels, facilities, and critical assets and infrastructure located on or adjacent to waters subject to the jurisdiction of the U.S. (33 CFR 101.105).

[5] *See* 33 CFR 104.405 and 33 CFR 105.405.

reader requirement for all vessels and facilities. Therefore, in this rulemaking, we are considering a phased approach to implementing TWIC reader requirements by proposing such requirements first for vessels and facilities where the risk of harm is expected to be the greatest. We will continue to analyze risk data on MTSA-regulated vessels and facilities and consider whether additional or modified TWIC reader requirements are warranted in future rulemakings.

This Notice of Proposed Rulemaking (NPRM) proposes TWIC reader requirements for MTSA-regulated vessels and facilities that we have determined to present a heightened risk of being involved in a TSI, as described more fully below in Section III.C., ''Risk-Based Approach to Categorizing Vessels and Facilities.'' The Coast Guard assembled a panel of maritime security subject matter experts from the Coast Guard and TSA to conduct a risk-based analysis of MTSA-regulated vessels and facilities. The panel assessed the distinct types of vessels and facilities using three factors: (1) Maximum consequences to that vessel or facility resulting from a terrorist attack; (2) criticality to the nation's health, economy, and national security; and (3) utility of the TWIC in reducing risk.

For the first factor (maximum consequence resulting from a terrorist attack), we used the Coast Guard's Maritime Security Risk Analysis Model (MSRAM). MSRAM is a terrorism risk-analysis tool the Coast Guard uses to perform risk analysis on Critical Infrastructure and Key Resources (CI/KR) in the maritime domain, given a range of terrorist attack scenarios. The purpose of MSRAM is to capture and rank the security risks facing different types of potential terrorist targets spanning all CI/KR sectors in the nation's ports and on its waterways.

An initial step in the MSRAM process is to calculate the maximum potential consequence resulting from the total loss of a target, factoring in injury and loss of life, economic and environmental impact, symbolic effect, and national security impact. MSRAM then assesses risk for a range of scenarios (each involving a combination of potential terrorist target and method of attack) in terms of threat, vulnerability, and consequence. MSRAM considers the response capability of the owner or operator, local first responders, and Federal agencies to mitigate the consequences of an attack. MSRAM also considers input from Area Maritime Security Committees (AMSCs).[6]

For the second factor (criticality to the nation's health, economy, and national security), we considered the impact of the total loss of a vessel or facility beyond the immediate local consequences, taking into account the regional or national impacts on human health, the economy, and national security.

For the third factor (TWIC utility), we considered the utility of the TWIC program in reducing a vessel's or facility's vulnerability to a terrorist attack.

We combined the above three factors and developed an overall risk ranking of vessels and facilities by type. The panel then assigned numerical valued weights to the three factors. In determining the final weights, the panel chose the approach that best reflected its understanding of the maritime environment and TWIC program implementation, the importance of consequences in representing target attractiveness to terrorists, and the panel's expert perspective of risk. The actual numerical valued weights finalized by the panel are Sensitive Security Information (SSI). Finally, the panel calculated the priority scores for each vessel and facility type. At the end of this process, types of vessels and facilities with similar scores were combined into one of three risk groups.

Vessels and facilities that present a heightened risk for being involved in a TSI, Risk Group A, would have new TWIC reader requirements under this rule. For now, vessels and facilities that do not present this heightened risk would either continue to visually inspect TWICs or voluntarily deploy TWIC readers. We believe this approach would implement the TWIC reader program in a targeted manner that enhances the security of MTSA-regulated vessels and facilities without imposing undue burdens.

2. Legal Authority for the Regulatory Action

Under MTSA, the Secretary of Homeland Security (Secretary) is required to issue regulations designed to prevent individuals from entering secure areas of MTSA-regulated vessels or facilities without holding a TWIC or being accompanied by another individual holding a TWIC.[7] As a first step toward implementing that mandate, DHS, through the Coast Guard and TSA, promulgated a rule on January 27, 2007 that requires all maritime workers and other individuals to obtain a TWIC before they are granted unescorted access to secure areas in the maritime sector. We also required owners and operators of MTSA-regulated vessels or facilities to visually inspect the TWICs of individuals seeking access to secure areas at those locations. Additionally, we included alternatives to accommodate instances when an individual cannot present a TWIC because it has been lost, damaged, or stolen. In the January 27, 2007 rule, we did not implement TWIC reader requirements. Instead, we decided that TWIC reader requirements would follow in a separate rule after pilot testing TWIC readers in the maritime sector.

The Security and Accountability For Every (SAFE) Port Act of 2006[8] required the Secretary to conduct a pilot program to test the business processes, technology, and operational impacts of TWIC readers in the maritime environment, and to issue regulations that require the deployment of TWIC readers that are consistent with the findings of the pilot program.[9]

*B. Summary of the Major Provisions of the TWIC Reader Advanced Notice of Proposed Rulemaking and This NPRM*

On March 27, 2009, the Coast Guard published an advanced notice of proposed rulemaking on TWIC reader requirements (ANPRM).[10] The ANPRM proposed a risk-based approach to TWIC reader requirements. First, the ANPRM proposed to classify MTSA-regulated vessels and facilities into one of three risk groups, based on specific factors related to TSI consequence. Second, the ANPRM proposed TWIC reader requirements for vessels and facilities in the two highest risk groups (Risk Groups A and B). For the lowest risk group (Risk Group C), the ANPRM proposed visual TWIC inspection requirements instead of TWIC reader requirements because we determined that routine electronic biometric matching using TWIC readers would not be practical at lower risk vessels and facilities. This is consistent with the understanding that TWIC readers constitute one component

[6] AMSCs are committees established pursuant to 46 U.S.C. 70112(a)(2)(A). AMSCs are composed of at least seven members having an interest in the maritime security of a specific geographic area. AMSC members may be selected from government, public safety, law enforcement, maritime industry, and other port stakeholders. AMSCs assist in the development, review, and update of formal plans that detail maritime security measures and procedures for ports in a specific geographic area. *See* 33 CFR part 103.

[7] 46 U.S.C. 70105(a)–(f).

[8] Public Law 109–347, 120 Stat. 1884 (Oct. 13, 2006).

[9] 46 U.S.C. 70105(k)(3).

[10] Transportation Worker Identification Credential (TWIC)—Reader Requirements, 74 FR 13360 (March 27, 2009).

of a multi-layered maritime security system, but are not necessary or appropriate for every vessel or facility.

Based on the public comments received in response to the ANPRM, the findings of the DHS pilot program, and further analysis of the relevant issues, this NPRM reiterates many of the ANPRM's proposals, including retaining the ANPRM's risk-based framework for classifying vessels and facilities into the same three risk groups. As in the ANPRM, vessels and facilities are generally placed in higher risk groups based on the hazardous nature of the cargo handled or carried, or an increase in the number of passengers present. Our analysis demonstrates that it is necessary to maximize the use of the TWIC's security features where the risk is highest, as described more fully below in Section III.C., ''Risk-Based Approach to Categorizing Vessels and Facilities.'' We also believe it is necessary to carefully weigh the costs and benefits of TWIC reader requirements on the regulated population.

The main change in approach from the ANPRM to this NPRM is regarding the TWIC reader requirements for the different risk groups. Specifically, this NPRM proposes TWIC reader requirements for Risk Group A only. For Risk Groups B and C, this NPRM proposes to maintain the existing visual TWIC inspection requirements instead of TWIC reader requirements. This approach is designed to target the use of TWIC readers at the highest risk entities while minimizing the overall burden of the rule. Proposing TWIC reader requirements for Risk Group A only in this NPRM is indicative of our desire to minimize highest risks first, but should not be read to foreclose revised TWIC reader requirements in the future. We will continue to gather and analyze data to determine how the use of TWIC readers might be appropriate for each risk group. Any future changes will be made through rulemaking and the public will have an opportunity to comment.

This NPRM also proposes a requirement for owners and operators using TWIC readers to maintain records on each individual granted unescorted access to a secure area. Owners and operators would be required to maintain such records for a period of 2 years. Additionally, this NPRM proposes requirements to amend security plans to incorporate TWIC reader requirements for vessels and facilities in the highest risk group. These provisions are designed to ensure that owners and operators of vessels or facilities in Risk Group A comply with TWIC reader requirements.

TABLE ES–1—SUMMARY OF REQUIREMENTS/PROVISIONS PROPOSED IN THIS NPRM

| Proposed requirement or provision | Vessels (33 CFR part 104) | Facilities (33 CFR part 105) | OCS Facilities (33 CFR part 106) |
|---|---|---|---|
| Risk Group A classification | Vessels that carry CDC in bulk<br>Vessels certificated to carry more than 1,000 passengers.<br>Vessels towing one of the above | Facilities that handle CDC in bulk<br>Facilities that receive vessels certificated to carry more than 1,000 passengers.<br>Barge fleeting facilities that receive barges carrying CDC in bulk. | Not applicable. |
| Risk Group B classification | Vessels that carry hazardous materials other than CDC in bulk.<br>Vessels that carry flammable or combustible liquid cargoes.<br>Vessels certificated to carry 500–1,000 passengers.<br>Vessels towing one of the above. | Facilities that receive Risk Group B vessels. | All OCS facilities. |
| Risk Group C classification | Vessels that carry non-hazardous cargoes.<br>Vessels certificated to carry less than 500 passengers.<br>Vessels towing one of the above.<br>MODUs and OSVs. | Facilities that receive Risk Group C vessels. | Not applicable. |
| Movement between risk groups | Vessels are permitted to move between risk groups based on the materials carried at a given time. Described in VSP. | Facilities are permitted to move between risk groups based on the materials handled at a given time. Described in FSP. | Not applicable. |
| Visual TWIC inspection requirement. | Risk Groups B and C perform identity verification, card authentication, and card validation by visual TWIC inspection for each individual prior to being granted unescorted access to secure areas. | Risk Groups B and C perform identity verification, card authentication, and card validation by visual TWIC inspection for each individual prior to being granted unescorted access to secure areas. | Risk Groups B performs identity verification, card authentication, and card validation by visual TWIC inspection for each individual prior to being granted unescorted access to secure areas. |
| TWIC reader requirement | Risk Group A must use TWIC reader with biometric check for identity verification, card authentication, and card validation on each individual prior to being granted unescorted access to secure areas. | Risk Group A must use TWIC reader with biometric check for identity verification, card authentication, and card validation on each individual prior to being granted unescorted access to secure areas. | No requirement. |
| TWIC reader exemption based on minimum crew size. | Vessels with 14 or fewer TWIC-holding crew are exempt. | No exemption | Not applicable. |
| Physical placement of TWIC readers. | Vessel access points only | Access points to each secure area. | Not applicable. |

TABLE ES–1—SUMMARY OF REQUIREMENTS/PROVISIONS PROPOSED IN THIS NPRM—Continued

| Proposed requirement or provision | Vessels (33 CFR part 104) | Facilities (33 CFR part 105) | OCS Facilities (33 CFR part 106) |
|---|---|---|---|
| Unreadable fingerprints | Exception handling process may include PIN or alternate biometric. | Exception handling process may include PIN or alternate biometric. | Not applicable. |
| TWIC reader malfunction | Owner or operator performs visual TWIC inspection. Individuals that have been granted unescorted access with a valid TWIC in the past may still be granted such access for up to 7 days (with the possibility of an additional extension at the COTP's discretion). | Owner or operator performs visual TWIC inspection. Individuals that have been granted unescorted access with a valid TWIC in the past may still be granted such access for up to 7 days (with the possibility of an additional extension at the COTP's discretion). | Not applicable. |
| Recordkeeping | Records on each individual whose TWIC was scanned using a TWIC reader must be kept for 2 years. | Records on each individual whose TWIC was scanned using a TWIC reader must be kept for 2 years. | Not applicable. |
| Lost/stolen TWIC | Individuals following prescribed procedures may be granted unescorted access for no longer than 7 consecutive days. (Additional 30-day extension may be granted per Coast Guard guidance.). | Individuals following prescribed procedures may be granted unescorted access for no longer than 7 consecutive days. (Additional 30-day extension may be granted per Coast Guard guidance.). | Individuals following prescribed procedures may be granted unescorted access for no longer than 7 consecutive days. (Additional 30-day extension may be granted per Coast Guard guidance.) |
| Compliance deadline | 2 years after final rule publication | 2 years after final rule publication | Not applicable. Existing regulations apply. |

*C. Summary of Costs and Benefits*

Under MTSA, the Coast Guard regulates approximately 13,825 vessels, 3,270 facilities, and 56 Outer Continental Shelf (OCS) facilities. Of those MTSA-regulated facilities that could have potentially been regulated, 38 vessels and 532 facilities are affected by this proposed rule. We estimate the annualized cost of this proposed rule on the affected population of 38 vessels and 532 facilities to be about $26.5 million, while the 10-year cost is $186.1 million, discounted at 7 percent. The main cost drivers of this proposal are the acquisition, installation, and integration of TWIC readers into access control systems. Annual costs would be driven by costs associated with Canceled Card List updates, recordkeeping, training, system maintenance, and opportunity costs associated with failed TWIC reader transactions. We account for delays of up to two minutes for failed TWIC reader transactions. We estimate that 5% of TWIC-holders who access Risk Group A facilities and vessels will need to replace their TWICs annually, also contributing to the annual costs of this rule.

The benefits of this proposed rule include the enhancement of the security of vessels, ports, and other facilities by ensuring that only individuals who hold TWICs are granted unescorted access to secure areas at those locations. TWIC readers will not help identify valid cards that were obtained via fraudulent means, e.g., through unreported theft or the use of fraudulent IDs. Further, if the Coast Guard becomes aware of an imminent threat to a facility or vessel, the Coast Guard will notify the relevant Captain of the Port and other Federal, state, and local law enforcement officials and implement additional security measures as appropriate as a part of DHS's layered approach to security. This proposed rule would also implement the MTSA transportation security card requirement, as well as the SAFE Port Act of 2006 electronic TWIC reader requirements. The main benefit of this regulation, decreased terrorism risk, cannot be quantified given current data limitations.

TABLE ES–2—ESTIMATED COSTS AND FUNCTIONAL BENEFITS OF TWIC READER REQUIREMENTS [11]

| Category | NPRM |
|---|---|
| Applicability | High risk MTSA-regulated facilities and high risk MTSA-regulated vessels with greater than 14 crew. |
| Affected Population | 38 vessels.<br>532 facilities. |
| Costs ($ millions, 7% discount rate) | $26.5 (annualized).<br>$186.1 (10-year). |
| Costs (Qualitative) | Time to retrieve or replace lost PINs for use with TWIC cards. |
| Benefits (Qualitative) | Standardization of access control and credential verification throughout industry.<br>Enhanced access control and security at U.S. maritime facilities and onboard U.S. flagged vessels.<br>Reduction of human error when checking identification and manning access points. |

We used arisk-based approach to apply these regulatory requirements on less than 5 percent of the MTSA-regulated population, which represents approximately 80 percent of the potential consequences of a TSI. A discussion of our risk-based approach is provided below in Section III.C., ''Risk-Based Approach to Categorizing Vessels and Facilities.'' For a more detailed discussion of the methodology underpinning our risk-based approach, please refer to the Coast Guard report, ''Analysis of Transportation Worker Identification Credential (TWIC) Electronic Reader Requirements in the Maritime Sector,'' which is available for viewing in the public docket for this rulemaking. The proposals in this NPRM target the highest risk entities while minimizing the overall burden of the rule. Furthermore, we propose several types of relief in an effort to minimize the possible burden on the regulated population.

## III. Background and Purpose

This section provides a detailed discussion of the considerations and rationale for the policy decisions that informed this NPRM. The section that follows (Section IV.) sets forth the NPRM's proposals.

Section III.A. provides a general description of the TWIC and its security features, and also explains how the TWIC is used in the maritime sector as an access control measure.

Section III.B. discusses the statutory basis for this rulemaking, and summarizes the regulatory history of the TWIC program. The Coast Guard's most recent TWIC-related regulatory action is the ANPRM on TWIC reader requirements.

Section III.C. describes the ANPRM's risk-based approach for evaluating and categorizing types of vessels and facilities into risk groups. In doing so, this section summarizes the factors considered in developing the ANPRM's categorization system.

Section III.D. summarizes the ANPRM's proposals for TWIC reader requirements and other TWIC-related requirements for each risk group.

Section III.E. provides a detailed discussion of the public comments received during the ANPRM's comment period and public meeting. Section III.E. also provides our responses to those comments.

Sections III.F., III.G., III.H., and III.I. discuss DHS's TWIC Reader Pilot Program on TWIC reader functionality, the Homeland Security Institute's report on the ANPRM's risk group classification system, additional data sources, and Advisory Committee input in the rulemaking process, respectively.

### *A. General Information About the Transportation Worker Identification Credential*

This section provides a general description of the types of vessels and facilities currently covered under MTSA, the TWIC and its security features, and also explains how the TWIC is currently used in the maritime sector for access control.

Under MTSA, the Coast Guard is authorized to regulate vessels and facilities. For purposes of MTSA, the term ''facility'' means ''any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States.'' [12] For purposes of MTSA, the term ''vessel'' includes ''every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.'' [13]

Coast Guard regulations implementing MTSA with respect to vessels [14] apply to: Mobile Offshore Drilling Units (MODUs), cargo vessels, or passenger vessels subject to International Convention for Safety of Life at Sea, 1974 (SOLAS), chapter XI–1 or Chapter XI–2; foreign cargo vessels greater than 100 gross register tons; generally, self-propelled U.S. cargo vessels greater than 100 gross tons; offshore supply vessels; vessels subject to the Coast Guard's regulations regarding passenger vessels; passenger vessels certificated to carry more than 150 passengers; passenger vessels carrying more than 12 passengers engaged on an international voyage; barges carrying, in bulk, cargoes regulated under the Coast Guard's regulations regarding tank vessels or Certain Dangerous Cargoes (CDCs); [15] barges carrying CDCs or cargo and miscellaneous vessels engaged on an international voyage; tankships; and generally, towing vessels greater than eight meters in register length engaged in towing barges.

Coast Guard regulations implementing MTSA with respect to facilities [16] apply to: Waterfront facilities handling dangerous cargoes (as generally defined in 49 CFR parts 170 through 179); waterfront facilities handling liquefied natural gas and liquefied hazardous gas; facilities transferring oil or hazardous materials in bulk; facilities that receive vessels certificated to carry more than 150 passengers; facilities that receive vessels subject to SOLAS, Chapter XI; facilities that receive foreign cargo vessels greater than 100 gross register tons; generally, facilities that receive U.S. cargo and miscellaneous vessels greater than 100 gross register tons; barge fleeting facilities that receive barges carrying, in bulk, cargoes regulated under the Coast Guard's regulations regarding tank vessels or CDCs; and fixed or floating facilities operating on the OCS for the purposes of engaging in the exploration, development, or production of oil, natural gas, or mineral resources (OCS facilities).

This rulemaking applies to the above-described vessels and facilities regulated by the Coast Guard pursuant to the authority granted in MTSA. The TWIC program is one component of the Coast Guard's multi-layered system of access control requirements and other measures designed to enhance maritime security. Under this multi-layered system, owners and operators of MTSA-regulated vessels or facilities are required to submit for Coast Guard approval a comprehensive security plan detailing the access control and other security policies and procedures implemented on each vessel and facility. Security plans must identify and mitigate vulnerabilities. They accomplish this task by detailing the following items: (1) Security organization of the vessel or facility; (2) personnel training; (3) drills and exercises; (4) records and documentation; (5) response to changes in Maritime Security (MARSEC) Level; (6) procedures for interfacing with other facilities and/or vessels; (7) Declarations of Security; (8) communications; (9) security systems and equipment maintenance; (10) security measures for access control; (11) security measures for restricted areas; (12) security measures for handling cargo; (13) security measures regarding vessel stores and bunkers; (14) security measures for monitoring; (15) security incident procedures; (16) audits and security plan amendments; (17) Security Assessment Reports and other security

[11] For a more detailed discussion of costs and benefits, see the full Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis available on the docket for this rulemaking. Appendix G of that document outlines the costs by provision and also discusses the complementary nature of the provisions and the subsequent difficulty in distinguishing independent benefits from individual provisions.

[12] 46 U.S.C. 70101(a)(2).

[13] 46 U.S.C. 115; 1 U.S.C. 3.

[14] *See* 33 CFR 104.105.

[15] The term ''Certain Dangerous Cargoes'' is defined in 33 CFR 101.105 by reference to 33 CFR 160.204, which lists all of the covered substances.

[16] *See* 33 CFR 105.105 and 106.105.

reports; and (18) TWIC procedures.[17] Coast Guard inspectors conduct routine and unannounced inspections and spot-checks to ensure proper implementation of approved security plans. The multi-layered security system also includes measures that consider broader security issues at U.S. ports and waterways, the coastal zone, the open ocean, and foreign ports.

The TWIC is a tamper-resistant biometric credential TSA issues to eligible maritime workers who require unescorted access to secure areas of MTSA-regulated vessels and facilities. To obtain a TWIC, applicants must provide biographic and biometric information and complete a TSA security threat assessment. Applicants are disqualified from obtaining a TWIC if their assessment reveals that they: have been convicted, or found not guilty by reason of insanity, of certain felonies; [18] are under want, warrant, or indictment for certain felonies; [19] have been released from incarceration within the preceding 5-year period for committing certain felonies; [20] may be denied admission to, or removed from, the United States under the Immigration and Nationality Act; [21] or otherwise pose a terrorism security risk to the United States.[22]

The face of the TWIC shows the holder's photograph, name, and TWIC expiration date, and the back shows a unique credential number (TWIC Serial Number). Because TWIC is the single credential used throughout the maritime sector, it provides considerable security benefits, including ensuring that individuals permitted to enter secure areas within the maritime transportation system have successfully undergone TSA's security threat assessment, involving a criminal history records check and an intelligence-related check. Before TWIC was in use, mariners and other individuals could access secure areas of MTSA-regulated vessels and facilities after presenting a State-issued driver's license or any number of other government-issued identification cards. To detect invalid credentials, it was necessary for security personnel to become familiar with the appearance and security features of every type of acceptable credential. Moreover, since some government-issued credentials are used for purposes other than security, applicants for those credentials do not necessarily submit biographic and biometric information and undergo a security threat assessment or criminal background check. For example, a State-issued driver's license is a generally accepted form of government-issued identification in many places because it: (1) Is laminated or otherwise secure against tampering; (2) bears the individual's name and photograph; and (3) bears the name of the issuing authority. Nonetheless, while issuance of a driver's license is conditioned upon the applicant's successful completion of a course on driving instruction, road test, written test, eye examination, and other criteria specific to driving a motor vehicle, the applicant is not necessarily fingerprinted and screened against law enforcement databases for felony criminal activity or terrorist group affiliation. These are inherent shortcomings of an access control system that would permit access based on a patchwork of generic credentials issued to individuals who have undergone no security screening as a precondition to obtaining those credentials. In contrast, issuance of a TWIC is specifically conditioned on these security-related criteria.

Since April 15, 2009, TWIC has been the single credential used throughout the maritime sector. Accordingly, security personnel only need to become familiar with the appearance and security features of one credential. Moreover, unlike other government-issued credentials, TWIC is specifically designed for transportation security. Its purpose is to ensure a vetted maritime workforce by establishing security-related eligibility criteria, and by requiring each TWIC-holder to undergo TSA's security threat assessment as part of the process of applying for and obtaining a TWIC.

In addition to its visible security features, the TWIC stores two electronically readable reference biometric templates (i.e., fingerprint templates), a personal identification number (PIN) selected by the TWIC-holder, a digital facial image, authentication certificates, and a Federal Agency Smart Credential-Number (FASC–N). These features enable the TWIC to be used in different ways for: (1) Identity verification; (2) card authentication; and (3) card validation.

Identity verification ensures that the individual presenting the TWIC is the same person to whom the TWIC was issued. Identity can be verified by visually comparing the photo on the TWIC to the TWIC-holder. Using a TWIC reader, identity can be verified by matching one of the fingerprint templates stored in the TWIC to the TWIC-holder's live sample biometric, or by requiring the TWIC-holder to place the TWIC into a TWIC reader and enter a 6-, 7-, or 8-digit PIN selected by the TWIC-holder at the time of card activation.

Card authentication ensures that the TWIC is not counterfeit. Security personnel can authenticate a TWIC by visually inspecting the security features on the card. A TWIC reader authenticates the card by performing a challenge/response protocol using the Card Authentication Certificate (CAC) and the associated card authentication private key stored in the TWIC.[23]

Card validation using a TWIC reader ensures that the TWIC has not expired or been revoked by TSA, or reported as lost, stolen, or damaged. Security personnel can validate whether a TWIC has expired by visually checking the TWIC's expiration date. A TSA-canceled TWIC is placed on TSA's official Canceled Card List (CCL), which is updated daily.[24] Using a TWIC reader, card validity is confirmed by finding no match on the CCL and electronically checking the expiration date on the TWIC. Checks against the CCL may be performed electronically by downloading the list onto a TWIC reader or integrated Physical Access Control System (PACS).

*B. Statutory and Regulatory History*

This section discusses the statutory basis for this rulemaking, and summarizes the TWIC-related regulatory actions that precede this NPRM.

In the aftermath of the September 11, 2001 attacks, President George W. Bush signed Public Law 107–295, MTSA, 2002, which required the Secretary to publish rules that institute measures for the protection of U.S. maritime security as soon as practicable. On July 1, 2003, the Coast Guard published a series of six rules to promulgate maritime security requirements mandated by MTSA. These rules included the following ones: Implementation of National Maritime Security Initiatives (68 FR

[17] *See* 33 CFR 104.405 and 33 CFR 105.405.

[18] 46 U.S.C. 70105(c)(1)(A)–(B).

[19] 46 U.S.C. 70105(c)(1)(C).

[20] 46 U.S.C. 70105(c)(1)(D)(i).

[21] 46 U.S.C. 70105(c)(1)(D)(iii); 8 U.S.C. 1101 *et seq.*

[22] 46 U.S.C. 70105(c)(1)(D)(iv).

[23] The TWIC reader will read the CAC from the TWIC and send a command to the TWIC requesting the card authentication private key be used to sign a random block of data (created and known to the TWIC reader). The TWIC reader will use the public key embedded in the CAC to verify that the signature of the random data block is valid. If the signature is valid, the TWIC reader will trust the TWIC submitted and will then pull the FASC—N and other information from the card for further processing. The CAC contains the FASC—N and a certificate of expiration date harmonized to the TWIC expiration date. This minimizes the need for the TWIC reader to pull more information from the TWIC (unless required for additional checking).

[24] TSA's Canceled Card List is available online at: *https://twicprogram.tsa.dhs.gov/TWICWebApp.*

39240); Area Maritime Security (68 FR 39284); Vessel Security (68 FR 39292); Facility Security (68 FR 39315); Outer Continental Shelf Facility Security (68 FR 39338); and Automatic Identification System (68 FR 39353). Most of these rules have been codified in 33 CFR subchapter H.

MTSA is the principal statutory authority for the TWIC program, and it requires the Secretary to issue regulations designed to prevent an individual from entering secure areas of MTSA-regulated vessels or facilities unless the individual holds a TWIC or is accompanied by another individual who holds a TWIC.[25]

On May 22, 2006, DHS, through the Coast Guard and TSA, published a notice of proposed rulemaking [26] (TWIC 1 NPRM) to implement the TWIC program in the maritime sector. On January 27, 2007, DHS, through the Coast Guard and TSA, issued a final rule [27] (TWIC 1 Final Rule) that required all credentialed merchant mariners and individuals granted unescorted access to secure areas of MTSA-regulated vessels or facilities to obtain a TWIC. Based on comments received in response to the TWIC 1 NPRM, and upon further analysis of the information available at the time, the Coast Guard concluded in the TWIC 1 Final Rule that it was premature to require the use of TWIC readers on vessels and at facilities.[28] The TWIC 1 Final Rule, however, stated that TWIC reader requirements would be addressed in a future rulemaking.[29] To date, TSA has issued approximately 2 million TWICs.[30] TWIC is now the single credential used throughout the maritime sector. For purposes of access control to MTSA-regulated vessels and facilities, security personnel only need to become familiar with the appearance and security features of one credential when determining whether to grant access to secure areas. Moreover, since the TWIC program is specifically designed for transportation security, it effectively ensures a vetted maritime workforce by establishing security-related eligibility criteria and by requiring each TWIC-holder to undergo TSA's security threat assessment as a precondition to obtaining a TWIC.

Section 104 of the SAFE Port Act of 2006 focused on how to further incorporate TWIC and TWIC readers into the MTSA security regime. Specifically, the SAFE Port Act supplemented various MTSA credentialing requirements by, among other things, requiring the Secretary to: (1) Conduct a TWIC reader testing pilot program (TWIC Pilot) to evaluate the business processes, technology, and operational impacts of a TWIC reader requirement; [31] and (2) promulgate final regulations requiring the use of TWIC readers in a manner consistent with the findings of the TWIC Pilot.[32]

While DHS collected data for the TWIC Pilot, the Coast Guard published the ANPRM on March 27, 2009, discussing the Coast Guard's preliminary thoughts on potential TWIC reader requirements, and opening a public dialog on how to best implement those requirements. The ANPRM proposed a framework that would separate individual MTSA-regulated vessels, MTSA-regulated facilities, and MTSA-regulated OCS facilities into one of three risk groups. Vessels and facilities are generally placed in higher risk groups based on the hazardous nature of the cargo handled or carried, or an increase in the number of passengers present. This framework is described more fully below in Section III.C., ''Risk-Based Approach to Categorizing Vessels and Facilities.'' The ANPRM proposed TWIC reader requirements for vessels and facilities in Risk Groups A and B, the two highest risk groups. For Risk Group C, the ANPRM proposed visual TWIC inspection requirements instead of TWIC reader requirements because we determined that the frequent electronic matching of a biometric would not be practical at lower risk vessels and facilities. This is consistent with the understanding that TWIC readers constitute one component of a multi-layered maritime security system, but are not necessary or appropriate for every vessel or facility.

Based on the public comments received in response to the ANPRM, the TWIC Pilot findings, and further analysis of the relevant issues, this NPRM reiterates many of the ANPRM's proposals, including retaining the ANPRM's risk-based framework for classifying vessels and facilities into the same three risk groups. Our analysis demonstrates that it is necessary to maximize the use of the TWIC's security features where the risk is highest, as described more fully below in Section III.C., ''Risk-Based Approach to Categorizing Vessels and Facilities.'' We also believe it is necessary to carefully weigh the costs and benefits of TWIC reader requirements on the regulated population.

The primary change in approach from the ANPRM to this NPRM is regarding the TWIC reader requirements for the different risk groups. Specifically, this NPRM proposes TWIC reader requirements for Risk Group A only. For Risk Groups B and C, this NPRM proposes to maintain the existing visual TWIC inspection requirements instead of TWIC reader requirements. This approach is designed to target the use of TWIC readers at the highest risk entities while minimizing the overall burden of the rule. Proposing TWIC reader requirements for Risk Group A only in this NPRM is indicative of our desire to minimize highest risks first, but should not be read to foreclose revised TWIC reader requirements in the future. We will continue to gather and analyze data to determine how the use of TWIC readers might be appropriate for each risk group. Any future changes will be made through rulemaking and the public will have an opportunity to comment.

The Coast Guard Authorization Act of 2010 (Pub. L. 111–281) (CGAA 2010) contains two provisions we refer to into this rulemaking. First, Section 809 of the CGAA 2010 authorizes the Secretary to exempt any credentialed mariner who is not granted unescorted access to secure areas of a vessel from the requirement to possess a TWIC. Second, Section 814 of the CGAA 2010 allows the Secretary to permit the use of alternate biometrics, such as a retina scan, to verify the identification of individuals using TWIC when the individual's fingerprints are not able to be taken or read.

### *C. Risk-Based Approach to Categorizing Vessels and Facilities*

This section describes the ANPRM's risk-based approach for evaluating and categorizing types of vessels and facilities into risk groups.

The Coast Guard assembled a panel of maritime security subject matter experts from the Coast Guard and TSA to conduct a risk-based analysis of MTSA-regulated vessels and facilities. The panel determined that the Analytical Hierarchy Process (AHP) would provide an effective basis for applying the panel's judgment to weigh and apply several key factors to the assessment of types of vessels and facilities. The AHP

[25] 46 U.S.C. 70105(a)–(f).

[26] Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License, 71 FR 29396 (May 22, 2006).

[27] Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License, 72 FR 3492 (Jan. 25, 2007).

[28] *See* 72 FR 3512.

[29] *See* 72 FR 3512.

[30] For statistics and other general information about the TWIC program, visit the TSA Web site at *http://www.tsa.gov/twic.*

[31] 46 U.S.C. 70105(k)(1).

[32] 46 U.S.C. 70105(k)(3).

is the core methodology in the Expert Choice [33] collaborative decision support tool, which was used in the Coast Guard's risk-based analysis. The AHP was originally developed in the 1970s by Dr. Thomas Saaty, then a professor at the Wharton School, University of Pennsylvania. The methodology has since gained wide acceptance and is used by Fortune 500 companies, Federal agencies, and MBA programs as a structured technique for achieving solutions to complex problems. Federal agencies that have used the AHP/Expert Choice include the National Institute of Standards and Technology, Department of the Army, Department of the Air Force, Bureau of Land Management, Bureau of Engraving and Printing, Department of Agriculture, Department of Energy, Department of Housing and Urban Development, Department of State, Defense Information Systems Agency, Department of Veterans Affairs, and the Federal Aviation Administration.

The AHP provides a comprehensive and rational framework for structuring a problem, representing and quantifying its elements, relating those elements to overall goals, and for evaluating a set of alternative solutions. The AHP has been used by government and industry to assess alternatives and arrive at solutions when faced problems that present disparate criteria and factors to consider.

The Coast Guard's panel of subject matter experts identified 68 distinct types of vessels and facilities based on their purpose or operational description. The panel then assessed each of the 68 types of vessels and facilities using three factors: (1) Maximum consequences to that vessel or facility resulting from a terrorist attack; (2) criticality to the nation's health, economy, and national security; and (3) utility of the TWIC in reducing risk.

For the first factor (maximum consequence resulting from a terrorist attack), we used the Coast Guard's Maritime Security Risk Analysis Model (MSRAM). MSRAM is a terrorism risk-analysis tool the Coast Guard uses to perform risk analysis on Critical Infrastructure and Key Resources (CI/KR) in the maritime domain, given a range of terrorist attack scenarios. The purpose of MSRAM is to capture and rank the security risks facing different types of potential terrorist targets (e.g., waterfront facilities, vessels, bridges, and other infrastructure) spanning all CI/KR sectors in the nation's ports and on its waterways.

An initial step in the MSRAM process is to calculate the maximum potential consequence resulting from the total loss of a target, factoring in injury and loss of life, economic and environmental impact, symbolic effect, and national security impact. MSRAM then assesses risk for a range of scenarios (each involving a combination of potential terrorist target and method of attack) in terms of threat, vulnerability, and consequence. MSRAM considers the response capability of the owner or operator, local first responders, and Federal agencies to mitigate the consequences of an attack. MSRAM also considers input from Area Maritime Security Committees (AMSCs).[34]

In consultation with representatives from AMSCs throughout the country, we have compiled MSRAM risk information from Coast Guard Sectors and Captains of the Port (COTPs) into a database that provides an overall national view of terrorism risk to maritime assets. For purposes of this proposed rule, we focused on MSRAM data specific to MTSA-regulated vessels and facilities, and used it to address the maximum consequence that would occur from the total loss of a vessel or facility caused by a TSI resulting from a terrorist attack. We averaged these MSRAM consequences across similar types of vessels and facilities to develop a standard risk for each type.

For the second factor (criticality to the nation's health, economy, and national security), we considered the impact of the total loss of a vessel or facility beyond the immediate local consequences, taking into account the regional or national impacts on human health, the economy, and national security.

For the third factor (TWIC utility), we considered the utility of the TWIC program in reducing a vessel or facility's vulnerability to a terrorist attack.

Using the AHP, we combined the above three factors and developed an overall risk ranking of vessels and facilities by type. As a first step in this process, the panel identified the 68 vessel and facility types, and the three criteria described above. As a second step, the panel considered different approaches to assigning numerical valued weights to the three factors. In determining the final weights, the panel chose the approach that best reflected its understanding of the maritime environment and TWIC program implementation, the importance of consequences in representing target attractiveness to terrorists, and the panel's expert perspective of risk. The actual numerical valued weights finalized by the panel are SSI. Finally, the panel used the AHP math in Expert Choice to calculate the priority scores for each vessel and facility type. At the end of this process, types of vessels and facilities with similar scores were combined into one of three risk groups. For a more detailed discussion of the panel's methodology, a copy of the panel's report, ''Analysis of Transportation Worker Identification Credential (TWIC) Electronic Reader Requirements in the Maritime Sector'' is available for viewing in the public docket for this rulemaking.

The ANPRM then proposed different TWIC-related requirements for each risk group. In determining the cutoff points between risk groups, risk rankings were graphed to identify natural breaks that occurred in the data. For vessels, these breaks generally occurred where there was a change in the hazardous nature of the cargo or where the number of passengers carried aboard a vessel increased. Similarly, for facilities, these breaks generally occurred where there was a change in the hazardous nature of the materials stored or handled at a facility, or where the number of passengers accessing a facility increased.

We engaged the Homeland Security Institute (HSI) to conduct an independent peer review of the risk-based analysis that formed the basis of the proposals in the ANPRM. HSI conducted its peer review in accordance with OMB Memorandum M–05–03, ''Issuance of OMB's 'Final Information Quality Bulletin for Peer Review''' (Dec. 16, 2004) [35] (OMB Review Guidelines). The OMB Review Guidelines establish government-wide guidance aimed at enhancing the practice of peer review of government science documents. Peer review is designed to increase the quality and credibility of the scientific information generated across the Federal government. The OMB Review Guidelines also discuss the concept of a ''highly influential scientific assessment,'' as one that would have at least one of the following characteristics: (1) Potential impact of

[33] Information about Expert Choice is available at *www.expertchoice.com.*

[34] AMSCs are committees established pursuant to 46 U.S.C. 70112(a)(2)(A). AMSCs are composed of at least seven members having an interest in the maritime security of a specific geographic area. AMSC members may be selected from government, public safety, law enforcement, maritime industry, and other port stakeholders. AMSCs assist in the development, review, and update of formal plans that detail maritime security measures and procedures for ports in a specific geographic area. *See* 33 CFR part 103.

[35] *OMB Memorandum M–05–03* is available for viewing at *http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf.*

more than $500 million in any year; (2) novel, controversial, or precedent-setting; or (3) significant interagency interest. HSI advised that the TWIC program is, at a minimum, precedent-setting. Therefore, peer review of the Coast Guard's underlying analysis would be considered at the level of a ''highly influential scientific assessment.''

HSI conducted its peer review and issued a final report (HSI Report) on October 21, 2008. HSI independently reproduced the results based on the information provided in the Coast Guard report, ''Analysis of Transportation Worker Identification Credential (TWIC) Electronic Reader Requirements in the Maritime Sector,'' and deemed the process to be technically sound. The HSI report also acknowledged that ''no decision-aid tools * * * including the AHP, should be considered to lead to unassailable results.'' [36] A portion of the HSI Report is considered Sensitive Security Information (SSI) under 49 CFR Part 15. Therefore, a non-SSI version of the HSI Report is available for viewing in the public docket for this rulemaking. A summary of the HSI Report recommendations is provided below in Section III.G. ''HSI Report.''

*D. ANPRM Proposals*

This section provides a summary of the ANPRM's proposals for TWIC reader requirements and other TWIC-related requirements. Later parts of Section III. ''Background and Purpose'' discuss the public comments received on the ANPRM, as well our responses to those comments. For a more detailed discussion of the ANPRM's proposals, please refer to the ANPRM at 74 FR 13360. We retain many of the ANPRM's proposals in the NPRM. We delete or modify a number of the ANPRM's proposals in the NPRM. To avoid any confusion, if you wish to focus specifically on the proposals in the NPRM, please refer to Section IV. ''Section-by-Section Description of Proposed Rule.''

1. Classification of Vessels and Facilities Into Risk Groups

For vessels subject to 33 CFR part 104, the ANPRM proposed the following risk group classifications:

Risk Group A

(1) Vessels that carry Certain Dangerous Cargoes (CDC) in bulk;

(2) Vessels certificated to carry more than 1,000 passengers; and

(3) Towing vessels engaged in towing a barge or barges subject to paragraphs (1) or (2).

Risk Group B

(1) Vessels that carry hazardous materials other than CDC in bulk;

(2) Vessels subject to 46 CFR Chapter I, Subchapter D, that carry any flammable or combustible liquid cargoes or residues; [37]

(3) Vessels certificated to carry 500 to 1,000 passengers; and

(4) Towing vessels engaged in towing a barge or barges subject to paragraphs (1), (2), or (3).

Risk Group C

(1) Vessels carrying non-hazardous cargoes that are required to have a vessel security plan (VSP);

(2) Vessels certificated to carry less than 500 passengers;

(3) Towing vessels engaged in towing a barge or barges subject to paragraphs (1) or (2);

(4) Mobile Offshore Drilling Units (MODUs); and

(5) Offshore Supply Vessels (OSVs) subject to 46 CFR Chapter I, Subchapters L or I.

The risk group classifications in the ANPRM for facilities are similar to those for vessels. For facilities subject to 33 CFR part 105, the ANPRM proposed the following risk group classifications:

Risk Group A

(1) Facilities that handle CDC in bulk;

(2) Facilities that receive vessels certificated to carry more than 1,000 passengers; and

(3) Barge fleeting facilities that receive barges carrying CDC in bulk.

Risk Group B

(1) Facilities that receive vessels that carry hazardous materials other than CDC in bulk;

(2) Facilities that receive vessels subject to 46 CFR Chapter I, Subchapter D, that carry any flammable or combustible liquid cargoes or residues;

(3) Facilities that receive vessels certificated to carry 500 to 1,000 passengers; and

(4) Facilities that receive towing vessels engaged in towing a barge or barges carrying hazardous materials other than CDC in bulk, carrying crude oil, or towing vessels certificated to carry 500 to 1,000 passengers.

Risk Group C

(1) Facilities that receive vessels carrying non-hazardous cargoes that are required to have a VSP;

(2) Facilities that receive towing vessels engaged in towing a barge or barges carrying non-hazardous cargoes;

(3) Facilities that receive vessels certificated to carry less than 500 passengers.

The ANPRM proposed to classify all OCS facilities subject to 33 CFR part 106 into Risk Group B.

In the ANPRM, we contemplated the possibility that vessels and facilities may move from one risk group to another, based on the cargo handled or carried at any given time. In those instances, the owner or operator would be expected to explain, in an amended security plan, how their regulatory compliance program would change to reflect movement between risk groups, with particular attention to the security measures to be taken when moving from a lower risk group to a higher risk group.

2. TWIC Reader Requirements for Risk Group A

The ANPRM proposed TWIC reader requirements and other TWIC-related requirements for Risk Group A that would utilize the TWIC's most protective measures for identity verification, card authentication, and card validation.

For identity verification, owners and operators of vessels or facilities in Risk Group A would be required to either match the TWIC-holder's fingerprint to one of the fingerprint templates stored in the TWIC, or match the TWIC-holder's alternate biometric (e.g., retina scan, hand geometry, or other biometric) to one captured and stored in a PACS. A TWIC reader can work as a stand-alone unit, or it can be integrated into a facility's PACS. Either way, the owner or operator would be required to use a TWIC reader from the official list of TSA-approved TWIC readers. The biometric match would need to be made using a TWIC reader and/or PACS before the individual is granted unescorted access to secure areas.

When electronically matching biometrics within a PACS, an owner or operator would be permitted to use a different biometric than a fingerprint (e.g., an iris scan or hand geometry), stored in the PACS and matched to the biometric of the TWIC-holder. The owner or operator would be required to link their system to the TWIC in such a manner that the PACS precludes access to someone who does not have a TWIC, or to someone other than the

[36] *See* HSI Report, p. 2.

[37] The intent as used here is to capture those tank vessels that are carrying the high flash point petroleums, like crude oil, that are not hazardous materials, whether inland, coastal, or seagoing.

individual to whom the TWIC has been issued. This requirement means that the TWIC would need to be read and the stored biometric identifier matched against the TWIC-holder's fingerprint at least once, when the individual's information is entered into the PACS. Before relying on the alternate biometric, it must be verified, through a one-to-one fingerprint match, that the individual presenting the TWIC is actually the person to whom the TWIC was issued.

In the ANPRM, we recognized that while PIN verification could be used to enhance the accuracy of identity verification, this method presents operational and environmental challenges. The PIN can only be entered when the TWIC is inserted into a ''contact'' TWIC reader, where the TWIC is inserted into a slot allowing direct contact between the TWIC reader and the chip embedded in the TWIC. Comments received in response to the TWIC 1 NPRM, as well as recommendations from the National Maritime Security Advisory Committee (NMSAC), emphasized concerns over whether contact TWIC readers would be able to withstand the harsh conditions often present in a maritime environment. Additional concerns were raised as to whether maritime workers should be expected to remember a 6- to 8-digit PIN, especially workers who would not typically use the PIN on a regular basis. Concerns were also raised over the operational delays associated with a PIN requirement. In light of these concerns, and taking into account the level of security already provided via the TWIC's other features, the ANPRM did not propose a PIN requirement to enhance identity verification.

For card authentication, owners and operators of vessels or facilities in Risk Group A would be required to use a TWIC reader to screen individuals seeking access to secure areas. As with identity verification, owners and operators would be permitted to integrate TWIC into a PACS, provided that the owner or operator completes this integration before the TWIC-holder's information is added into the PACS, and before the TWIC-holder is granted unescorted access to secure areas.

For card validation, owners and operators of vessels or facilities in Risk Group A would be required to use a TWIC reader to check an individual's TWIC against the CCL. An owner or operator updates CCL information by downloading the current list onto the TWIC reader or PACS. At MARSEC Level 1, owners and operators would be required to update the CCL on a weekly basis. At MARSEC Levels 2 and 3, owners and operators would be required to update the CCL on a daily basis.

3. TWIC Reader Requirements for Risk Group B

The ANPRM proposed TWIC reader requirements and other TWIC-related requirements for Risk Group B that would differ depending on MARSEC Level. At MARSEC Levels 2 and 3, owners and operators of vessels or facilities in Risk Group B would be required to utilize the most protective measures of the TWIC for identity verification, card authentication, and card validation. Those requirements are the same as those described above with respect to Risk Group A.

At MARSEC Level 1, owners and operators would perform card authentication and card validation using a TWIC reader in the same manner required at higher MARSEC Levels. At MARSEC Level 1, however, owners and operators would not be required to use a TWIC reader to perform a biometric match for identity verification, subject to the exception described below. Instead, owners and operators would be permitted to perform identity verification by using the TWIC as a visual identity badge. The exception to this leniency at MARSEC Level 1 is that on a random basis, but at least 1 day per month, owners and operators would be required to perform identity verification using a TWIC reader to match the TWIC-holder's fingerprint to one stored in the TWIC.

The ANPRM's proposed requirements for Risk Group B were based on a determination that the TSI risk to such vessels and facilities at MARSEC Level 1 does not warrant a requirement to perform routine biometric identity verification using a TWIC reader.

4. TWIC Requirements for Risk Group C

The ANPRM proposed TWIC requirements for Risk Group C that would not involve the use of a TWIC reader at any MARSEC Level. Instead, owners and operators of vessels or facilities in Risk Group C would visually inspect the security features on the TWIC for identity verification, card authentication, and card validation. TWIC-holders working on vessels or at facilities in Risk Group C would periodically have their TWICs scanned using a TWIC reader during Coast Guard inspections and unannounced spot checks.

The ANPRM's proposed requirements for Risk Group C were based on our determination that, given the type of commodities and small number of passengers typical of this risk group, it is likely that these vessels and facilities present a less attractive target to individuals who wish to do harm than vessels and facilities in Risk Groups A and B. Nonetheless, vessels and facilities in Risk Group C still present some risk of being involved in a TSI. As a result, we determined that visual inspection of TWICs would be an appropriate security measure.

5. Recurring Unescorted Access

The concept of Recurring Unescorted Access (RUA) was first proposed in the TWIC 1 NPRM.[38] RUA was conceived as a means of providing flexibility to vessel owners and operators so that the TWIC program would provide them with a valuable security enhancement without unnecessarily burdening daily operations. As initially proposed, RUA would apply to vessels that would otherwise be required to use TWIC readers. RUA would allow the owners and operators of such vessels to grant certain TWIC-holders the privilege of entering secure areas on a repetitive basis without having their TWICs electronically scanned by a TWIC reader each time, provided that certain preconditions had been met.

The TWIC 1 NPRM cited two factors on which the decision to grant RUA privileges should be based: (1) The relationship of the individual to the vessel, or how well ''known'' the individual is; and (2) the individual's need to have frequent and unimpeded access to the vessel. We assumed that the crew of most vessels would consist of a relatively small number of individuals who would quickly become familiar enough with one another and readily distinguish each other from non-crewmembers. Accordingly, on such vessels, there would be no added benefit from repeated biometric identity verification using a TWIC reader.

Although RUA would exempt certain individuals from having their TWICs routinely scanned by a TWIC reader, these individuals would still need to present a TWIC for visual inspection. Additionally, prior to granting RUA privileges to a TWIC-holder, the vessel owner or operator would be required, among other things, to perform a one-time scan of the individual's TWIC using a TWIC reader for initial identity verification, card authentication, and card validity.

In addition to proposing RUA for vessels, the ANPRM also proposed RUA for facilities. Thus, owners and operators of vessels or facilities could grant RUA privileges to a number of individuals per vessel or facility.

[38] *See* 71 FR 29410–29411.

Owners and operators would be required to explain their RUA procedures in an amended security plan.

As proposed in the ANPRM and based on a recommendation from the Towing Safety Advisory Committee (TSAC), RUA could be granted to a maximum of 14 individual TWIC-holders per vessel or facility. TSAC's rationale for establishing 14 as the maximum cut off for requiring TWIC readers on vessels is that these vessels have a reduced vulnerability because the individuals are all ''known'' to one another. The number was developed by taking into account the fact that for a small vessel, such as a towing vessel or offshore supply vessel, the crew would typically include up to one Master, one Chief Engineer, and three four-person crews who rotate through watch shifts.

6. TWIC Reader Approval, Calibration, and Compliance

In the ANPRM, we considered the possibility that some owners and operators may wish to incorporate TWIC reader requirements into an existing PACS. In those situations, the ANPRM proposed to require owners and operators to follow the standard/specification to be developed from the results of the TWIC Pilot.

The ANPRM stated that we were considering alternatives for how to ensure that TWIC readers are maintained in proper working order. The existing provisions in 33 CFR 104.235, 104.260, 105.225, 105.250, 106.230, and 106.255 would require TWIC readers to be inspected, tested, calibrated, and maintained in accordance with the manufacturers' recommendations, and that records of those actions be maintained as well. The ANPRM requested comments on whether TWIC readers should be subject to additional Coast Guard inspections or third-party audits.

7. Security Plan Amendment

The ANPRM proposed a requirement on owners and operators to amend their security plans to include TWIC requirements within 6 months of promulgation of a TWIC reader final rule. In the ANPRM, we indicated that we would consider re-evaluating this deadline, and we sought public comment on how long owners and operators should have to amend security plans to incorporate TWIC reader requirements. Security plan amendments would need to detail how the owner or operator would implement TWIC requirements, including those promulgated in the TWIC 1 Final Rule, and TWIC reader requirements, if applicable.

The ANPRM mentioned that we would consider additional security plan provisions that require the owner or operator to discuss procedures for handling TWIC-holders with poor quality or no fingerprints, as well as TWIC-holders who are otherwise unable to match a live fingerprint to one of the templates stored in the card. The ANPRM also mentioned that we were considering a requirement on owners and operators using a separate PACS to explain how they will protect personal identity information.

The ANPRM articulated our position that requests for waivers, alternatives, and equivalents would need to comply with existing regulatory requirements found in 33 CFR 101.120, 101.130, 104.130, 104.135, 105.130, 105.135, 106.125, and 106.130.

In the ANPRM, we stated our intent to not amend 33 CFR 101.120 regarding Alternative Security Programs (ASPs). Instead, we would exercise our existing authority, found in 33 CFR 101.120(d)(1)(ii), to require those organizations that have approved ASPs to amend them to incorporate the TWIC requirements. Please see Section IV.C. below for a discussion on our decision to eliminate this proposal from the NPRM.

An ASP is a third-party or industry organization-developed standard that the Coast Guard has determined provides an equivalent level of security to that established by 33 CFR parts 104 or 105. MTSA-regulated facilities that are members in good standing of trade organizations or industry groups may operate under an ASP, instead of an FSP, submitted by the trade organization or industry and approved by the Coast Guard.[39] The Coast Guard permits use of ASPs to tailor Coast Guard security requirements to diverse industries within the maritime community. ASPs allow owners and operators to participate in a development process with other industry groups, associations, or organizations, and to coordinate their compliance with Coast Guard security rules and other rules already implemented.[40] Practically, ASPs are written to address a group of owners and operators based on a business model. Thus, a security standard for the small passenger industry will be different from the industry standard for container vessels, simply based on the differences in their respective vulnerabilities and associated TSI consequence. In effect, ASPs allow the end-users to implement an existing security program as an alternative to creating an individual vessel- or facility-specific security plan. ASPs also lessen the numbers of security plans that must be reviewed and approved by the Coast Guard. Currently, there are 11 approved ASPs.

8. Recordkeeping

The ANPRM proposed to require owners and operators to maintain, for a period of 2 years, records captured by TWIC readers on each scan. Under the ANPRM, owners and operators would also maintain, for a period of 2 years, records on individuals to whom RUA was granted. Finally, the ANPRM indicated that we would consider whether to require owners and operators to maintain a record to demonstrate that they have completed required card validity checks.

9. Additional Persons Required To Obtain TWICs

MTSA requires the Secretary to issue TWICs to certain individuals unless the Secretary determines that an individual poses a security risk warranting denial of the card.[41] Section 70105(b)(2) of Title 46 U.S.C. lists the categories of individuals to whom this requirement applies.

We published the ANPRM prior the enactment of the CGAA 2010. At the time we published the ANPRM, the list of individuals to whom the Secretary was required to issue a TWIC included: (1) An individual allowed unescorted access to secure areas of a MTSA-regulated vessel or facility; (2) an individual issued a license, certificate of registry, or merchant mariners document; (3) a vessel pilot; (4) an individual engaged on a towing vessel that pushes, pulls, or hauls alongside a tank vessel; (5) an individual with access to SSI; (6) other individuals engaged in port security activities; and (7) other individuals as determined appropriate by the Secretary.[42]

The Coast Guard implementing regulations in 33 CFR 101.514(a) require individuals to obtain a TWIC as a pre-condition to gaining unescorted access to secure areas of MTSA-regulated vessels and facilities. For purposes of Coast Guard regulation of these vessels and facilities, we believe that the language in 33 CFR 101.514(a) adequately covers the individuals required to obtain a TWIC. Nonetheless, at the time we published the ANPRM,

[39] *See* 33 CFR 101.125.

[40] *See* 68 FR 60449, 60454, and 60532 (October 22, 2003).

[41] 46 U.S.C. 70105(b)(1).

[42] 46 U.S.C. 70105(b)(2).

we were aware of a potential gap between MTSA and our regulations. Specifically, there may be some vessel pilots who do not hold Federal licenses, and there may be some individuals who are not credentialed mariners engaged on towing vessels that are not MTSA-regulated. Therefore, to avoid any possible gaps between MTSA and our regulations, we included a proposal in the ANPRM to explicitly include these individuals in the regulatory requirement to obtain a TWIC.

Subsequent legislation has caused us to eliminate part of this proposal from this NPRM. Section 809 of the CGAA 2010 changed the applicability of 46 U.S.C. 70105(b)(2)(B) and (D) so that the Secretary is now required to issue a TWIC to credentialed mariners and those engaged on towing vessels only if these individuals are allowed unescorted access to a secure area of a MTSA-regulated vessel. Section 809 has eliminated the gap with respect to mariners on towing vessels. Mariners who are allowed unescorted access to MTSA-regulated vessels are already covered in the existing regulatory requirement to obtain a TWIC. We no longer need to add a provision requiring mariners working on vessels that are not MTSA-regulated to obtain a TWIC. While there may be some vessel pilots that do not hold Federal licenses, we have not determined whether there is a population of State-licensed vessel pilots that are not otherwise required to obtain a TWIC because they access secure areas of MTSA-regulated vessels. We seek public comment on this subject and whether a specific provision to include them in the regulatory requirement to obtain a TWIC is necessary. If there is a population of State-licensed vessel pilots not covered under the current regulatory requirement to obtain a TWIC, we intend to revise 33 CFR 101.514 to cover that population. Please see Section IV.C. below for further discussion on our decision to eliminate or modify this proposal in this NPRM.

*E. Public Comments Received in Response to the ANPRM and Public Meeting*

This section provides a detailed discussion of the public comments received during the ANPRM's comment period and public meeting. This section also provides our responses to those comments.

We received approximately 100 comment letters in response to the ANPRM. In addition, we hosted a public meeting in Arlington, Virginia on May 6, 2009, to provide another forum for obtaining public feedback on the ANPRM.[43] Comments received at the public meeting aligned into approximately 20 categories. Copies of the public meeting sign-in sheets, written comments received, and a transcript of the public meeting, are available for viewing in the public docket for this rulemaking.

Commenters represented a wide range of individuals and entities, including: Federal, State, and local government officials; port authorities; representatives of affected industries, such as maritime, trucking, rail, security, port, and other facilities; professional/trade associations; labor unions; and private citizens. The comments received from these parties helped to inform the proposals in this NPRM.

1. General Comments

Numerous commenters supported the ANPRM's general approach to TWIC reader requirements and other TWIC-related requirements. Many recognized the potential value of the TWIC program to enhance transportation security in general, and maritime security in particular. Several commenters commended us for first publishing an ANPRM to solicit public input on a preliminary set of proposals before publishing an NPRM.

Several commenters cautioned us to implement TWIC reader requirements in a manner that does not unnecessarily burden affected industries. We believe the requirements proposed in this NPRM achieve that goal. Section V. ''Regulatory Analysis'' below provides a detailed discussion of the benefits and burdens associated with this proposed rule.

One commenter suggested that the NPRM should clarify which provisions specifically apply to vessels, and which apply to facilities. Similarly, two commenters suggested that we consider proposing separate sets of regulations for vessels and facilities.

Our proposals in this NPRM clearly distinguish between vessels and facilities. To clarify, 33 CFR part 101 sets forth general maritime security regulations, 33 CFR part 104 sets forth maritime security regulations specific to vessels, 33 CFR part 105 sets forth maritime security regulations specific to facilities, and 33 CFR part 106 sets forth maritime security regulations specific to OCS facilities. As described in greater detail below in Section IV., this NPRM proposes to add or amend relevant provisions in each of these parts. Please refer to Table ES–1 in the Executive Summary for a breakdown of the NPRM proposals by vessel, facility, and OCS facility.

Several commenters expressed general concerns about TWIC reader requirements. Some opposed any requirement to use TWIC readers, citing financial burdens and operational complications they believe would result from such requirements. Others highlighted differences between different types of vessels, and suggested that TWIC readers may not necessarily enhance security in each case. Commenters also raised concerns about increased traffic and other operational challenges associated with TWIC reader requirements.

As discussed more fully below in Sections IV. and V., this NPRM does not propose TWIC reader requirements for Risk Group B. This decision was based, in part, on comments received in response to the ANPRM. Many of the comments opposing TWIC reader requirements represented the interests of owners and operators of vessels or facilities assigned to Risk Group B. We have estimated the annualized cost of the TWIC reader requirements on vessels and facilities in Risk Group A at $26.5 million, at a 7 percent discount rate. Had we proposed TWIC reader requirements to also include Risk Group B facilities, the annualized cost would increase to $141.2 million, at a 7 percent discount rate. Moreover, including Risk Group B in the TWIC reader requirements would not only increase the annualized cost, but the average consequence figure (the monetized costs of fatalities and injuries resulting from a TSI) would drop by more than one-third. While this does not mean that there should be no TWIC reader requirements for Risk Group B, we believe this analysis supports our phased approach for requiring TWIC readers first for Risk Group A. We also wish to emphasize the utility of TWIC in enhancing security even when not used in conjunction with TWIC readers. Before mariners and other individuals were required to obtain a TWIC, they could access secure areas of MTSA-regulated vessels and facilities after presenting a State-issued driver's license or any number of other government-issued identification cards. This patchwork system of valid credentials required security personnel to become familiar with the appearance and security features of every type of acceptable credential. Moreover, since some government-issued credentials are used for purposes other than security, applicants are not necessarily screened

[43] *See* Transportation Worker Identification Credential (TWIC)—Reader Requirements, 74 FR 17444 (Apr. 15, 2009) to view the notice of public meeting; request for comments.

from a security threat perspective. Additionally, the eligibility criteria for some government-issued credentials do not preclude issuance to an individual with a felony criminal record.

The TWIC program mitigates the above shortcomings. Since April 15, 2009, TWIC has been the single credential used throughout the maritime sector. Accordingly, security personnel only need to become familiar with the appearance and security features of one credential. Moreover, unlike other government-issued credentials, TWIC is specifically designed for transportation security. Its purpose is to ensure a vetted maritime workforce by establishing security-related eligibility criteria, and by requiring each TWIC-holder to undergo TSA's security threat assessment as part of the process of applying for and obtaining a TWIC.

We will continue to analyze risk data and reassess the need to modify or add TWIC reader requirements in the future. We believe that this approach should alleviate the concerns raised by these commenters.

2. Statutory Authority

A number of commenters emphasized that the Secretary's authority to require TWIC readers on vessels is discretionary, and not mandated by MTSA. We agree with this comment.

One commenter requested clarification that if vessels in lower risk groups have not been determined by the Secretary to be at risk of a TSI, the SAFE Port Act prohibits TWIC reader requirements for such vessels. We disagree with this comment. The relevant portion of the SAFE Port Act provides: ''The Secretary may not require the placement of an electronic reader for transportation security cards on a vessel unless: (1) The vessel has more individuals on the crew that are required to have a transportation security card than the number the Secretary determines, by regulation issued under subsection (k)(3), warrants such a reader; or (2) the Secretary determines that the vessel is at risk of a severe TSI.'' [44] Under the SAFE Port Act, the Secretary could require vessels in lower risk groups to use TWIC readers if their crew size exceeds the minimum threshold, in this rule proposed as 14 individuals, established by regulation. While this NPRM does not propose TWIC reader requirements for Risk Groups B or C, the Coast Guard is not prohibited from doing so under the SAFE Port Act.

One commenter noted that certain proposals in the ANPRM would apply to facilities that receive towing vessels engaged in towing a barge or barges carrying non-hazardous cargoes, facilities that receive vessels subject to 46 CFR Chapter I, Subchapter D, that carry any flammable or combustible liquid cargoes or residue, and facilities that receive vessels not transferring cargo. The commenter suggested that these facilities are not covered by MTSA, and therefore, should not be subject to TWIC reader requirements. We disagree with the suggestion that these facilities are not covered by MTSA. MTSA broadly defines the term ''facility'' to mean ''any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States.'' [45] MTSA requires facility security plans (FSPs) for ''facilities that the Secretary believes may be involved in a transportation security incident* * *.'' [46] MTSA does not prohibit us from placing TWIC requirements on such facilities.

3. Risk-Based Approach

a. General

We received a broad range of comments with respect to the ANPRM's risk-based approach to classifying MTSA-regulated vessels and facilities. Many commenters expressed support for the ANPRM's risk-based approach. A number of commenters expressed support for a risk-based approach, but cited general reservations on the way such an approach was proposed in the ANPRM. Other commenters expressed opposition to the ANPRM's risk-based approach.

One argument cited by commenters opposing the ANPRM's risk-based approach is that vessels have already been divided into risk groups by MTSA with respect to security plan requirements, and by the Port Security Grant program. These commenters argued that to introduce another risk-based classification matrix would create too much complexity for affected industries. A larger group of commenters took the opposite view, however, arguing that the ANPRM's matrix should be based on additional variables, such as: Risk-reduction measures vessels and facilities have already implemented; size and type of vessel; port traffic volume; port location; port-wide risk; type, volume, and frequency of carrying or handling high-risk cargoes; characteristics of container cargoes and facilities; number of TWIC-holders with access to a vessel or facility; scenarios other than MSRAM's ''total destruction'' scenario; compliance costs; and other industry-specific considerations.

After considering these wide-ranging comments that fell on both sides of the issue, we continue to believe that the risk-based approach set forth in the ANPRM appropriately categorizes types of vessels and facilities based on their risk of being involved in a TSI, without creating an overly complex categorization system. Other existing risk-based categorization matrices are not tailored to TWIC requirements like the AHP/MSRAM approach described above. Additionally, as discussed more fully below in section III.G., ''HSI Report,'' HSI conducted a generally favorable independent peer review of the risk-based approach that formed the basis of the ANPRM's proposals.

Several commenters requested that the Coast Guard establish an appeals process whereby owners and operators could petition to have an assigned risk-ranking reviewed and lowered based on unique circumstances. We wish to clarify that an appeals process already exists for those directly affected by a decision or action taken pursuant to the Coast Guard's maritime security regulations.[47] Thus, owners and operators would be able to appeal a risk-ranking under the existing procedures. The establishment of a separate appeals process for petitioning TWIC-related risk-rankings is not necessary.

Other commenters suggested that COTPs should assign risk ratings to each vessel and facility on a case-by-case basis. We disagree with this approach because it is less predictable than a clear regulatory standard, and could lead to different standards being applied to similar vessels or facilities depending on their location.

b. MSRAM

Several commenters addressed the use of MSRAM as part of the ANPRM's risk-based approach. Some suggested that MSRAM should be updated to take into account risk-mitigation measures that industry has implemented since 2005. We will continue to update the MSRAM data, but we believe the data that informed the ANPRM provides an accurate basis for the regulatory proposals in this NPRM.

Other commenters requested additional information about MSRAM in order for them to comment on its utility in developing a risk-based classification system. In response, we emphasize that the ANPRM and this

[44] 46 U.S.C. 70105(m).

[45] 46 U.S.C. 70101(2).

[46] 46 U.S.C. 70103(c)(2)(A).

[47] 33 CFR 101.420; 33 CFR 104.150; 33 CFR 105.150; 33 CFR 106.145.

preamble set forth the general principles that underlie MSRAM as a risk-analysis tool. The AHP/MSRAM process generates risk scores for facility and vessel types. These scores are based on factors related to TSI consequence. Since this information is designated as SSI, the publication of more specific MSRAM data is prohibited under 49 CFR Part 15.

c. Movement Between Risk Groups

Several commenters agreed with the ANPRM's proposal to permit movement between risk groups by vessels and facilities that handle or carry dangerous cargoes only on a limited basis. Several other commenters took the opposite view, arguing that movement between risk groups would create a burdensome and confusing set of requirements, and would also introduce unfair economic incentives in favor of facilities in lower risk groups.

We continue to favor a flexible approach that allows for the option of vessels and facilities to move between risk groups based on the cargo handled or carried at a given time. This would ensure appropriate utilization of TWIC readers when dangerous cargoes are present, without imposing undue burdens when dangerous cargoes are not. Owners and operators who do not wish to take advantage of this flexibility would not be required to do so. Owners and operators who wish to take advantage of this flexibility would be expected to explain, in an amended security plan, how changes at their vessel or facility qualify for a higher or lower risk group and address the change in risk.

A number of commenters suggested alternatives to the ANPRM's approach with respect to movement between risk groups. Several argued in favor of a uniform set of TWIC requirements applicable to all vessels and facilities, which would obviate the need for regulatory provisions dealing with movement between risk groups. Two commenters suggested that facilities in Risk Group C should always retain their classification in that group, regardless of whether they handle dangerous cargoes on an infrequent basis.

We do not believe that a ''one size fits all'' approach to TWIC requirements is efficient or effective. Instead, we favor a more targeted approach that requires TWIC readers for vessels and facilities deemed higher risk, and requires less stringent TWIC requirements for vessels and facilities not deemed higher risk. We also generally disagree with an approach that would permit a vessel or facility to comply with the requirements of a lower risk group while handling or carrying cargoes that would otherwise trigger the TWIC requirements of a higher risk group. Therefore, this NPRM proposes to give the option for vessels and facilities to move between risk groups based on the cargo handled or carried at a given time.

Two commenters suggested that facilities in Risk Group C should be permitted to appeal to the COTP for a special operating designation to cover their infrequent handling of dangerous cargoes. We reiterate that an owner or operator may apply for a waiver of any requirement the owner or operator considers unnecessary, as provided in 33 CFR 104.130, 105.130, and 106.125. We also wish to note that if such a waiver is granted, an owner or operator is not required to update their security plan after approval of the waiver.

Three commenters requested clarification of the proposed TWIC requirements in scenarios where a vessel assigned to a higher risk group calls on a facility assigned to a lower risk group. One commenter suggested that, in such cases, we should allow time for TWIC infrastructures to be updated.

We wish to clarify that, according to our risk-based approach, facilities are classified by the types of commodities they handle and the types of vessels they receive. Thus, a facility that receives Risk Group A vessels would be categorized as a Risk Group A facility. We request additional comments on specific scenarios that might warrant further consideration of potential regulatory requirements to address the interaction of vessels and facilities in different risk groups.

Some commenters suggested that the regulations should provide for multiple risk group assignments within one facility for situations where one portion of the facility handles dangerous cargoes, while another portion does not. We are considering granting this request. If we grant this request, we expect the regulations to reflect that plans for multiple risk group assignments within a facility would be reviewed on a case-by-case basis and subject to COTP approval. We request additional comments from the public that specifically describe how multiple risk group assignments might apply to their facilities. We note that in the TWIC 1 Final Rule, we provided facilities with greater flexibility by revising 33 CFR 105.115 to allow owners and operators to redefine their ''secure area'' as only that portion of their access control area that is directly related to maritime transportation. We seek comments from the public on whether the additional flexibility of being able to further modify a facility's footprint by assigning different portions of the facility to different risk groups is necessary or appropriate.

d. MARSEC Levels

Several commenters agreed in principle with the ANPRM's approach of imposing enhanced TWIC requirements at higher MARSEC Levels, but questioned why there was little difference between the ANPRM's TWIC reader requirements for Risk Groups A and B at different MARSEC Levels. These commenters suggested alternative approaches, all of which were variations on the theme that TWIC reader requirements should become more stringent as MARSEC Levels are elevated. Other commenters disagreed with the ANPRM's approach, but proposed stricter requirements, suggesting that all MTSA-regulated vessels and facilities should be required to use TWIC readers at elevated MARSEC Levels. Another commenter disagreed with the ANPRM's approach, arguing that to impose different TWIC reader requirements depending on MARSEC Level is overly complex and would provide no added security benefits.

We recognize that the system of MARSEC Levels creates a useful mechanism for the Coast Guard to elevate security requirements at times of heightened risk. Nonetheless, we use this mechanism in a targeted manner, and at this time, we do not believe that elevated TWIC reader requirements at higher MARSEC Levels are generally practical or appropriate. In considering the comments above, we note the change we have made from the ANPRM to this NPRM with respect to TWIC reader requirements. In the ANPRM, we proposed TWIC reader requirements for Risk Groups A and B, with stricter TWIC reader requirements for both risk groups at higher MARSEC Levels. The ANPRM's stricter TWIC reader requirements would have primarily affected Risk Group B because the ANPRM proposed routine biometric scanning with a TWIC reader for Risk Group A at all MARSEC Levels. For example, the ANPRM would have required Risk Group B to use TWIC readers at MARSEC Level 1 for card authentication (i.e., no routine biometric scan) and once-monthly biometric identity verification. The ANPRM, however, would have only required Risk Group B to regularly use TWIC readers for biometric identity verification at higher MARSEC Levels.

In this NPRM, we have eliminated the proposed TWIC reader requirements for Risk Group B. The requirements for

routine biometric scanning with a TWIC reader for Risk Group A remain the same as in the ANPRM. Note that we propose increased requirements at higher MARSEC Levels to the extent that the NPRM would require Risk Group A to perform daily updates of CCL information at higher MARSEC Levels, instead of the weekly updates required at MARSEC Level 1.

We also note that data from the TWIC Pilot demonstrated that switching between different TWIC reader modes of operation negatively impacted the efficiency of TWIC reader use by complicating the learning process for TWIC-holders. According to the TWIC Pilot, TWIC-holders were confused by the different procedural requirements for the different TWIC reader modes of operation, regardless of attempts to inform TWIC-holders in advance of mode changes. This often resulted in delays caused by TWIC-holders' confusion as to whether or not they needed to place their finger on the TWIC reader's fingerprint sensor. In contrast, the TWIC Pilot found that when TWIC readers were used in the same mode of operation for a sustained period of time, TWIC-holders became familiar with a consistent throughput procedure, resulting in more efficient processing. While more stringent TWIC reader requirements might seem appropriate at higher MARSEC Levels, the TWIC Pilot demonstrated the importance of a consistent user experience. We also note that according to existing regulations in 33 CFR 101.405, the Coast Guard may issue MARSEC Directives setting forth mandatory measures if we determine that additional security measures are necessary to respond to specific threats.

Consistent with the findings of the TWIC Pilot, the TWIC reader requirements proposed in this NPRM call for no switching between TWIC reader modes, and also call for little variation in requirements at higher MARSEC Levels. The only difference between the requirements proposed in the ANPRM and this NPRM based on MARSEC Level is that, at MARSEC Level 1, owners and operators of vessels or facilities in Risk Group A would be required to perform card validity checks based on CCL information that has been updated weekly, whereas at higher MARSEC Levels, the CCL updates would be required daily. The increased risk associated with elevated MARSEC Levels warrants this requirement to update the CCL information more frequently. The Coast Guard seeks public comment on this approach.

e. CCL and ''Privilege Granting''

Most of the comments we received regarding the CCL recognized some benefits to card validation requirements that involve checking TWICs against this list. One commenter, however, stated that the benefits of such requirements would not outweigh the burdens. We disagree with this comment. Invalid TWICs are placed on the CCL if they are lost, stolen, damaged, or revoked by TSA for cause. The benefit of a requirement to check TWICs against the CCL is that it enables owners and operators to limit the access to secure areas of our nation's transportation system to individuals that hold a TWIC. We estimate the burden of updating CCL information into the TWIC reader or PACS to be approximately 30 minutes per week. For a more detailed discussion of the costs and benefits associated with this proposed rule, see Section V. ''Regulatory Analyses'' below.

Three commenters requested that more frequent or real-time updated CCL information be made available. These commenters argued that access to real-time CCL information would enhance security better than the method proposed in the ANPRM, which requires owners and operators to update CCL information on a weekly or daily basis depending on the particular MARSEC Level. Other commenters felt that daily or weekly download requirements are reasonable.

We believe that the requirements to download the CCL weekly or daily (based on MARSEC level) strike a reasonable balance between security and practicality. Owners and operators who wish to download CCL information more frequently would be able to do so.

Two commenters requested functionality that would enable CCL information to be downloaded directly into an entity's PACS. We confirm that this functionality exists via Internet connection.

Other commenters requested functionality that would make CCL information available through additional mechanisms, such as wireless connection to a TWIC reader, manual download to a TWIC reader, access via smart-phone, or a searchable Internet database accessible via the Homeport [48] or other secure system. We emphasize that the CCL information is available via the Internet through a wireless device or manual download to a TWIC reader.[49]

Seven commenters expressed concerns over the CCL because it groups together individuals who are legitimate security threats with individuals who merely have a lost or stolen TWIC. These commenters felt that individuals in the latter categories would be unduly stigmatized by being placed on the CCL together with individuals identified as security threats. Accordingly, they argued that the CCL should focus exclusively on individuals determined to be security threats.

We wish to clarify that the CCL does not contain names, any personally identifiable information, or any security information. The CCL is simply a list of TWIC numbers that have not yet expired, but are no longer valid for entry to secure areas due to their reported loss or theft, being revoked by TSA, or replaced administratively due to damage, or other reason.

We also note that the Coast Guard does not maintain or control the content of the CCL. The CCL is maintained and controlled by TSA. The Coast Guard has shared these comments with TSA for use in future planning. Facility and vessel owners and operators should understand that a variety of factors could cause a TWIC to be listed on the CCL.

One commenter suggested that we use a vehicle, such as the Homeport system, to notify employers when an employee has been identified as a national security threat or otherwise deemed ineligible to hold a TWIC. In response to this comment, we note that national security threats are dealt with in the manner prescribed by relevant law enforcement agencies, and typically do not involve release of any information that could compromise an ongoing investigation, including whether an individual may pose a national security threat. We also note, however, that TSA requires all TWIC applicants to acknowledge that TSA may notify employers and facility owners and operators if there is an imminent threat of risk to individuals or property.

Several commenters expressed opinions on the ANPRM's proposal regarding a ''privilege granting'' system, which would enable an owner or operator to register with TSA the names of specific TWIC-holders granted access to secure areas. TSA would then contact the owner or operator directly when a registered individual has been added to

[48] Homeport is a publicly accessible internet portal located at *https://homeport.uscg.mil,* which provides users with current maritime security information. It also serves as the Coast Guard's communication tool designed to support the sharing, collection, and dissemination of sensitive but unclassified information to targeted groups of registered users within the port population.

[49] The CCL is updated daily and is publicly available for download on the Internet at *https://twicprogram.tsa.dhs.gov/TWICWebApp/.*

the CCL. Approximately 20 commenters stated that they would prefer a privilege-granting system over a requirement to continually download or manually check CCL information. One of these commenters suggested that privilege granting should actually be a minimum requirement for all owners and operators of vessels and facilities in Risk Group C, because this would confer a meaningful security benefit at little cost. Most of the commenters supporting a privilege-granting system opposed the proposition to pay a fee for it. Two commenters suggested that if a fee were to be charged, the NPRM should include a fee estimate so that the public would have more of a basis on which to comment.

Several commenters were not in favor of the ANPRM's privilege-granting system. One simply felt it is unnecessary. Another cited employee privacy concerns. One commenter stated that a privilege-granting system might provide some benefit to vessels, but would not benefit facilities. Another stated that a privilege-granting system would not be a viable option for tug or barge operators because these operators do not know which individuals require access to which vessels or facilities.

After considering the comments and further analysis, we have decided not to include a privilege-granting system in this NPRM. The population of TWIC-holders granted access to any given vessel or facility often changes, which means that a privilege-granting system would be labor-intensive, costly, and impractical to maintain. Moreover, we believe that creating and maintaining a privilege-granting system would require substantial government and/or industry resources, and commenters were generally unwilling to pay fees that would be necessary to create and maintain such a system.

One commenter requested information on how vessels operating outside of available wireless Internet access zones would download necessary CCL updates. We wish to clarify that there would be no obligation to download updated CCL information when there are no new individuals seeking access to secure areas. For example, a vessel designated as a secure area that is underway for an extended period of time with the same crew would not need to download updated CCL information if card validity was properly confirmed when the TWIC-holders boarded the vessel. We request additional comments from the public regarding practical scenarios in which a vessel might not be able to download necessary CCL updates within the prescribed frequency (weekly or daily, depending on MARSEC Level). Additionally, we request comments from the public regarding the regulatory requirements that we should put in place when vessels are in one of those scenarios. One possibility would be to continue to require the use of TWIC readers for identity verification, card authentication, and card validity, even though the CCL might not have been updated within the prescribed frequency. This would electronically confirm that the TWIC has not expired, and also confirm no match against the most recently downloaded version of the CCL. The owner or operator would be required to update the CCL at the next available opportunity. We request comments from the public on this proposal or any preferred alternatives we should consider.

One commenter requested guidance on the obligations an employer might have if notified by TSA that a former employee's TWIC has been revoked. We wish to clarify that generally, no such notification would be forthcoming. We note, as mentioned above, that TSA requires all TWIC applicants to acknowledge that TSA may notify employers and facility owners and operators if there is an imminent threat of risk to individuals or property. In those scenarios, TSA would provide appropriate case-specific guidance to the employer at the time of any such TSA notification.

Several commenters requested additional general guidance on any proposed requirements to perform card validation using CCL information. We will consider whether and how to issue additional guidance, as necessary.

f. PIN Usage

Approximately 30 commenters agreed with the ANPRM's approach that TWIC-holders should not be required to input their PINs in order to be granted access to secure areas. Among the reasons commenters cited in opposing a PIN requirement were: intermittent use makes PINs hard to remember; difficulty of retrieving forgotten PINs; throughput delays and other disruptions; and lack of an appreciable security benefit once a biometric match has been established.

In the ANPRM, we recognized the operational and environmental challenges that a PIN requirement would present. The TWIC Pilot also noted that since many TWIC-holders had rarely, if ever, used their PINs since activating their TWICs, some workers could not remember their PINs. These individuals were then required to visit a TWIC enrollment center to reset their PINs. The TWIC Pilot also noted that inputting the PIN is not necessary to conduct a biometric match. Consistent with the comments and TWIC Pilot findings, this NPRM does not propose a requirement that TWIC-holders enter their PINs in order to access secure areas.

Several commenters also requested that PINs not be required during Coast Guard spot checks and inspections. We note that such a proposal was not included in the ANPRM. Existing regulation already requires mariners to provide their PINs to Coast Guard personnel upon request.[50] For example, when a mariner's fingerprints cannot be read using a TWIC reader, Coast Guard personnel may require the mariner to provide the PIN. To account for this and other instances when a mariner's identity cannot be verified by means other than the TWIC and PIN, we are retaining the existing provision that requires mariners to provide PIN information to Coast Guard personnel upon request.

Some commenters acknowledged that PIN verification may be useful in certain circumstances, and that there are certain advantages associated with PINs. One commenter noted that PIN usage would be a viable alternative when fingerprint matching is not possible. We agree with this comment and have addressed this issue below in section IV.F. ''TWIC Inspection Requirements in Special Circumstances.''

Another commenter suggested that TWIC readers designed to only check PINs might be less expensive than TWIC readers that perform other functions. We believe that the operational and environmental challenges presented by a PIN requirement outweigh this possible cost advantage.

One commenter stated that PINs are another line of defense against forged TWICs. We agree with this comment, but do not believe it warrants a PIN requirement. Although this NPRM does not propose to require PIN verification, owners and operators may choose to impose their own PIN verification requirement on individuals before granting them access to secure areas.

Finally, several commenters requested that we implement a more widely available and accessible system for resetting forgotten PINs. This comment relates to TSA's procedures for resetting PINs. We have provided these comments to TSA for their consideration. TSA currently protects PINs by securely locking them on the card as required by the Federal Information Processing Standards 201–1 (FIPS 201). PIN reset requires virtual private network (VPN) access to the

[50] *See* 33 CFR 101.515(d)(2).

TWIC system available only at TWIC enrollment centers. TSA is looking at possible alternatives and updates to the current PIN reset policy.

4. Utility of TWIC Readers in Reducing TSI Vulnerability

Many commenters acknowledged the utility of the TWIC program in reducing TSI vulnerability, though they expressed differing opinions on the utility of TWIC readers in that regard. Some asserted that TWIC readers would not reduce risks, especially on small vessels where crewmembers are familiar with one another, and on vessels where restricted areas are already protected by other access control mechanisms. Several of these commenters expressed the opinion that TWIC effectively reduces risk insofar as personnel are required to complete a rigorous security threat assessment in order to obtain a TWIC; yet, they believe that TWIC readers would provide no additional risk reduction benefit. Although one of these commenters acknowledged the potential utility of TWIC readers at large facilities and on large vessels, this group of commenters generally opposed all of the proposed TWIC reader requirements.

Other commenters took the opposite view. Several argued that the TWIC's security benefits would only be realized through the institution of a standard requirement to use TWIC readers at all MTSA-regulated vessels and facilities. One point emphasized by this group of commenters is that visual inspection as a means of identity verification would not effectively detect counterfeit TWICs.

One commenter favored an approach in which TWIC readers are used in addition to—not in place of—visual comparison of the TWIC-holder to the photograph on the TWIC. Another commenter favored an approach in which owners and operators would be required to conduct random electronic biometric matches using a TWIC reader, as opposed to using a TWIC reader each time an individual accesses secure areas. Finally, one commenter suggested that we include an option that would allow owners and operators to schedule periodic Coast Guard visits for the purpose of conducting comprehensive inspections using the Coast Guard's portable TWIC readers.

The wide ranging nature of these comments demonstrates the need for an analysis of the impacts of TWIC reader requirements in the maritime sector. Similarly, Congress had also mandated a thorough analysis of TWIC reader utility in the SAFE Port Act by requiring the Secretary to '' * * * conduct a pilot program to test the business processes, technology, and operational impacts required to deploy * * * [TWIC] readers at secure areas of the maritime transportation system.'' [51] At the time we published the ANPRM and received the comments above, TSA had not yet completed data collection for the TWIC Pilot. TSA completed data collection for the TWIC Pilot on May 31, 2011. In accordance with the SAFE Port Act, we crafted the proposals in this NPRM in a manner consistent with the findings of the TWIC Pilot.[52]

The TWIC Pilot was designed to assess, among other things, the utility of TWIC readers in enhancing security. The TWIC Pilot found that when designed, installed, and operated in a manner consistent with the business considerations of the vessel or facility, TWIC readers enhance security by reducing the risk that an unauthorized individual could gain access to secure areas. The TWIC Pilot also found that TWIC readers enhance security by enabling owners and operators to assign secure area access privileges to a limited population of TWIC-holders. The proposals in this NPRM to require TWIC readers are consistent with the findings of the TWIC Pilot and were developed to reduce TSI vulnerability at MTSA-regulated facilities and vessels.

5. TWIC Reader Requirements on Vessels

Many commenters expressed opposition to any requirement for TWIC readers on vessels. These commenters argued that TWIC readers on vessels would be expensive, impractical, ineffective in enhancing security, and would put U.S.-flagged vessels at a competitive disadvantage relative to foreign-flagged vessels that can operate without TWIC readers. Instead, these commenters favored using TWIC as a visual identity badge on vessels. They argued that the greatest value of the TWIC program is not as an access control device, but rather as a reliable, standardized means to establish the identity and background of new employees. The commenters emphasized that TWIC readers would likely cause logistical problems, and would be unnecessary on vessels in which crew size is relatively small, because crewmembers are familiar with one another. Finally, the commenters believed that TWIC readers are unnecessary on vessels because, in most cases, TWIC-holders accessing vessels have already had their TWICs checked using a TWIC reader at shore-side facilities and during Coast Guard inspections.

One commenter felt that there might be limited utility to TWIC readers on vessels. Another commenter proposed an alternative approach that would require vessel owners and operators to specify a certain percentage of individuals on board for random biometric matches using a TWIC reader.

As mentioned previously, we rely on the TWIC Pilot's finding that TWIC readers enhance security when used properly. Additionally, we recognize that many of the commenters arguing against the proposed requirement for TWIC readers on vessels expressed the interest of owners and operators of vessels in Risk Group B. After considering the public comments and additional analysis, we have eliminated from this NPRM the proposal to require TWIC readers on vessels in Risk Group B. As discussed more fully below in Section IV., ''Section-by-Section Description of Proposed Rule,'' this NPRM proposes TWIC reader requirements for vessels in Risk Group A only. Moreover, this NPRM proposes to exempt from TWIC reader requirements all vessels with 14 or fewer TWIC-holding crewmembers. These measures should alleviate most of the concerns raised by commenters with respect to the costs and logistics of TWIC readers on vessels and on the limits for utility on vessels with 14 or fewer crewmembers.

Some commenters expressed the opinion that on small vessels, even a requirement to use the TWIC as a visual identity badge is an unnecessary burden that would confer little or no security benefit. We disagree with this comment. A security benefit is conferred when a vessel owner or operator is able to confirm that each entrant to a secure area holds a TWIC.

One commenter requested clarification as to whether a vessel owner or operator would be required to check TWICs electronically on days the vessel does not sail. We wish to clarify that TWIC reader requirements are triggered when individuals are granted access to secure areas, regardless of whether a vessel sails.

6. TWIC Reader Requirements for Risk Group A

a. Risk Group A Classification

Two commenters questioned why Risk Group A includes facilities that handle bulk CDC, but does not include facilities that handle non-bulk Division 1.1 or 1.2 explosives. We reiterate that based on the AHP/MSRAM data and analysis, facilities that handle non-bulk

[51] 46 U.S.C. 70105(k).

[52] 46 U.S.C. 70105(k).

substances did not warrant placement in Risk Group A. Such facilities generated lower AHP scores because unlike bulk CDC, Division 1.1 or 1.2 explosives are segregated and kept in smaller quantities.

b. Risk Group A TWIC Reader Requirements

Six commenters representing owners and operators of large vessels or facilities expressed general concerns that the ANPRM's proposed TWIC reader requirements would present significant operational challenges. Another commenter stated that it would be burdensome if TWIC readers had to be manually updated to keep CCL information current.

In considering these comments, we note that the TWIC Pilot elicited a variety of lessons learned with respect to the operational impacts of deploying TWIC readers in the maritime sector. The TWIC Pilot generally found that when TWIC readers are designed, installed, and operated in a manner consistent with the business considerations of the vessel or facility, they function properly.

We believe that the proposals in this NPRM appropriately consider the findings of the TWIC Pilot and implement the TWIC reader requirements mandated by MTSA and the SAFE Port Act in a manner that enhances the nation's maritime security without imposing undue burdens. More information on the economic analysis for this proposed rule is provided below in Section V. ''Regulatory Analyses.''

We also note that in the TWIC 1 Final Rule, we revised 33 CFR 105.115 to permit owners and operators to redefine their ''secure area'' as only that portion of their access control area that is directly related to maritime transportation. This revision was intended to provide greater flexibility to facility owners and operators in dealing with the operational impacts of implementing the TWIC program at each individual facility. Additionally, as discussed above, we are also considering allowing multiple risk group designations within one facility, to account for situations where one portion of a facility handles dangerous cargoes and another portion does not.

7. TWIC Reader Requirements for Risk Group B

a. Risk Group B Classification

Numerous commenters expressed the opinion that Risk Group B is over-inclusive in terms of the types of vessels and facilities covered. Many argued that OCS facilities subject to 33 CFR part 106 do not present risks that warrant placement in Risk Group B.

Two commenters argued that tank vessels as defined in 33 CFR Subchapter D should not be placed in Risk Group B. One commenter suggested that with respect to crewmembers on Subchapter D vessels, the only requirement to scan their TWICs using a TWIC reader should be upon initial hiring at the employer's home office.

One commenter whose vessel is licensed for 800 passengers and carries a crew of six argued that TWIC reader requirements would be a financial burden that provides no appreciable security benefit. In response, we note that in this NPRM, we do not propose to require TWIC readers for Risk Group B.

One commenter argued that facilities handling no hazardous materials other than asphalt cement do not present risks that warrant placement in Risk Group B. The commenter requested that we specifically exclude from Risk Group B facilities that handle products designated as hazardous only due to storage and handling at elevated temperatures. Two commenters suggested that for purposes of this rule, the term ''hazardous materials'' should not be defined by reference to 49 CFR 172. One of these commenters argued that this definition would cover many products that present little or no risks. Instead, the commenter suggested that we adopt the definition of ''hazardous materials'' used by TSA and/or the Pipeline and Hazardous Materials Safety Administration.

We wish to clarify that the term ''hazardous materials'' is defined in 33 CFR part 101.105 as those materials subject to regulation under 46 CFR parts 148, 150, 151, 153, or 154, or 49 CFR parts 171 through 180. We believe that the types of vessels and facilities referenced in the comments above are appropriately placed in Risk Group B based on the AHP/MSRAM analysis. We further believe that the comments above seeking re-classification out of Risk Group B resulted from the ANPRM's proposal to require TWIC readers for Risk Group B. We reiterate that, based on the comments and additional analysis, this NPRM does not propose TWIC reader requirements for Risk Group B.

b. Risk Group B TWIC Reader Requirements

One commenter believed that the ANPRM's proposed requirements for Risk Group B are appropriate. Another commenter argued that identity verification upon each entry to a secure area would be too burdensome. Another commenter argued that the proposed TWIC reader requirements in the ANPRM for Risk Group B at MARSEC Level 2 would be too burdensome. Finally, two commenters argued that, as a general matter, the ANPRM's proposals are too burdensome because they would require vessels and facilities in Risk Group B to have both a TWIC reader and a security guard to visually inspect TWICs as well.

Several commenters argued that the ANPRM's requirement for Risk Group B to conduct random monthly scans using a TWIC reader would be costly and provide minimal security benefits, especially if done on a low volume or non-work day. Other commenters requested clarification as to whether the ANPRM's approach would require monthly scans on all TWIC-holders associated with a vessel or facility, or only on the TWIC-holders visiting the vessel or facility on a specific day.

Several commenters proposed alternative TWIC requirements for Risk Group B. Some suggested approaches that rely less on TWIC readers than did the ANPRM's approach. For example, two commenters suggested requiring only visual TWIC checks for identity verification, card authentication, and card validation as a routine matter at MARSEC Level 1. Thus, scans using a TWIC reader would only be required once per month at MARSEC Level 1, but would remain a standard procedure at higher MARSEC Levels. Another commenter suggested that card validity checks should be required on small vessels less frequently than as proposed in the ANPRM. Two commenters opposed the ANPRM's requirement to perform monthly scans using a TWIC reader at MARSEC Level 1.

Other commenters suggested alternative approaches that rely more on TWIC readers than did the ANPRM's approach. For example, several commenters suggested that owners and operators of vessels or facilities in Risk Group B should always be required to use TWIC readers to perform identity verification, arguing that visual checks are less reliable. Some of these commenters argued that unlike random monthly scans using a TWIC reader, routine use of TWIC readers would provide TWIC-holders the benefit of a consistent user experience.

Based on the comments and further analysis, this NPRM does not propose TWIC reader requirements for Risk Group B. We have estimated the annualized cost of the TWIC reader requirements on vessels and facilities in Risk Group A at $26.5 million, at a 7 percent discount rate. Had we proposed TWIC reader requirements to also

include Risk Group B facilities, the annualized cost would be $141.2 million, at a 7 percent discount rate. Moreover, including Risk Group B in the TWIC reader requirements would not only increase the annualized cost, the average consequence figure (the monetized costs of fatalities and injuries resulting from a TSI) drops by more than one-third. While this does not mean that there should be no TWIC reader requirements for Risk Group B, we believe this analysis supports our phased approach for requiring TWIC readers first for Risk Group A.

We also wish to emphasize the utility of TWIC in enhancing security even when not used in conjunction with TWIC readers. Before mariners and other individuals were required to obtain a TWIC, they could access secure areas of MTSA-regulated vessels and facilities after presenting a State-issued driver's license or any number of other government-issued identification cards. This patchwork system of valid credentials required security personnel to become familiar with the appearance and security features of every type of acceptable credential. Moreover, since some government-issued credentials are used for purposes other than security, applicants are not necessarily screened from a security threat perspective. Additionally, the eligibility criteria for some government-issued credentials do not preclude issuance to an individual with a felony criminal record.

The TWIC program mitigates the above shortcomings. Since April 15, 2009, TWIC has been the single credential used throughout the maritime sector. Accordingly, security personnel only need to become familiar with the appearance and security features of one credential. Moreover, unlike other government-issued credentials, TWIC is specifically designed for transportation security. Its purpose is to ensure a vetted maritime workforce by establishing security-related eligibility criteria, and by requiring each TWIC-holder to undergo TSA's security threat assessment as part of the process of applying for and obtaining a TWIC.

As we go forward with our phased approach to implementing TWIC reader requirements, we will continue to evaluate the use of TWIC readers on vessels and at facilities, and determine the need for additional or different TWIC reader requirements. Proposing requirements for Risk Group A only in this NPRM is indicative of our desire to minimize highest risks first, but should not be read to foreclose revised TWIC reader requirements in the future.

Several commenters argued that container (cargo) facilities present risks that actually warrant the more stringent TWIC reader requirements of Risk Group A rather than those of Risk Group B. In response, we note that, based on the AHP/MSRAM analysis, being a container facility alone did not automatically cause a facility to be categorized in Risk Group B. In addition, several factors led the Coast Guard to decide not to require TWIC readers for most of these facilities at this time. First, there are limits on the additional risk reduction (above and beyond the credentialing and visual identification purposes of the TWIC itself) of TWIC readers at container facilities. Security risk in the maritime sector can be considered as following one of three high-level scenarios: (1) The asset in question could be the target of an attack; (2) the asset in question could be used as a weapon for an attack; or (3) the asset could be used to enable or facilitate an attack elsewhere. For container facilities, the first scenario brings low risk given the number of personnel concentrated and exposed to an attack and limited storage of hazardous materials. Similarly, the second scenario brings low risk as containers bring low risk of use as a weapon. Furthermore, the use of TWIC readers, or other access control features, would not mitigate the threat associated with the contents of a container. The TWIC reader serves as an additional access control measure, but would not improve screening of cargoes for dangerous substances or devices. The third scenario is the primary risk driver for container facilities, with the risk of containers used to smuggle illicit materials and/or personnel into the country. The additional verifications provided by TWIC readers, however, would bring limited utility to this scenario. Those individuals looking to access the contents of the container could do so after the container exits the secured area. As such, TWIC readers bring limited additional risk reduction over the TWIC itself. Additionally, requiring TWIC readers at container facilities brings significant costs, as these facilities typically have a higher number of access points per facility (and therefore would incur more capital costs) and higher numbers of personnel accessing the facility. While the additional time to use the TWIC reader to conduct a biometric match over the visual inspection is limited on an individual basis, the high volume of workers could cause the associated delay costs to accrue to much more significant levels than other facility types. Given the large numbers of truck drivers accessing these facilities, these delays would also be accompanied by increased air emissions, resulting in greater potential for environmental impact. Therefore, in this NPRM, only those container facilities that are otherwise categorized in Risk Group A would be required to use TWIC readers. We will continue to assess whether container facilities warrant additional consideration with respect to TWIC reader requirements. We welcome additional comments from the public on the risk group classification of container facilities.

8. TWIC Requirements for Risk Group C

a. Risk Group C Classification

One commenter supported the ANPRM's classification of OSVs in Risk Group C. One commenter suggested that the passenger cutoff number for vessels in Risk Group C should not be 500. Instead, this commenter argued that the cutoff number should be 49 overnight passengers or 150 passengers, similar to the Coast Guard's vessel safety regulations. In response, we reiterate that the AHP/MSRAM analysis considered factors based on TSI consequence. These factors are different than the factors that underpin the Coast Guard's safety regulations. The passenger cutoff numbers derived from the AHP/MSRAM analysis are more appropriate for defining the risk-based framework for TWIC reader requirements.

b. Risk Group C TWIC Requirements

Many commenters agreed with the ANPRM's approach that TWIC reader requirements would not appreciably enhance security for vessels and facilities in Risk Group C. One commenter further argued that since vessels and facilities in Risk Group C are so low risk, even visual TWIC inspections would be an unnecessary burden that would confer no security benefit. As noted above, however, several commenters took the opposing view, broadly asserting that owners and operators of all MTSA-regulated vessels and facilities (including those in Risk Group C) should be required to use TWIC readers to control access to secure areas.

We believe that although vessels and facilities in Risk Group C present a less likely target for individuals wishing to do harm, these vessels and facilities still hold the potential of being involved in a TSI and with consequences that could still be significant. A security benefit is conferred when an owner or operator is able to confirm that each entrant to secure areas holds a TWIC, as the TWIC serves as evidence that the person has

successfully passed TSA's security threat assessment. Accordingly, this NPRM proposes the same requirements as the ANPRM for Risk Group C, which includes requirements to visually inspect TWICs before granting unescorted access to secure areas, as is already required in the current regulations.

Some commenters asked whether vessels and facilities in Risk Group C would need dedicated security guards to perform visual TWIC checks, and what credentials these security guards would need to possess. Under current regulations (which would not change under this NPRM) for vessels and facilities categorized in this NPRM as Risk Group C, security personnel must visually inspect the TWIC of each person seeking unescorted access to secure areas. Our regulations do not require the use of ''dedicated security guards,'' but do require that the security personnel doing visual inspection of TWICs have certain knowledge, training, and experience. It is important for owners, operators, and others with security duties to be familiar with the technologies embedded in the TWIC, particularly the features that make the TWIC resistant to tampering and forgery. Those who would be examining TWICs at access control points should be familiar enough with the TWIC's physical appearance so that variations or alterations are easily recognized. Relevant security training requirements for personnel on vessels and at facilities are found at 33 CFR 104.210, 104.215, 104.220, 104.225, 105.205, 105.210, 105.215, 106.205, 106.210, 106.215, and 106.220.

9. Physical Placement of TWIC Readers

Eight commenters requested clarification as to whether TWIC readers would be required at the access points to each secure area or at the perimeter access points to the vessel or facility. Three commenters suggested that vessels should not be required to place TWIC readers at every access point to a secure area. Instead, according to these commenters, vessels required to have TWIC readers should only be required to place them at the main access points to the vessels. Several commenters expressed concerns that if TWIC readers are required at the access points to each secure area on vessels, safety would be compromised in emergency situations when crewmembers need immediate access to those areas.

We wish to clarify that for both vessels and facilities, the term ''secure area'' is defined as ''* * * the area * * * over which the owner/operator has implemented security measures for access control * * *. It does not include passenger access areas, employee access areas, or public access areas * * *.'' [53] For facilities, the secure area may encompass the entire facility, or the facility may consist of a combination of secure areas and public access areas. Similarly, for vessels, the secure area may encompass the entire vessel, or the vessel may consist of a combination of secure areas and passenger and employee access areas.

This NPRM proposes different requirements for vessels and facilities with respect to the placement of TWIC readers. For facilities, this NPRM proposes to require TWIC readers at the access points to each secure area. If the entire facility is designated as a secure area, then TWIC readers would only be required at the access points to the facility itself. If the secure area does not encompass the entire facility, then TWIC readers would be required at the access points to each secure area.

For vessels, this NPRM proposes to require TWIC readers at the access points to the vessel itself, regardless of whether the secure area encompasses the entire vessel. Thus, even if the secure area does not encompass the entire vessel (e.g., a passenger vessel consisting of secure areas and passenger and employee access areas), TWIC readers would only be required at the access points to the vessel itself. TWIC-holders may be granted unescorted access to the vessel's secure areas after the TWIC has been verified, validated, and authenticated at a vessel access control point. TWIC-holders may then move between secure areas and passenger and employee access areas without processing through a TWIC reader each time. We request additional comments from the public on the proposed regulatory provisions regarding the placement of TWIC readers for vessels and facilities, and how to minimize crewmembers from entering secure and/or restricted areas if they do not hold a TWIC.

With respect to emergency situations, we partially addressed this issue in the TWIC 1 Final Rule, and added a paragraph to 33 CFR 101.514 clarifying that emergency personnel need not have TWICs to obtain unescorted access to secure areas during emergencies. Moreover, this NPRM does not propose to require TWIC readers on vessels at each access point to a secure area. Instead, TWIC readers would only be required at the access points to the vessel itself.

One commenter suggested that with respect to OCS facilities, the appropriate location for TWIC reader placement is not on the facility itself, but, rather, at the shore-side points of embarkation for the facility. This comment echoes a recommendation from NMSAC in the TWIC 1 NPRM,[54] to which we responded that OCS facilities where access is limited and can be controlled by reading the TWIC at the point of embarkation may continue to do so. Note that this NPRM does not propose TWIC reader requirements for any OCS facilities. Accordingly, OCS facilities where access is limited and can be controlled by visually inspecting the TWIC at the point of embarkation may do so.

One commenter suggested that owners and operators of facilities should not be required to use TWIC readers on docks and other waterside access points. In response, we emphasize that we are not proposing a blanket exemption from TWIC reader requirements on docks and other waterside access points. As proposed in this NPRM, owners and operators of facilities in Risk Group A would be required to ensure that access to secure areas is limited to individuals whose TWICs have been scanned by a TWIC reader.

We also note that in the TWIC 1 Final Rule, we revised 33 CFR 105.115 to provide greater flexibility to facility owners and operators by allowing them the option to redefine their ''secure area'' as only that portion of their access control area that is directly related to maritime transportation. Thus, facilities whose footprint includes portions that are not directly related to maritime transportation can submit an FSP for Coast Guard approval that removes those areas from the definition of the facility's ''secure area'' for Coast Guard regulatory purposes. Such facilities would typically include refineries, chemical plants, factories, mills, power plants, smelting operations, or recreational boat marinas. As discussed above, we are also considering allowing multiple risk group designations within one facility, to account for situations where one portion of a facility handles dangerous cargoes and another portion does not. Owners and operators should comply with TWIC reader requirements in a manner that considers the specific nature of their facilities and their access points, and they may take advantage of regulatory provisions that would minimize the impact on operations.

10. Recurring Unescorted Access

Numerous commenters generally supported the ANPRM's provision

[53] 33 CFR 101.105.

[54] *See* 71 FR 29405.

regarding RUA as a means of providing relief to owners and operators otherwise required to use TWIC readers. Many of these commenters expressed differing opinions regarding the proposed cutoff number of 14. Six commenters stated that 14 is an appropriate cutoff number. More than 25 commenters felt that the cutoff number should be higher. One commenter felt that the cutoff number should be lower. Several commenters argued that 14 is an arbitrary cutoff number, though they offered no rationale or alternative cutoff number. Five commenters suggested that the cutoff number should be approved by the COTP on a case-by-case basis, considering factors such as an entity's size and whether a vessel operates with multiple crews.

Several commenters requested clarification regarding whether an entity could grant RUA privileges to contractors, vendors, and other frequent visitors.

Approximately eight commenters opposed the ANPRM's RUA proposal, suggesting instead that we should simply exempt all vessels with fewer than 14 TWIC-holders on board from TWIC reader requirements. One commenter noted that such an exemption would fall squarely within the SAFE Port Act's provision that prohibits requiring TWIC readers on vessels that the Secretary has determined do not have the requisite number of TWIC-holders as crewmembers.[55]

Two commenters argued that RUA would compromise security by granting unescorted access to secure areas without requiring individuals to undergo screening using a TWIC reader.

One commenter felt the phrase ''recurring unescorted access'' could be misinterpreted to mean that an individual may require an escort to access a secure area, even if the individual is a TWIC-holder.

Several commenters opposed a requirement to perform the initial biometric scan using a TWIC reader on TWIC-holders granted RUA. Their rationale was that TSA already performs reliable biometric identity verification prior to the issuance of each individual's TWIC. Some commenters also raised concerns of potential fraud that could arise if, as suggested in the ANPRM, an owner or operator pursued an agreement with a facility or other company to borrow or otherwise have access to a TWIC reader in order to perform the one-time initial biometric verification.

One commenter felt that the proposed initial biometric scan requirement would be appropriate. Another commenter felt that owners and operators should be required to perform an electronic biometric scan using a TWIC reader at the beginning of each shift for each TWIC-holder granted RUA.

Three commenters argued that owners and operators granting RUA privileges should not be required to purchase a TWIC reader to perform initial biometric scans on RUA grantees. Two commenters suggested that an Internet-based system would provide the most practical method for keeping track of RUA grantees.

One commenter called attention to the fact that employee records regarding individuals granted RUA would be kept by the employer, not the Coast Guard or TSA.

After considering the comments and further analysis discussed below in Section IV., ''Section-by-Section Description of Proposed Rule,'' we have removed from this NPRM the RUA provisions proposed in the ANPRM. RUA was previously proposed to introduce flexibility and provide relief to vessels otherwise required to use TWIC readers, based on the familiarity that exists between a relatively small number of crewmembers. This NPRM incorporates two important proposals, however, that render RUA an unnecessary provision. First, unlike the ANPRM, which proposed TWIC reader requirements for Risk Groups A and B, this NPRM proposes TWIC reader requirements for Risk Group A only. Second, this NPRM proposes a broad exemption from TWIC reader requirements for all vessels with 14 or fewer TWIC-holding crewmembers. This exemption is based on the SAFE Port Act's provision that prohibits requiring TWIC readers on vessels that the Secretary has determined do not have the requisite number of TWIC-holders as crewmembers.[56] These two changes render the need for RUA as a mechanism for regulatory relief unnecessary.

11. TWIC Reader Durability, Safety, Approval, Calibration, and Compliance

Four commenters expressed concerns that harsh weather and other physical stresses on vessels and at facilities would likely cause TWIC readers to fail or otherwise become damaged. One commenter countered that TWIC readers have already been subjected to environmental testing, and have proven to function well in the marine environment.

The TWIC Pilot found that at varying locations, some TWIC readers experienced difficulty scanning fingerprints in inclement weather. Certain types of TWIC readers withstood harsh weather conditions, whereas others were found to be sensitive to those conditions. Throughout the TWIC Pilot, the conditions under which TWIC readers had to perform were significantly more challenging than those commonly found at entrances to office buildings and other more controlled locations and environments. The TWIC Pilot, however, noted that most of the challenges associated with weather can be overcome with proper planning that takes environmental conditions into consideration.[57]

One commenter requested that we consider the safety concerns of using TWIC readers in areas where flammable materials are stored or transferred. We agree that safety concerns are of the utmost importance, and expect that owners and operators who carry or handle flammable materials would comply with applicable TWIC reader requirements in a manner that does not compromise safety.

One commenter stated that TWIC readers must be able to process biometric scans in 3 seconds or less in order to minimize the impact of TWIC reader requirements at facilities with large numbers of entrants. Several commenters stated that we should establish a minimum standard for errors in connection with TWIC reader technology. We have passed these comments to TSA for consideration in future planning. TSA has established the TWIC reader specifications and Qualified Technology List process (described later in this section) to validate that TWIC readers meet the specifications. In addition, TSA is conducting a card error/failure analysis to identify and address TWIC reader and card failures. There is additional information on TWIC reader throughput in the TWIC Pilot report, which is available in the public docket for this rulemaking.

As discussed in the ANPRM, TWIC readers are considered ''security systems and equipment,'' and therefore, existing regulatory provisions applicable to security systems and equipment maintenance would require that TWIC readers be inspected, tested, calibrated, and maintained in accordance with the manufacturers'

[55] 46 U.S.C. 70105(m)(1).

[56] 46 U.S.C. 70105(m)(1).

[57] See page vii of the TWIC Pilot Report. (A copy of the TWIC Pilot Report is available for viewing in the public docket for this rulemaking.)

recommendations.[58] Additionally, records of such actions would be required to be maintained for at least 2 years and made available to the Coast Guard upon request.[59] The ANPRM sought public comment on whether TWIC readers should also be subject to additional Coast Guard inspections and/or third party audits to further ensure that TWIC readers are maintained in proper working order.

Two commenters favored both additional Coast Guard inspections and third-party audits to check that TWIC readers are maintained in proper working order. Ten commenters opposed third-party audits, and suggested that the Coast Guard should conduct compliance inspections. Six commenters favored neither Coast Guard inspections nor third-party audits, arguing that owners and operators are already required to maintain security equipment maintenance logs, which can be reviewed by the Coast Guard to make compliance determinations. We note that 33 CFR 104.260 and 105.250 already require security systems (which would include TWIC readers) to be in good working order and inspected, tested, calibrated, and maintained according to the manufacturer's recommendation. These existing regulatory provisions also require owners and operators to maintain records of the results of such testing for 2 years. Additionally, Coast Guard field inspectors would inspect TWIC reader functionality as part of regularly occurring inspections. We agree with the majority of commenters above that appreciable value would not be added by requiring additional Coast Guard inspections and/or third party audits beyond the existing provisions on security systems and equipment maintenance. Therefore, this NPRM does not propose additional Coast Guard inspections and/or third party audits.

One commenter generally requested guidance regarding how owners and operators may voluntarily use TWIC readers before we publish a TWIC reader final rule. On March 15, 2011, we published a notice announcing the availability of Policy Advisory Council Decision (PAC–D) 01–11, ''Voluntary Use of TWIC Readers,''[60] providing guidance on how owners and operators may use TWIC readers to meet existing regulatory requirements. Navigation and Vessel Inspection Circular (NVIC) 03–07[61] provides additional guidance to the public on this issue.

Five commenters requested that we immediately publish a list of TWIC reader specifications, or a list of acceptable TWIC reader vendors, so that owners and operators wishing to use Federal grant money to purchase equipment can do so before we publish a TWIC reader final rule. Another commenter cautioned that such an approach may not be advisable because TWIC reader technology is still evolving.

PAC–D 01–11 provides guidance on how owners and operators of vessels or facilities can use TWIC readers to meet existing regulatory requirements for effective identity verification, card validity, and card authentication. A list of TWIC readers that have passed the Initial Capability Evaluation (ICE) Test is available at *http://www.tsa.gov/assets/pdf/twic_ice_list.pdf.* As stated in PAC–D 01–11, however, TWIC readers allowed pursuant to PAC–D 01–11 may no longer be valid after promulgation of a TWIC reader final rule, and DHS will not fund replacement TWIC readers.

The Department of Commerce's National Institute of Standards and Technology (NIST) and TSA are developing TWIC reader specifications. TSA will establish a process to qualify TWIC readers, and will maintain a Qualified Technology List (QTL) of acceptable TWIC readers. We anticipate that there may be changes from the ICE Test list to the QTL list, based on final TWIC reader specifications resulting from the QTL process.

12. TWIC Pilot and HSI Report

Seven commenters expressed confidence that the TWIC Pilot would yield important information that should inform this NPRM, including information regarding TWIC reader error rates, transaction times, durability in extreme weather conditions, and TWIC integration with an existing PACS. Two commenters requested that the TWIC Pilot include additional ports. The Merchant Marine Personnel Advisory Committee (MERPAC) recommended that the TWIC Pilot should include a sufficient number of vessels in appropriately diverse operating areas to test TWIC reader technology, operating conditions, and procedures.

TSA completed data collection for the TWIC Pilot on May 31, 2011. The TWIC Pilot gathered data from pilot sites regarding TWIC reader performance and reliability as well as throughput data at vehicle and pedestrian access points, which was instrumental in evaluating the impact of TWIC reader use on vessel and facility operations. Although the SAFE Port Act required the pilot program to take place at not fewer than five distinct geographic locations, the program actually took place in seven geographic locations to allow for the evaluation of TWIC reader functionality and impacts across a variety of environmental and operational conditions. The TWIC Pilot report provides a list of the TWIC Pilot participants.

Two commenters urged us to consider the final HSI Report in crafting the NPRM. We acknowledge that the HSI Report has provided useful insights and information that have informed the proposals in this NPRM.

A summary of both the TWIC Pilot and HSI Report recommendations are provided below in Sections III.F. ''TWIC Reader Pilot Program'' and III.G., ''HSI Report,'' respectively. A copy of the TWIC Pilot Report is available for viewing in the public docket for this rulemaking. A non-SSI version of the HSI Report is available for viewing in the public docket for this rulemaking.

13. Security Plan Amendment

Two commenters requested that the revisions to security plans resulting from this NPRM should be as minimal as possible. We believe the proposals in this NPRM are consistent with that request.

Six commenters generally supported the ANPRM's proposal to require amendments to security plans within 6 months after we publish a final TWIC reader rule. Three commenters felt that the ANPRM's proposed deadline of 6 months is too short. One commenter requested a 9-month deadline. Five commenters requested at least a 1-year deadline. One commenter suggested staggered deadlines of 24 months, 18 months, and 12 months for Risk Groups A, B, and C, respectively. Six commenters requested staggered deadlines based on the expiration dates of existing security plans. Two commenters suggested that each security plan amendment deadline should be determined on a case-by-case basis. Another commenter suggested that requirements to amend security plans should apply once we have classified each vessel and facility into its risk group.

In light of the comments and further analysis, this NPRM would extend the proposed deadline for security plan updates. Owners and operators would

[58] *See* 33 CFR 104.260 and 105.250.

[59] *See* 33 CFR 104.235 and 105.225.

[60] Policy Advisory Council Decision 01–11, ''Voluntary Use of TWIC Readers,'' available for viewing at *https://homeport.uscg.mil/.*

[61] *See* Navigation and Vessel Inspection Circular (NVIC) No. 03–07, ''Guidance for the Implementation of the Transportation Worker Identification Credential (TWIC) Program in the Maritime Sector,'' (July 2, 2007).

be required to amend security plans to include TWIC requirements within 2 years after publication of the final rule in the **Federal Register**.

One commenter suggested that amended security plans should be reviewed by the Coast Guard before owners and operators are required to invest resources into TWIC-related expenditures. We encourage owners and operators to work with the Coast Guard, as needed, to prepare security plans that comply with regulatory requirements. We do not believe, however, that it is necessary to create a formal coordination process in which the Coast Guard would review amended security plans separate from what already exists.

14. Recordkeeping

The ANPRM proposed a requirement on owners and operators using TWIC readers to maintain records on each individual granted unescorted access to a secure area. Owners and operators would be required to maintain such records for a period of 2 years. Five commenters argued that owners and operators should not be required to check the TWICs of individuals leaving a vessel or facility. This is consistent with the ANPRM's approach, and we propose it in this NPRM as well.

One commenter considered the ANPRM's proposed 2-year record retention requirement to be reasonable. Other commenters believed 2 years is longer than necessary for record retention, and suggested alternative durations ranging from 30 days to 1 year. Fifteen commenters opposed a 2-year record retention requirement altogether, arguing that the costs would outweigh the benefits to law enforcement. One commenter opposed recordkeeping requirements for Risk Group C.

We believe TWIC reader records can prove useful to law enforcement without imposing an undue burden on the regulated population. The 2-year timeframe for record retention was designed, in part, for consistency with existing security-related and other recordkeeping requirements applicable to vessels and facilities.[62] A uniform timeframe for recordkeeping requirements provides the public with a consistent and predictable standard.

Two commenters stated that MTSA does not require the Secretary to impose recordkeeping requirements. We agree with this comment. With respect to TWIC, MTSA requires the Secretary to prescribe regulations to prevent an individual from entering secure areas of vessels and facilities unless the individual is so authorized and either possesses a TWIC or is escorted by someone who possesses a TWIC.[63] Thus, while MTSA does not specifically require the Secretary to impose recordkeeping requirements, such requirements are within the Secretary's authority, and they are an important part of the set of regulations designed to prevent unauthorized access to the secure areas of the nation's transportation system. For example, in the event of a TSI or a security breach, records would be available to the Coast Guard and other law enforcement to enable them to determine who had accessed the vessel or facility.

Two commenters requested that we prescribe more detailed recordkeeping requirements. In contrast, one commenter requested that we allow individual regulated parties to determine the best method and manner of complying with the recordkeeping requirements. We agree with the latter commenter's more flexible approach.

One commenter acknowledged that TWIC-related records could be useful to law enforcement, but argued that records should only be shared with law enforcement on a need-to-know basis. Another commenter suggested that records should only be kept to the extent they provide a homeland security-related benefit. We believe that TWIC reader recordkeeping requirements would prove beneficial to law enforcement in any number of investigations. Accordingly, this NPRM does not propose restrictions on how law enforcement may use those records.

One commenter questioned whether portable TWIC readers have the capability to retain records for 2 years. In response to this question, we wish to clarify that this NPRM would not require records to be stored specifically in TWIC readers. Logs from TWIC readers may be maintained on the TWIC readers themselves or exported to other systems. As stated above, we are not prescribing the specific method and manner of complying with the proposed recordkeeping requirements.

Four commenters expressed concerns regarding the privacy of personal information stored in TWIC readers. Some commenters highlighted concerns with respect to foreign-owned vessels and vessels traveling in foreign waters where equipment may be subject to seizure by foreign authorities. One commenter suggested that the personal information stored in a TWIC reader should be classified as SSI, which would trigger the compliance protections in 49 CFR part 1520.

We believe that information collected by a TWIC reader needs to be protected. We wish to clarify that the TWIC requirements found in 33 CFR part 104 do not apply to foreign vessels.[64] We also wish to clarify that TWIC readers typically do not capture or record the name of the TWIC-holder. A TWIC reader only captures the TWIC-holder's name if it is a contact TWIC-reader (i.e., one that requires the TWIC-holder to insert the TWIC into a slot for direct contact between the TWIC reader and the chip embedded in the TWIC) and only after the TWIC-holder has entered the PIN. This NPRM does not propose to require owners and operators to specifically use contact TWIC readers, nor does this NPRM propose any PIN requirement. Therefore, a TWIC reader will typically capture three pieces of information when an individual's TWIC is scanned: (1) FASC—N; (2) date; and (3) time. As explained above, a contact TWIC reader will also capture name information after the PIN has been entered. A PACS may also capture the name of the TWIC-holder. We consider a TWIC-holder's name and FASC–N to be SSI under 49 CFR 15.5. Therefore, if that information is captured by a TWIC reader, the information would need to be protected in accordance with 49 CFR Part 15, which imposes duties on ''certain covered'' persons to protect SSI.[65] ''Covered persons'' include, among others: (1) Each owner, charterer, or operator of a vessel, including foreign vessel owners, charterers, and operators, required to have a security plan under Federal or International law; (2) each owner or operator of a maritime facility required to have a security plan under MTSA and each person who has access to SSI, as specified in 49 CFR 15.11.[66] Furthermore, the International Ship and Port Facility Security Code requires a vessel's security plan and applicable security records to be protected from unauthorized access or disclosure.[67] SSI information collected by a TWIC reader falls under that requirement.

One commenter supported the ANPRM's proposed requirement that owners and operators explain how they are protecting personal identity information stored in a separate PACS. Two commenters questioned whether MTSA grants the Coast Guard authority to impose such a requirement.

To the extent that a PACS contains personal identity and biometric

[62] 33 CFR 104.235; 33 CFR 105.225.

[63] 46 U.S.C. 70105(a).

[64] *See* 33 CFR 104.105(d).

[65] *See* 49 CFR 15.7.

[66] *See* 49 CFR 15.7.

[67] *See* International Ship and Port Facility Code, Part A, adopted on December 12, 2002, Sections 9.7, 9.8 and 10.4.

information, it contains SSI, which must be protected in accordance with 49 CFR part 15. The Coast Guard, through delegation from the Secretary, has the authority to impose such recordkeeping requirements. Section 70124 of Title 46 U.S.C. authorizes the Secretary to issue regulations necessary to implement provisions of chapter 701 of Title 46 U.S.C, and 46 U.S.C. 70103(c)(4) subjects all security plans to review by the Secretary. Additionally, 46 U.S.C. 71013(c)(4)(D) requires the periodic verification of the effectiveness of an FSP. Recordkeeping requirements are authorized under those statutory provisions.

15. Other Comments

Seven commenters requested additional public meetings and greater coordination between the Coast Guard and affected industries as the TWIC program is implemented. Two commenters requested greater labor union input regarding the employee information collected and stored in the TWIC. One commenter requested greater Coast Guard collaboration with Congress, authorities from affected States, and Coast Guard advisory committees during the rulemaking process.

We will hold at least one public meeting in connection with this rulemaking and we are considering holding additional public meetings in connection with this rulemaking. The details of any future public meeting will be published in a separate notice in the **Federal Register**. We welcome the participation and comments of all interested parties.

Three commenters suggested that TWIC reader requirements should be tailored to enable integration with an existing PACS, since some owners and operators have invested substantial resources into existing systems. We agree with these commenters. In fact, data from the TWIC Pilot demonstrated that those pilot participants where TWIC readers were certified for operation with an existing PACS encountered fewer integration and operational and technical issues than other pilot participant systems. Accordingly, this NPRM proposes options for vessels and facilities to either use a stand-alone TWIC reader or to integrate TWIC into an existing PACS.

Two commenters requested additional information regarding the ANPRM's reference to alternate biometrics that may be used in connection with TWIC. This NPRM continues to propose two alternatives for biometric matching. Owners and operators may: (1) Use a TWIC reader to match the TWIC-holder's fingerprint to one of the fingerprint templates stored in the TWIC; or (2) use a PACS to match the TWIC-holder's biometric to the biometric stored in a PACS. For the latter option, owners and operators may use a different biometric than the fingerprint, such as an iris scan or hand geometry, stored in a PACS to be matched to the individual seeking access to secure areas. Since the implementation of the latter option would be unique to each vessel or facility, it would be impractical for us to propose a single set of prescriptive regulations for each owner and operator to follow. Instead, owners and operators would explain in their security plans the details of how their use of alternate biometrics performs the required access control functions.

Two commenters suggested that TWIC functionality should be enhanced to include other biometrics in addition to fingerprints. We believe that to enhance the features on the TWIC so that it includes other biometrics in addition to fingerprints would increase the costs associated with the TWIC program. We do not currently have data to show that the benefits of such an enhancement would justify those additional costs. Furthermore, the only standard for a biometric that the Federal government has published to date is the fingerprint biometric.[68]

One commenter suggested that the final TWIC reader rule should become effective only after a period of 24–36 months to enable owners and operators to adequately train employees and test their TWIC readers. We acknowledge that a period for TWIC reader training and testing is warranted. This NPRM proposes an effective date for compliance within 2 years after publication of a TWIC reader final rule in the **Federal Register**.

One commenter requested confirmation that the regulations are imposing minimum requirements, and that owners and operators be given discretion to implement higher standards. While we have sought to minimize costs in this rulemaking, owners and operators may impose security provisions that exceed the minimum regulatory requirements.

Three commenters suggested that vessels operating outside U.S. waters should not be required to use TWIC readers, citing concerns about disruptions at foreign ports due to the inability of foreign workers to access these vessels. We disagree with these comments and do not propose an exemption from TWIC reader requirements for vessels operating outside U.S. waters. Under existing regulation, all persons requiring unescorted access to secure areas of a MTSA-regulated vessel must possess a TWIC, regardless of whether the vessel is located in U.S. waters.[69] For any individual without a TWIC to access secure areas of a MTSA-regulated vessel, the individual must be authorized to be there and also be escorted by a TWIC-holder.

One commenter asked whether a non-U.S. citizen is eligible to obtain a TWIC. A list of certain non-U.S. citizens that are eligible to obtain a TWIC is available on TSA's Web site at *http://www.tsa.gov/sites/default/files/publications/pdf/twic/immigration_status_documents.pdf.*

Some commenters requested additional guidance for situations when TWIC readers or communication systems malfunction. In this NPRM, we propose that, in the event of a TWIC reader malfunction, individuals can still be granted unescorted access to secure areas for a period not to exceed 7 days, provided that the individual has been granted such unescorted access in the past and is known to possess a TWIC. Owners and operators expecting such occurrences should provide appropriate contingency planning in their security plans. We request comments from the public regarding whether 7 days is a sufficient amount of time in which to expect resolution of a typical TWIC reader or communication systems malfunction.

Four commenters requested further guidance with respect to how owners and operators would be required to process TWIC-holders with poor quality or no fingerprints. In such instances, we expect that the owner or operator would describe in their security plan the exception process they plan to use. The exception process may include PIN verification, alternative biometric verification, visual comparison of the digital photo stored in the TWIC to the presenter using a portable reader with a contact interface and releasing the photo to the reader screen by entering the 6-, 7-, or 8-digit PIN, or an alternative process proposed by the owner or operator and approved by the Coast Guard.

Three commenters argued that TWIC reader requirements at rail entrances to facilities would be impractical. These

[68] *See* National Institute of Standards and Technology (NIST) Special Publication 800–76–1, ''Biometric Data Specification for Personal Identity Verification,'' (January 2007), available at *http://csrc.nist.gov/publications/nistpubs/800–76–1/SP800–76–1_012407.pdf.*

[69] *See* 33 CFR 101.514.

commenters cited throughput delays, increased traffic, environmental concerns with increased emissions, costs of TWIC readers at seldom-used rail entrances, and security risks when rail workers leave their cargoes unattended to walk to the nearest TWIC reader.

We note that facilities could provide TWIC-holding escorts to rail workers, which is one way to alleviate these concerns. We also note that current regulations already require visual inspection of TWICs at rail entrances to secure areas of regulated facilities. The TWIC Pilot found that the increase in throughput delay resulting from a TWIC reader requirement is 2 seconds. Therefore, we do not believe a TWIC reader requirement at rail entrances to secure areas of Risk Group A facilities would lead to the results suggested by the commenters. While we seek to minimize the burdens associated with TWIC reader requirements, an exemption from such requirements at rail entrances would be inconsistent with the goal of the TWIC program to ensure that access to secure areas of the transportation system is limited to authorized individuals holding a TWIC.

One commenter suggested that TWIC-holders on all MTSA-regulated vessels and facilities should be required to visually display their TWICs, similar to the requirement at federally regulated airports. Another commenter opposed such a requirement, citing concerns that this practice might increase the number of lost TWICs.

In keeping with the longstanding tradition that seafarers keep their mariner credentials and other important documents on the bridge or stored in a secure place, this NPRM does not propose to require TWIC-holders to display their credentials at all times. Existing Coast Guard guidance acknowledges that such a requirement may not be practical in the marine environment.[70] Owners and operators are permitted to collect and store all crewmember TWICs in the vessel's pilot house or allow for TWICs to be stored in another secure location on board the vessel or at the facility.

*F. TWIC Reader Pilot Program*

This section discusses the background and findings of DHS's TWIC Pilot on TWIC reader functionality in the maritime sector. A copy of the TWIC Pilot report, as well as the GAO reports discussed below, are available for viewing in the public docket for this rulemaking. The Coast Guard seeks comments on the following characterizations of the TWIC Pilot, the Coast Guard's conclusions from the TWIC Pilot, and how the Coast Guard used the findings from the TWIC Pilot to inform the NPRM.

1. Background

The TWIC Pilot was established under Section 104 of the SAFE Port Act, and was designed to evaluate the business processes, technology, and operational impacts of implementing a TWIC reader system. The SAFE Port Act required the Secretary to conduct the TWIC Pilot at not fewer than five distinct geographic locations, and include vessels and facilities in a variety of environmental settings.[71] DHS conducted the TWIC Pilot in seven geographic locations, and covered five participant groups: (1) Container terminals; (2) large passenger vessels and terminals with more than 500 passengers; (3) break-bulk terminals; (4) petroleum facilities; and (5) small passenger vessels, towboats, and other facility types. DHS managed the TWIC Pilot through the joint participation of TSA and the Coast Guard, with grant funding provided by the Federal Emergency Management Administration through the Port Security Grant Program.

The TWIC Pilot consisted of three phases. In Phase 1 (Initial Technical Testing), DHS tested TWIC readers under controlled laboratory conditions to verify that the TWIC readers correctly processed biometric information from the TWIC, and could also perform other TWIC verification and validation operations in maritime environments.

In Phase 2 (Early Operational Assessment) DHS required pilot participants to install TWIC readers and begin using them. This phase allowed both TWIC-holders and security personnel to become familiar with TWIC readers and different operational modes. It also provided an opportunity to evaluate the initial technical performance of TWIC readers in maritime settings, and to address problems.

Phase 3 (System Test and Evaluation) required pilot participants to verify the identities of individuals granted unescorted access to secure areas based on potential requirements as set forth in the ANPRM. Data collected during Phase 3 included: (1) Impacts of the biometric verification process on vessel and facility operations; (2) measurement of wait times for access to secure areas; (3) TWIC reader and infrastructure failures and maintenance requirements; and (4) implementation and operating costs.

TSA completed data collection for the TWIC Pilot as of May 31, 2011. The SAFE Port Act required the Secretary to " * * * submit a comprehensive report to the appropriate congressional committees * * * that includes: (A) The findings of the pilot program with respect to technical and operational impacts of implementing a transportation security card reader system; (B) any actions that may be necessary to ensure that all vessels and facilities * * * are able to comply with [TWIC reader] regulations; and (C) an analysis of the viability of equipment under the extreme weather conditions of the marine environment." DHS submitted the TWIC Pilot report to Congress on February 27, 2012.

2. General Findings

The TWIC Pilot noted a number of benefits associated with the use of TWIC readers. First, when used properly, TWIC readers provide an additional layer of security by reducing the risk that an unauthorized individual could gain access to a secure area. Owners and operators using TWIC readers can achieve this security risk reduction without significantly increasing throughput times at access points. Second, security is further enhanced by enabling owners and operators to assign access privileges to a specific, limited population of TWIC-holders. Finally, vessels and facilities using the TWIC as a site access token, in addition to as a means of identification, may benefit financially through the reduction of card management operational costs associated with identity vetting, card inventory, printing equipment, and issuance infrastructure.

The TWIC Pilot also elicited a number of operational challenges and lessons learned. Although the TWIC Pilot provided the most complete information available regarding the costs associated with large-scale TWIC reader implementation and integration for access control available, we note some limitations regarding the TWIC Pilot data. We were not able to obtain data from a statistically representative sample of the affected population of MTSA-regulated vessels and facilities affected by this proposed rule because the TWIC Pilot was a voluntary program. As such, it was necessary to extrapolate the findings of the TWIC Pilot across the entire affected population. There were also some variations as to how individual pilot participants reported their data to TSA, which made some data manipulations

[70] *See* Navigation and Vessel Inspection Circular (NVIC) No. 03–07, "Guidance for the Implementation of the Transportation Worker Identification Credential (TWIC) Program in the Maritime Sector," (July 2, 2007).

[71] 46 U.S.C. 70105(k)(1)(B).

more difficult. Also, some of the cost reporting included costs that were not directly related to TWIC readers, but rather general physical security, and these were included in the pilot participants' cost estimates.

Additionally, while not all of the TWIC Pilot participants were in Risk Group A, using the costs associated with TWIC reader deployment at facilities not in Risk Group A does not adversely affect our overall estimates. Potential TWIC reader implementation costs should not differ greatly across risk groups, as the size and geography of a facility is independent of its risk grouping. The key difference between the risk groups is the potential consequences of a TSI at a particular facility, not the costs associated with potential TWIC reader deployment.

Since the passage of MTSA in 2002, the United States Government Accountability Office (GAO) has published a number of reports regarding implementation of the TWIC program, highlighting both progress and limitations. Copies of these reports are available for viewing on the GAO Web site at *www.gao.gov,* by clicking on the ''Reports & Testimonies'' tab, and using ''TWIC'' as your keyword search term, as well as in the docket. The GAO has conducted a review of the TWIC Pilot, highlighting some of the same limitations with respect to the quality of TWIC Pilot data we have described above. While we acknowledge that the TWIC Pilot contained certain data limitations, the TWIC Pilot provided the most detailed and wide-spread assessment of the impacts of deploying TWIC readers in the maritime sector to date. The TWIC Pilot provided useful data with respect to the costs associated with installing and integrating TWIC readers at facilities, as well as valuable TWIC-holder population data and TWIC reader failure rates, as experienced during the TWIC Pilot. As discussed below in Section III.H. ''Additional Data Sources,'' we supplemented TWIC Pilot data with other data sources as necessary to provide the most accurate estimates for cost and benefit possible. In accordance with 46 U.S.C. 70105(k)(3), the proposals in this NPRM are consistent with the findings of the TWIC Pilot.

The TWIC Pilot generally found that when TWIC readers are designed, installed, and operated in a manner consistent with the business considerations of the vessel or facility, they function properly. Conversely, the TWIC Pilot also noted a number of operational and technological difficulties that affected overall success at many pilot locations. The proposals in this NPRM are designed to be consistent with the findings of the TWIC Pilot.

3. Specific Challenges and Lessons Learned

The TWIC Pilot noted that processing delays at access points were sometimes compounded by user unfamiliarity with the TWIC authentication process. It is important to note that when a user is properly trained and acclimated to interface with the TWIC reader, transaction times decrease considerably. In this NPRM, we have included a 2-year compliance deadline for TWIC reader implementation to allow adequate time for proper training.

The TWIC Pilot noted that training requirements were often underestimated by TWIC Pilot participants. Additionally, TWIC-holders experienced challenges becoming familiar with different TWIC reader modes and processes. Switching among different TWIC reader modes complicated the learning process, impacting the efficiency of TWIC reader use. Additionally, TWIC-holders had difficulty interfacing with TWIC readers from multiple manufacturers with differing designs and user interfaces. Finally, some TWIC-holders presented the wrong finger, or did not hold their finger on the fingerprint sensor long enough to complete the transaction. These occurrences impeded operations and increased throughput times. In this NPRM, we have included a 2-year compliance deadline for TWIC reader implementation to allow adequate time for proper training.

The TWIC Pilot noted certain challenges that arose when using portable TWIC readers. At facilities where workers are required to enter and exit secure areas multiple times over short periods, it was particularly challenging to maintain biometric checks using portable readers. Additionally, some portable TWIC readers malfunctioned when used carelessly in wet conditions not aligned with vendor guidance. In this NPRM, we do not specifically require the use of portable TWIC readers. Instead, we take a flexible approach by allowing owners and operators to choose the type of TWIC readers that best suit their operational needs.

The TWIC Pilot noted that while some TWIC readers performed well throughout the TWIC Pilot, others were not as mature technologically or required adjustments. In one case, the TWIC readers repeatedly failed and had to be replaced by another vendor. We expect these challenges to be mitigated in the future because TSA is developing the QTL so that approved readers meet durability standards.

The TWIC Pilot noted that the ability of TWIC readers to work properly depends, in part, on a functioning TWIC card. In response, TSA established an Integrated Product Team (IPT) in conjunction with DHS that is continuing to review the nature and prevalence of non-functioning TWIC cards and seeking ways to resolve these technical issues.

The TWIC Pilot noted TWIC reader installation delays at some facilities where TWIC systems integrators were unfamiliar with other components of multi-functional systems. In this NPRM, we have included a 2-year compliance deadline for TWIC reader implementation to allow facilities and security personnel adequate time for proper training.

The TWIC Pilot noted challenges with respect to the registration of authorized TWIC-holders in a PACS. The registration process proved to be time-consuming. Some TWIC Pilot participants that were located within the same geographical region chose to operate using a regional registration database. This was a successful way to populate their various PACS. One factor that led to delays was the decision by some facilities to require TWIC-holders to enter their PIN as part of the registration process. Since many TWIC-holders rarely, if ever, used their PIN since activating their TWIC, some workers could not remember their PIN. These workers then had to visit a TWIC enrollment center to reset their PIN and return to the facility to complete the registration process. This NPRM does not propose to require facilities to register authorized TWIC-holders by requiring them to enter their PIN.

The TWIC Pilot noted that some participants failed to grant TWIC-holder rights to specific access points, which increased the number of invalid transactions using TWIC readers. Developing standard operating procedures to assign access privileges should mitigate this issue.

The TWIC Pilot noted that TWIC reader system architecture played a significant role in overall technical efficiency, performance, and throughput times. The TWIC Pilot participant with a dedicated network only used by TWIC readers and PACS showed faster transaction times, higher validation rates, and fewer technical issues than other TWIC Pilot participants. System configurations that used hard wired networks were more efficient with respect to network speed and availability than wireless networks. Systems that included TWIC readers

within the security architecture encountered fewer operational issues. Finally, TWIC reader implementation costs were lower if facilities were able to use existing infrastructure. We encourage the regulated population to take note of these lessons learned. Additionally, in this NPRM, we take a flexible approach by allowing owners and operators to choose the type of TWIC readers that best suit their operational needs.

The TWIC Pilot found that a consistent experience on the part of TWIC-holders and security personnel enhanced the efficiency of TWIC reader use. TWIC-holders who reported to the same facility on a daily basis had a consistent user experience and learned to interface with TWIC readers quickly. TWIC-holders whose work required them to access multiple facilities, however, experienced challenges becoming familiar with TWIC readers from several manufacturers with different designs and interfaces, as well as many site-specific business processes and requirements. Different TWIC reader ergonomics found at different access points further compounded these challenges. For example, truck drivers visiting several facilities encountered TWIC readers that were sometimes placed at awkward heights or distances, making the readers difficult to reach.

The TWIC Pilot tested both fixed and portable TWIC readers in different modes of operation. In contactless mode, the card is scanned by holding it within 4 inches of the TWIC reader. In contact mode, the card must be inserted into a slot that allows direct contact between the TWIC reader and the chip embedded in the TWIC. The TWIC Pilot found that when contactless TWIC readers are used in a non-biometric mode to verify that the card is authentic, has not expired, and is not on the CCL, and in a manner consistent with their intended environment, access point throughput times were less than throughput times required to visually inspect TWICs. When used in non-biometric mode, however, it is also necessary to visually compare the photograph on the TWIC to the TWIC-holder. Although adding a biometric match to the above TWIC reader functions may take slightly longer than mere visual inspection, the TWIC Pilot did not find that the resulting access point throughput delays impacted business operations. Nonetheless, using TWIC readers in the biometric mode significantly increases the assurance that only TWIC-holders are permitted to access secure areas.

The TWIC Pilot also found that fixed readers with both contact and contactless interfaces yielded a higher validation rate than fixed readers that only used the contactless interface to read the TWIC. A contact read required the TWIC to be inserted into the contact slot of the TWIC reader, which reduced the potential for incorrectly placing the TWIC, and provided an alternative to the TWIC's internal antennae.

A successful contactless read requires the user to hold the card motionless on or near the surface of the TWIC reader for approximately 2 seconds, which was not initially understood by many pilot participants. As a remedial measure, the posting of explanatory diagrams helped overcome this problem. The TWIC Pilot found that switching between different TWIC reader modes created a confusing process for TWIC-holders and had a negative impact on the efficiency of TWIC reader use.

Accordingly, the proposals in this NPRM enable owners and operators to use fixed or portable, contact or contactless TWIC readers in a single mode of operation as much as possible. Each owner or operator would have the discretion to configure a system that best suits the vessel or facility.

The TWIC Pilot found that facilities with an existing PACS that could be easily adapted to incorporate TWIC reader technology took less time to install than facilities without that existing infrastructure. Consistent with that finding, this NPRM allows for the integration of TWIC reader technology into an existing PACS.

The TWIC Pilot found that geographic location did not affect the efficiency of TWIC reader functionality. The TWIC Pilot found, however, that at varying locations, some TWIC readers experienced difficulty scanning fingerprints in inclement weather. Fully encapsulated fixed contactless TWIC readers withstood harsh weather, whereas contact TWIC readers, and TWIC readers exposed to the elements were sensitive to inclement weather conditions. Throughout the TWIC Pilot, the conditions under which TWIC readers had to perform were significantly more challenging than those commonly found at entrances to office buildings and other more controlled locations and environments. The TWIC Pilot demonstrated that TWIC readers installed in harsh environments will occasionally be contaminated with debris, and a maintenance program to perform regular inspections and cleaning cycles is necessary. The TWIC Pilot noted, however, that most of the challenges associated with weather can be overcome with proper planning that takes environmental conditions into consideration. Proper planning means that a facility's business practices will be useful in determining which type of TWIC readers and accompanying infrastructure to use. For example, if an access point is exposed to direct sunlight, the facility can mitigate glare by using an awning or hood. If an access point is exposed to harsh weather, the facility may wish to use an encapsulated fixed TWIC reader or instead use a portable TWIC reader that is kept inside a nearby security guard booth.

TSA is developing the QTL so that approved readers meet durability standards. Additionally, in this NPRM, we're proposing requirements that provide owners and operators the flexibility to choose the TWIC reader that best suits their operational needs.

*G. HSI Report*

This section summarizes the analysis and recommendations provided by HSI after evaluating the risk-based approach that formed the basis of the proposals in the ANPRM. A non-SSI version of the HSI Report is available for viewing in the public docket for this rulemaking.

Prior to publishing the ANPRM, we developed a risk-based approach based on MSRAM, to inform our proposals for more stringent TWIC reader requirements on higher-risk vessels and facilities. We engaged HSI to obtain an independent peer review of our analysis. HSI is a federally funded research and development center established by the Secretary, pursuant to Section 312 of the Homeland Security Act of 2002 (Pub. L. 107–296). On October 21, 2008, HSI issued a final report, titled ''Independent Verification and Validation of Development of Transportation Worker Identification Credential (TWIC) Reader Requirements'' (HSI Report). The HSI Report provided information and recommendations that were useful in formulating the proposals in this NPRM.

The HSI Report verifies that our AHP/MSRAM analysis matches the way we described it, and that its findings can be reproduced. The HSI Report also validates that our AHP/MSRAM analysis is technically sound. While the HSI Report suggests that some adjustments to the results of our analysis might be necessary, the report concludes that our methodology is appropriate for establishing the risk ranking of vessels and facilities set forth in the ANPRM.

The HSI Report notes that Risk Group A is well defined, but the distinction between Risk Groups B and C is not as clear. The HSI Report also notes that, while adjustments could be suggested with respect to the ANPRM's proposed

TWIC reader requirements, the overall risk-based approach to specifying the TWIC reader requirements is fundamentally sound. The HSI Report recommends that we consider further analysis of how to best group vessels and facilities into appropriate risk-based categories.

Our proposals in this NPRM are consistent with the above conclusions and recommendations. Whereas the ANPRM proposed different TWIC requirements for Risk Groups B and C, this NPRM proposes the same TWIC requirements for both of those risk groups. We expect to continue analyzing the risk rankings to determine whether alternative or additional considerations would yield more appropriate risk groupings and corresponding TWIC requirements. As noted earlier, if the Coast Guard changes the risk groupings, it will be done through rulemaking and the public will have an opportunity to comment.

The HSI Report also recommends that we consider better defining the concept of TWIC utility. As used in the context of the AHP/MSRAM analysis, TWIC utility accounts for the reduced risk to a vessel or facility due to TWIC implementation. The HSI Report acknowledges that a clearer definition of this concept may require analysis of each individual vessel and facility, which would substantially expand the scope of the process of developing TWIC reader requirements. The HSI Report suggests that we consider an approach that combines general analyses of broad risk groups with specific analyses of individual vessels and facilities. We are considering the feasibility of implementing this recommendation.

The HSI Report recommends that we consider adding flexibility to TWIC reader requirements by providing a process through which owners and operators may seek a waiver of TWIC reader requirements based on the unique features of a specific vessel or facility. The rationale for this recommendation is that while TWIC reader requirements apply to an entire risk group, each risk group is comprised of a range of types of vessels and facilities with fundamentally different security systems. In response to this recommendation, we note that waiver provisions already exist in current 33 CFR 104.130, 105.130, and 106.125. These provisions enable an owner or operator to apply for a waiver of any requirement that the owner or operator considers unnecessary in light of the nature or operating conditions of a vessel or facility.

The HSI Report recommends that we consider using dynamic consequence data instead of the static maximum consequence data currently used as part of the MSRAM analysis. The rationale for this recommendation is that maximum consequence would necessarily change depending on how vessels and facilities are used. For example, a cruise ship terminal would have a different maximum consequence when cruise ships are docked at the facility, as opposed to when the port is empty. We believe that, due to the amount and complexity of dynamic consequence data, obtaining such data would not be feasible. Furthermore, use of dynamic consequence data would eliminate or at least dramatically reduce the predictability of regulatory requirements, and would likely not reduce costs significantly, as most costs would be borne anyway. Nonetheless, we are considering the feasibility of implementing this recommendation.

*H. Additional Data Sources*

TWIC Pilot data was supplemented with other data sources as necessary to provide the most accurate estimates for cost and benefit possible. Other data sources included the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database for population figures, MSRAM for risk hierarchy and consequence data, the General Services Administration schedule for TWIC reader hardware and software costs, Environmental Protection Agency data for estimates for truck throughput, and contracted studies for general discussion points on access control systems. For a more detailed discussion on the use of this data, please refer to the ''Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis,'' which is available in the public docket for this rulemaking. The Coast Guard seeks public comment on whether or not there are additional data sources that should be considered. If there are, please include information in your comments about these data sources and the reason for their relevance.

*I. Advisory Committee Input*

This section discusses the input we received from advisory committees in connection with this rulemaking.

The Coast Guard has a long tradition of consulting with its advisory committees before taking regulatory action. We acknowledge the benefit of consulting with advisory committees. Prior to issuing the ANPRM, we sent a task statement to MERPAC, NMSAC, and TSAC, asking 18 questions related to TWIC reader requirements. This task statement is available for viewing in the public docket for this rulemaking. We accepted and incorporated a number of the advisory committee recommendations into the ANPRM and this NPRM. For example, we incorporated TSAC's recommendation to set the crew size cutoff number at 14 for determining when to exempt vessels from TWIC reader requirements as discussed more fully below in Section IV.E. ''TWIC Reader Exemption for Vessels With 14 or Fewer TWIC-holding Crewmembers.'' Both NMSAC and MERPAC recommended that we wait for completion of the TWIC Pilot before publishing an NPRM on TWIC reader requirements. MERPAC recommended against requiring owners and operators to verify TWIC-holder PIN information. MERPAC also recommended that low risk vessels and facilities should not be subject to TWIC reader requirements. These are some examples of the advisory committee recommendations we incorporated into this NPRM. We greatly appreciate advisory committee input into this program. Copies of each advisory committee's formal recommendations and responses to the task statement are available for viewing in the public docket for this rulemaking.

## IV. Section-by-Section Description of Proposed Rule

This section provides a discussion of the regulations we propose in this NPRM, which include: updated definitions relevant to this rulemaking; a provision on the Federalism issues associated with the Coast Guard's maritime security regulations; TWIC reader and inspection requirements for Risk Groups A, B, and C, applicable in both normal and special circumstances; deadlines for compliance with the proposed regulatory requirements; TWIC reader recordkeeping requirements; TWIC-related risk group classifications for vessels and facilities; requirements for the physical placement of TWIC readers; and several technical amendments to the regulations.

We note that, if finalized, the proposed regulations would be subject to the control and compliance measures in 33 CFR 101.410, which give the COTP authority to impose measures to rectify non-compliance. The proposed regulations would also be subject to the relevant civil and/or criminal penalties in 33 CFR 101.415 for violations of any provision in 33 CFR subchapter H.

*A. Definitions*

We propose to amend 33 CFR 101.105 by adding several new defined terms.

The term ''biometric match'' would mean a confirmation that: one of the two

biometric (fingerprint) templates stored in the TWIC matches the scanned fingerprint of the person presenting the TWIC; or the alternate biometric stored in a PACS matches the corresponding biometric of the person.

The term ''Canceled Card List (CCL)'' would mean the list of TWIC Federal Agency Smart Credential-Numbers that have been invalidated or revoked because TSA has determined that the TWIC-holder may pose a security threat, or because the card has been reported lost, stolen, or damaged.

The term ''card authentication'' would mean the electronic verification that the card presented is a valid TWIC issued by TSA.

The term ''Card Holder Unique Identifier (CHUID)'' would mean the standardized data object comprised of the FASC–N, globally unique identifier, expiration date, and certificate used to validate the data integrity of other data objects on the credential.

The term ''card validity check'' would mean the verification that a TWIC has not been revoked or expired.

The term ''Mobile Offshore Drilling Unit (MODU)'' is defined by reference to 33 CFR 140.25.

The term ''Offshore Supply Vessel (OSV)'' is defined by reference to 46 CFR 125.160.

The term ''Physical Access Control System (PACS)'' would mean a system that includes devices, personnel, and policies that controls the access to and within a facility or vessel.

The term ''Risk Group'' would mean the risk ranking assigned to a vessel, facility, or OCS facility for the purpose of TWIC requirements.

The term ''TWIC reader'' would mean an electronic device used to verify and validate: the authenticity of a TWIC; the identity of the TWIC-holder as the legitimate bearer of the credential; that the TWIC is not expired; and that the TWIC is not on the CCL. The term is specifically defined by reference to TSA's Qualified Technology List of acceptable TWIC readers, because only those devices meet TSA's required specifications.

We propose to amend 33 CFR 101.105 by deleting the term ''recurring unescorted access''. This term was included in 33 CFR 101.105 as part of the TWIC 1 final rule, though we determined at that time to defer implementing TWIC reader requirements. RUA was initially proposed to provide relief to owners and operators of vessels otherwise required to use TWIC readers, because of the familiarity that exists between a relatively small number of crewmembers. Two important changes in approach from the ANPRM to this NPRM render RUA an unnecessary provision. First, this NPRM proposes to exempt from TWIC reader requirements all vessels with 14 or fewer TWIC-holding crewmembers, based on the SAFE Port Act's provision that prohibits requiring TWIC readers on vessels that the Secretary has determined do not have the requisite number of TWIC-holders as crewmembers.[72] This exemption provides relief equivalent to that which RUA would have provided. Second, whereas the ANPRM proposed to require TWIC readers for Risk Groups A and B, this NPRM proposes to require TWIC readers for Risk Group A only. This change reduces the number of vessels and facilities to which TWIC reader requirements would apply, and renders the need for RUA as a mechanism for regulatory relief unnecessary.

*B. Federalism*

A Presidential Memorandum, dated May 20, 2009, entitled ''Preemption,''[73] requires an agency to codify a preemption provision in its regulations if the agency intends to preempt State law. We propose to add new 33 CFR 101.112, providing a statement regarding the preemption principles that apply to 33 CFR subchapter H.

We believe the field-preemption Federalism principles articulated in *United States* v. *Locke* and *Intertanko* v. *Locke*[74] apply to 33 CFR parts 101, 103, 104, and 106. Therefore, States and local governments are foreclosed from regulating within this field. We believe the Federalism principles articulated in *Locke* also apply to 33 CFR part 105, at least insofar as a State or local law or regulation applicable to MTSA-regulated facilities for the purpose of their protection, would conflict with a Federal regulation (i.e., it would either actually conflict or would frustrate an overriding Federal need for uniformity).

*C. Additional Persons Required To Obtain TWICs*

This NPRM withdraws the ANPRM's proposal to include non-credentialed individuals engaged on towing vessels not regulated under 33 CFR part 104 among the list of mariners required to possess a TWIC. We seek public comment on the number of vessels pilots without a Federal license, and whether a specific provision to include them in the regulatory requirement to obtain a TWIC is necessary.

In the ANPRM, we proposed to explicitly require non-Federally licensed vessel pilots and non-credentialed individuals engaged on towing vessels not regulated under 33 CFR part 104 to possess a TWIC. The purpose of this proposal was to update the regulations to more thoroughly incorporate the list of individuals required by 46 U.S.C. 70105(b) to possess a TWIC.

Subsequent developments have caused us to withdraw part of the ANPRM's proposal. Section 809 of the CGAA 2010 authorized the Secretary to exempt any credentialed mariner who is not granted unescorted access to secure areas of a vessel from the requirement to possess a TWIC. On December 19, 2011, the Coast Guard's Office of Vessel Activities (CG–543) published Policy Letter No. 11–15,[75] describing both policy and forthcoming regulatory solutions that we are undertaking to implement Section 809. Policy Letter No. 11–15 contains exemptions for certain mariners from the requirement to obtain or hold a TWIC. Exempt mariners would include mariners not operating under the authority of a credential and mariners serving on a vessel not required to have a Vessel Security Plan. These are mariners that the ANPRM's proposal would have explicitly included among the list of mariners required to obtain a TWIC.

In light of Section 809 and related Coast Guard regulatory action, this NPRM withdraws the ANPRM's proposal to include non-credentialed individuals engaged on towing vessels not regulated under 33 CFR part 104 among the list of mariners required to possess a TWIC. Additionally, while there may be some vessel pilots that do not hold Federal licenses, we have not determined whether there is a population of State-licensed vessel pilots that are not otherwise required to obtain a TWIC because they access secure areas of MTSA-regulated vessels. We seek public comment on this subject, and whether a specific provision to include them in the regulatory requirement to obtain a TWIC is necessary. If there is a population of State-licensed vessel pilots not covered under the current regulatory requirement to obtain a TWIC, we intend to revise 33 CFR 101.514 to cover that population.

[72] 46 U.S.C. 70105(m)(1).

[73] 74 FR 24693.

[74] 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).

[75] CG–543 Policy Letter No. 11–15, ''Processing of Merchant Mariner Credentials (MMC) For Mariners Not Requiring a Transportation Worker Identification Credential,'' available for viewing at *https://homeport.uscg.mil/*.

*D. TWIC Reader Requirements for Risk Group A*

We propose to add new 33 CFR 101.520 that sets forth the TWIC reader requirements for Risk Group A. We have determined that owners and operators of vessels or facilities in Risk Group A should be required to implement the TWIC's most protective measures using a TWIC reader or TWIC-integrated PACS.

At MARSEC Level 1, all persons seeking unescorted access to secure areas would be required to present a TWIC and fingerprint for biometric identity verification, card authentication, and card validity check. The owner or operator would be required to perform the card validity check based on CCL information no more than 7 days old. The owner or operator may perform these functions using a TWIC reader or a TWIC-integrated PACS. If using a PACS, biometrics other than fingerprints may be used to perform the identity verification, provided that the owner or operator links the person, the TWIC, and the alternate biometric in the PACS. To do this, the owner or operator would be required to perform a one-time biometric match and card authentication using a TWIC reader. Owners or operators would be required to explain in their security plans how the PACS performs the required security functions and how the SSI captured by the PACS is protected.

At MARSEC Level 2, the same procedures would apply as those at MARSEC Level 1, except that the owner or operator would be required to perform the card validity check based on CCL information no more than 1 day old. The heightened security threats present at elevated MARSEC Levels justify this additional requirement.

We propose two additional provisions in 33 CFR 101.520 to ensure that CCL information is updated and used appropriately. First, owners and operators would be required to update CCL information within 12 hours of any increase in MARSEC Level, regardless of when the CCL information was last updated. Second, owners and operators would be required to use the most recently obtained CCL information when conducting card validity checks.

Finally, we propose a provision in 33 CFR 101.520 that would authorize the COTP to temporarily suspend TWIC reader requirements at a facility if the COTP determines that such requirements are causing delays resulting in excessive vehicle build-up or other unintended consequence. A facility owner or operator could contact the COTP seeking such a determination. During the period of any such suspension, the owner or operator would be required to perform visual TWIC inspections for identity verification, card authentication, and card validation.

*E. TWIC Reader Exemption for Vessels With 14 or Fewer TWIC-Holding Crewmembers*

We propose to add new 33 CFR 101.520(e), exempting all vessels with 14 or fewer TWIC-holding crewmembers from TWIC reader requirements. The statutory basis for this exemption is the SAFE Port Act provision that prohibits the Secretary from requiring TWIC readers on a vessel unless the vessel has more individuals on the crew required to have a TWIC than the number the Secretary determines warrants such a reader.[76] The underlying rationale for this exemption is that vessels with a small enough number of TWIC-holders on board have a reduced TSI vulnerability from unauthorized access because the small number of crewmembers are easily recognizable and known to one another. We propose 14 as the cutoff number based on a recommendation from TSAC. According to TSAC, vessels with 14 or fewer crewmembers have a reduced vulnerability because the individuals are all ''known'' to one another. The number was developed by taking into account the fact that for a small vessel, such as a towing vessel or offshore supply vessel, the crew would typically include up to one Master, one Chief Engineer, and three four-person crews who rotate through watch shifts.

We seek public comment on this proposal to exempt all vessels with 14 or fewer TWIC-holding crewmembers from TWIC reader requirements, including whether 14 is an appropriate cut-off number. We request that commenters please explain and provide available data to support their comments.

We recognize that, particularly for smaller vessels such as towing vessels, the value of electronic identity verification is less than it is for facilities, which generally interact with greater numbers of vendors, visitors, and facility employees. For this reason, and because TWIC readers are only proposed for Risk Group A, we believe it is neither appropriate nor necessary to exempt facilities with 14 or fewer TWIC-holders from TWIC reader requirements.

[76] 46 U.S.C. 70105(m).

*F. TWIC Inspection Requirements for Risk Groups B and C*

We propose to add new 33 CFR 101.525 and 101.530 that set forth the TWIC visual inspection requirements for Risk Groups B and C, respectively. In this NPRM, we are not proposing TWIC reader requirements for vessels and facilities in Risk Groups B and C. We believe the overall approach in this proposed rule would implement the TWIC reader program in a targeted manner that enhances the security of MTSA-regulated vessels and facilities without imposing undue burdens. We request public comment on this determination.

At all MARSEC Levels, all persons seeking unescorted access to secure areas of vessels or facilities in Risk Groups B or C would be required to present a TWIC for visual identity verification, card authentication, and card validity check, prior to each entry. An owner or operator would perform identity verification by visually matching the photograph on the TWIC to the individual presenting it. An owner or operator would verify TWIC authenticity by visually checking its security features to determine whether it has been tampered with or forged. An owner or operator would validate the TWIC by visually checking the expiration date on the face of the TWIC to determine whether it has expired. Owners and operators of vessels or facilities in Risk Groups B and C would not be required to check TWICs against the CCL.

As discussed above in Sections II. and III. above, we are considering a phased approach to implementing TWIC reader requirements by proposing such requirements first for vessels and facilities in Risk Group A, where the risk of harm is greatest. We have estimated that for Risk Group A, the ratio of annualized cost of TWIC reader requirements to average consequence figures (the monetized costs of fatalities and injuries resulting from a TSI) warrants the TWIC reader requirements proposed in this NPRM. For Risk Group B, we believe the estimated ratio of annualized cost of TWIC reader requirements to average consequence figures supports our phased approach. We will continue to analyze risk data and consider whether additional or modified TWIC reader requirements would be warranted in the future. For a more detailed discussion of the costs and benefits of the proposals in this NPRM, please refer to Section V., ''Regulatory Analyses'' below.

The proposed TWIC inspection requirements in 33 CFR 101.525 and

101.530 would be minimum requirements. We have included proposed regulatory provisions stating that owners and operators would have the discretion to impose access control measures that are stricter than the minimum regulatory requirements.

Although this NPRM proposes the same substantive TWIC inspection requirements for Risk Groups B and C, these requirements appear in separate sections because we are continuing to gather data and analyze whether different requirements would be appropriate for these risk groups. Any such modifications would be proposed in a separate rulemaking document, with the opportunity provided for public comment.

*G. TWIC Inspection Requirements in Special Circumstances*

We propose to add new 33 CFR 101.535 that sets forth TWIC inspection requirements in special circumstances. These provisions are designed to provide an appropriate level of flexibility in the TWIC reader and inspection requirements when special circumstances arise.

If an individual is unable to present a TWIC because it has been lost, damaged, or stolen, and the individual has previously been granted unescorted access to secure areas and is known to have previously possessed a TWIC, an owner or operator would be permitted to grant the individual unescorted access to secure areas for a period of no longer than 7 consecutive days, provided that the following conditions are met: (1) The individual has reported the TWIC as lost, damaged, or stolen to TSA as required in 49 CFR 1572.19(f); (2) the individual presents another identification credential that meets the requirements of 33 CFR 101.515; and (3) there are no other suspicious circumstances associated with the individual's claim of loss or theft. With the exception of these individuals, all others who are granted unescorted access to secure areas would be required to produce their TWIC upon request from TSA, the Coast Guard, any other authorized DHS representative, or a law enforcement officer.

If an individual cannot present a TWIC for any reason other than those outlined in the immediately preceding paragraph, the individual may not be granted unescorted access to secure areas. In order to access secure areas, the individual would need to be escorted by a TWIC-holder authorized to be in the secure area.

In some instances, when an individual has poor quality fingerprints, a TWIC reader may not be able to consistently perform the biometric identity verification function. Also, a small number of TWICs will be issued that contain either poor quality fingerprint templates, mostly due to badly damaged fingers, or no fingerprint minutiae, in the case of amputations. We expect owners and operators to describe the exception handling process to be used in such cases in their security plans. The exception handling process may include granting unescorted access after the individual has successfully provided a PIN. Alternatively, an owner or operator may require the individual to present an alternative biometric, such as a retina scan or other biometric that has been incorporated into a PACS.[77]

If a TWIC reader malfunctions, an owner or operator would still be permitted to grant the individual unescorted access to secure areas, provided that certain conditions are met. First, the individual would be required to have previously been granted unescorted access to secure areas in the past, and the individual would be required to be known to have a TWIC. Second, the owner or operator would be required to perform identity verification, card validation and card authentication by visual inspection. An owner or operator may rely on this alternative for a period of 7 calendar days while the TWIC reader malfunction is corrected.

TWIC requirements in 33 CFR 104.265, 105.255, and 106.260 currently contain provisions regarding disciplinary measures to prevent fraud and abuse, coordination of access control with other vessels and conveyances, and security plan requirements. We propose to relocate those provisions to 33 CFR 101.535(f)-(h).

*H. Compliance Deadlines*

We propose to amend 33 CFR 104.115 and 105.115 to set forth the required compliance deadlines with respect to TWIC reader requirements. Within 2 years after publication of the TWIC reader final rule, owners and operators would be required to be operating in accordance with the requirements contained in that final rule. Also, within 2 years after publication of the TWIC reader final rule, owners and operators would have to amend their security plans to indicate how they implement the TWIC reader requirements contained in the applicable sections of 33 CFR parts 101, 104, and 105.

In the ANPRM, we were not proposing to amend the section on ASPs to require amendments within 2 years of the final rule. Instead, in the ANPRM, we said we would exercise our authority under 33 CFR 101.120(d)(1)(ii) to require those entities using ASPs to amend them to incorporate TWIC requirements. For the purpose of consistency with the other vessels and facilities subject to 33 CFR parts 104, 105, and 106, this NPRM eliminates the ANPRM's proposed approach to treat entities with approved ASPs differently. Accordingly, this NPRM proposes to require entities to update their ASPs in the same manner and on the same schedule as the other vessels and facilities subject to 33 CFR parts 104, 105, and 106.

We recognize that in addition to this NPRM, there are a number of ongoing Coast Guard rulemakings (e.g., *Updates to 33 CFR Subchapter H: Maritime Security* (RIN 1625–AB30) and *Consolidated Cruise Ship Security Measures* (RIN 1625–AB38)) that could affect vessel, facility, and OCS facility security plans in the near future. In 2011, a majority of facilities that would be subject to these proposed requirements already updated and submitted for approval security plans in accordance with 33 CFR subchapter H. If each of the ongoing rulemaking projects required an update to security plans, there could be a significant increase in workload for owners and operators, as well as at the Coast Guard Marine Safety Center, Districts, and Sectors. We are currently examining several options to coordinate the rulemakings and manage the plan submission and re-approval process to ensure that plan changes occur only as often as necessary to incorporate any new regulatory requirements. While this NPRM proposes a 2-year deadline for updated security plans, we invite comments or suggestions from the public on how to streamline and reduce the level of effort for all stakeholders.

*I. Recordkeeping*

We propose to amend 33 CFR 104.235 and 105.225 to set forth TWIC reader recordkeeping requirements. These recordkeeping requirements would apply when TWIC readers are used, and not in the special circumstances described in the proposed regulations when the owner or operator is permitted to rely on visual TWIC inspection. Owners and operators using TWIC readers, with or without a PACS, would be required to maintain certain records for at least 2 years. During that time, owners and operators would be required to make those records available to the

[77] Section 814 of the CGAA 2010 allows the Secretary to use a secondary authentication system to verify the identification of individuals using TWIC when the individual's fingerprints are not able to be taken or read.

Coast Guard upon request. Those records include, with respect to each individual granted unescorted access to a secure area: (1) FASC–N; (2) date that access was granted; (3) time that access was granted; and (4) if captured, the name of the individual to whom access was granted. If a TWIC reader or PACS captures the required data when the TWIC is scanned, and can retain and reproduce that data, the recordkeeping requirement would be met. Owners and operators would be required to also maintain records to demonstrate that they have performed the required card validity check using the CCL on each individual. Finally, we propose to include a regulatory provision indicating that TWIC reader records are SSI, and would be required to be protected in accordance with 49 CFR part 1520.

*J. Risk Group Classifications*

We propose to add new 33 CFR 104.263, 105.253, and 106.258 to set forth the risk group classifications for vessels and facilities. The risk group classifications proposed in the NPRM are the same as those proposed in the ANPRM, with minor technical changes, as follows:

For vessels subject to 33 CFR part 104, this NPRM proposes the following risk group classifications:

Risk Group A

(1) Vessels that carry Certain Dangerous Cargoes (CDC) in bulk.

(2) Vessels certificated to carry more than 1,000 passengers.

(3) Towing vessels engaged in towing a barge or barges subject to (1) of this section or vessels subject to (2) of this section.

Risk Group B

(1) Vessels that carry hazardous materials other than CDC in bulk.

(2) Vessels subject to 46 CFR chapter I, subchapter D, that carry any flammable or combustible liquid cargoes or residues.

(3) Vessels certificated to carry 500 to 1,000 passengers.

(4) Towing vessels engaged in towing a barge or barges subject to (1), (2), or vessels subject to (3) of this section.

Risk Group C

(1) Vessels carrying non-hazardous cargoes that are required to have a vessel security plan (VSP).

(2) Vessels certificated to carry less than 500 passengers.

(3) Towing vessels engaged in towing a barge or barges subject to (1) of this section or vessels subject to (2) of this section.

(4) Mobile Offshore Drilling Units (MODUs).

(5) Offshore Supply Vessels (OSVs) subject to 46 CFR chapter I, subchapter L or I.

For facilities subject to 33 CFR part 105, this NPRM proposes the following risk group classifications:

Risk Group A

(1) Facilities that handle Certain Dangerous Cargoes (CDC) in bulk.

(2) Facilities that receive vessels certificated to carry more than 1,000 passengers.

(3) Barge fleeting facilities that receive barges carrying CDC in bulk.

Risk Group B

(1) Facilities that receive vessels that carry hazardous materials other than CDC in bulk.

(2) Facilities that receive vessels subject to 46 CFR chapter I, subchapter D, that carry any flammable or combustible liquid cargoes or residues.

(3) Facilities that receive vessels certificated to carry 500 to 1,000 passengers.

(4) Facilities that receive towing vessels engaged in towing a barge or barges carrying hazardous materials other than CDC in bulk, crude oil, or towing vessels certificated to carry 500 to 1,000 passengers.

Risk Group C

(1) Facilities that receive vessels carrying non-hazardous cargoes not otherwise included in Risk Groups A or B.

(2) Facilities that receive vessels certificated to carry less than 500 passengers.

(3) Facilities that receive towing vessels engaged in towing a barge carrying non-hazardous cargoes or less than 500 passengers.

This NPRM proposes to classify all OCS facilities subject to 33 CFR part 106 into Risk Group B.

As discussed more fully above in Section III.C., we used the AHP to conduct a risk-based analysis of MTSA-regulated vessels and facilities. We identified 68 distinct types of vessels and facilities based on their purpose or operational description. We then assessed each of the 68 types of vessels and facilities using three factors: (1) Maximum consequences to that vessel or facility resulting from a terrorist attack; (2) criticality to the nation's health, economy, and national security; and (3) utility of the TWIC in reducing risk.

For the first factor, we used the Coast Guard's MSRAM terrorism risk-analysis tool to calculate the maximum potential consequence resulting from the total loss of a target, factoring in injury and loss of life, economic and environmental impact, symbolic effect, and national security impact. We averaged these MSRAM consequences within each of the 68 types to develop a standard consequence for each type.

For the second and third factors, we considered the impact of the total loss of a vessel or facility beyond the immediate local consequences, and the utility of the TWIC program in reducing a vessel or facility's vulnerability to a terrorist attack.

Using the AHP, we combined the above three factors and developed an overall risk ranking of vessels and facilities by type. At the end of this process, types of vessels and facilities with similar scores were combined into one of three risk groups. This NPRM proposes to classify vessels and facilities into Risk Groups A, B, and C based on the AHP risk rankings.

Upon further analysis of the data generated through the AHP process, we note that certain types of facilities currently categorized in Risk Group B have relatively high MSRAM consequence scores. These facilities include petroleum refineries,[78] non-CDC bulk hazardous materials facilities, and petroleum storage facilities. Due to their high MSRAM consequence scores, we are considering whether TWIC reader requirements would be appropriate for these three types of facilities and to include these types of facilities into Risk Group A. Note, however, that despite the relatively high consequence scores for these three facility types, they do not handle CDC in bulk. Like all Risk Group B facilities, these three facility types pose less operational risk than Risk Group A facilities because they do not handle CDC in bulk. We are soliciting public comments on this issue. Specifically, we request public comments on whether any or all of petroleum refineries, non-CDC bulk hazardous materials facilities, and petroleum storage facilities should be categorized in Risk Group A. We also seek public comments on how to define these facilities for the purpose of this rulemaking. Please see Section V., ''Regulatory Analyses'' below for a discussion of the costs and benefits associated with this alternative.

*K. Movement Between Risk Groups*

We propose to add 33 CFR 104.263(d) and 105.253(d) to address the movement between risk groups by vessels and

[78] Note that Risk Group A, as currently proposed in the NPRM, captures certain petroleum refineries. In the NPRM, Risk Group A includes refineries that handle Certain Dangerous Cargoes (CDCs) in bulk or receive vessels that do the same. There are 16 such refineries.

facilities, based on the materials they are carrying or handling, or the types of vessels they are receiving at any given time. These regulatory provisions are designed to provide flexibility to owners and operators of vessels and facilities that only meet the Risk Group A criteria on a periodic basis. These provisions are not mandatory. The owner or operator of such a vessel or facility could choose to maintain its Risk Group A status, even during those periods when the vessel or facility is not handling or carrying materials that meet the Risk Group A criteria. However an owner or operator wishing to take advantage of one of these provisions would be required to explain how the vessel or facility would move between risk groups in an amended security plan. The security plan would be required to account for the timing of such movement, as well as how the owner or operator would comply with the requirements of the higher- and lower-level risk groups, with particular attention to the security measures to be taken when moving from a lower-level risk group to a higher-level risk group.

*L. Physical Placement of TWIC Readers*

We propose to amend 33 CFR 104.265(a)(4) by requiring a vessel owner or operator to place TWIC readers at the vessel's access points only, regardless of whether the secure area encompasses the entire vessel. Thus, even if the secure area does not encompass the entire vessel (e.g., a passenger vessel consisting of secure areas and passenger and employee access areas), TWIC readers would be required only at the points of access to the vessel itself. TWIC-holders may be granted unescorted access to the vessel's secure areas after the TWIC has been verified, validated, and authenticated at a vessel access point. TWIC-holders may then move from passenger/employee access areas to secure areas without processing through a TWIC reader each time.

We propose to amend 33 CFR 105.255(a)(4) by requiring a facility owner or operator to place TWIC readers at the access points to a facility's secure areas. If the entire facility is designated as a secure area, then TWIC readers would be required only at the facility's access points. If the secure area does not encompass the entire facility, then TWIC readers would be required at access points to the secure areas.

We request additional comments from the public on the proposed regulatory provisions regarding the placement of TWIC readers for vessels and facilities.

*M. Technical Amendments*

We propose several technical amendments to remove references to dates no longer relevant and to add or change cross-references within the regulations to align with the proposed new or updated provisions. These amendments appear at 33 CFR 101.514, 101.515(d)(2), 104.105(d), 104.115(c), 104.200(b), 104.260(d)(1), 104.265(d)(1), 104.265(e)(8), 104.265(f)(11), 104.267(a), 104.292(b), 104.292(e), 104.405(a)–(b), 105.110(b), 105.115(c)–(d), 105.200(b), 105.255(d)(1), 105.255(e)(8), 105.255(f)(10), 105.257(a), 105.290(b), 105.296(a)(4), 105.405(a)–(b), 106.110(d)–(e), 106.200(b), 106.260(d)(1), 106.260(e)(5), 106.260(f)(9), 106.262(a), and 106.405(a)–(b).

*N. Privacy*

When an individual's TWIC is scanned using a TWIC reader, the TWIC reader captures limited information, including the TWIC-holder's FASC–N as well as the date and time of the scan. The TWIC-holder's name would also be captured in limited circumstances, depending on the type of TWIC reader employed. For example, a TWIC reader only captures the TWIC-holder's name when operating in ''contact'' mode,[79] and only after the TWIC-holder enters a 6–8 digit PIN.[80] An integrated PACS may also capture the name of the TWIC-holder.

The proposed rule contains recordkeeping requirements for owners or operators using TWIC readers. Owners and operators using TWIC readers, with or without a PACS, would be required to maintain certain records for at least 2 years. During that time, owners and operators would be required to make those records available to the Coast Guard upon request. Those records include, with respect to each individual granted unescorted access to a secure area: (1) FASC–N; (2) date that access was granted; (3) time that access was granted; and (4) if captured, the name of the individual to whom access was granted.

If a TWIC reader or PACS captures the required data when the TWIC is scanned, and can retain and reproduce that data, the recordkeeping requirement would be met. Owners and operators would also be required to maintain records to demonstrate that they have performed the required card validity check using the CCL on each individual. The proposed rule also contains a regulatory provision indicating that TWIC reader records are SSI, and must be protected in accordance with 49 CFR part 1520.[81]

*O. Public Comment*

The Coast Guard invites comments on the risk-based approach to categorizing facilities and vessels and the assumptions and estimates used in the ''Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis,'' which is available in the public docket for this rulemaking. Specifically, the Coast Guard requests comments on the following:

1. We request comments from the public on the risk-based approach to classifying facilities and vessels including the use of MSRAM in the risk-based approach.
2. We request comments from the public regarding the incremental security benefits of requiring TWIC readers for higher-risk facilities and vessels. We request comments from the public on the security benefits of performing TWIC-holder identification, validation, and authentication via a TWIC reader instead of visual inspection.
3. We request comments from the public regarding the expected lifespan and replacement cycle for TWIC readers.
4. We request comments from owners and operators of Risk Group A facilities and vessels on the maintenance costs associated with the proposed TWIC reader requirements.
5. We request comments from owners and operator of MTSA-regulated vessels

[79] ''Contact'' TWIC readers perform a scan when an individual inserts a TWIC into a slot to provide direct contact between the device and the computer chip imbedded in the TWIC.

[80] As discussed in this preamble, the Coast Guard has observed operational challenges and limited utility associated with PIN usage. Therefore, the proposed rule would not require owners and operators to check TWIC-holder PINs. Owners and operators who wish to enhance access control would be allowed to require workers to input PIN information. However, because of the noted operational challenges and limited utility, the Coast Guard does not expect widespread PIN usage. Therefore, the Coast Guard does not expect TWIC readers to capture name information in most instances.

[81] In accordance with 49 U.S.C. 114(s), Sensitive Security Information (SSI) is information obtained or developed in the conduct of security activities, including research and development, the disclosure of which TSA has determined would: (1) Constitute an unwarranted invasion of privacy (including, but not limited to, information contained in any personnel, medical, or similar file); (2) reveal trade secrets or privileged or confidential information obtained from any person; or (3) be detrimental to the security of transportation. Part 1520 of Title 49 of the CFR generally requires that SSI be properly marked and protected from unauthorized disclosure. Unauthorized disclosure of SSI is grounds for a civil penalty and other enforcement or corrective action by DHS, and appropriate personnel actions for Federal employees. Corrective action may include issuance of an order requiring retrieval of SSI to remedy unauthorized disclosure or an order to cease future unauthorized disclosure.

and facilities already using TWIC readers, and whether the proposals in this NPRM would require additional investments, e.g., new readers or supporting infrastructure?

6. We request comments from owners and operators of MTSA-regulated vessels and facilities on the additional hours of TWIC reader training that would result from this proposed rule.

7. We request comments from the public regarding our estimates that it would take 25 hours to create an addendum for each VSP and FSP.

8. We request comments from the public on potential delays due to TWIC reader use and the associated cost estimates used in this proposed rule.

9. We request comments from owners and operator of MTSA-regulated vessels and facilities already using TWIC readers on the types and frequency of TWIC reader failures.

10. We request comments from the public on the expected rates at which TWICs will need to be replaced during implementation and all subsequent years.

11. We request comments from owners and operators of Risk Group A vessels and facilities regarding whether they intend to require the use of PINs, how often will PINs be used, and in what scenarios. What percentage of TWIC-holders do not currently remember their PIN, and also how many TWIC-holders are anticipated to travel to an enrollment center to retrieve their PIN?

12. We request comments from the public on the anticipated frequency of the use of an escort and the availability of escorts to provide access to secure areas in the cases of an invalid TWIC reader transaction.

13. We request comments from the public on any additional costs or benefits to TWIC reader requirements not accounted for in this NPRM.

14. We have clarified in the preamble to this NPRM that a facility that receives Risk Group A vessels would be categorized as a Risk Group A facility. We request additional comments from the public on specific scenarios that might warrant further consideration of potential regulatory requirements to address the interaction of vessels and facilities in different risk groups.

15. We seek comments from the public on whether the additional flexibility of being able to modify a facility's security footprint by assigning different portions of the facility to different risk groups is necessary or appropriate. Please be as specific as possible in explaining how this would apply to your facility.

16. We request comments from the public regarding practical scenarios in which a vessel might not be able to download necessary CCL updates within the prescribed frequency (weekly or daily, depending on MARSEC Level). Additionally, we request comments from the public regarding the regulatory requirements that we should put in place when vessels are in one of those scenarios. In those scenarios, should we require the use of TWIC readers for identity verification, card authentication, and card validity, even though the CCL might not have been updated within the prescribed frequency? Should we require the owner or operator to update the CCL at the next available opportunity? What other alternatives should we consider?

17. We request comments from the public on the proposed regulatory provisions regarding the placement of TWIC readers for vessels and facilities, and how to minimize crewmembers from entering secure and/or restricted areas if they do not hold a TWIC.

18. We request comments from the public regarding whether 7 days is a sufficient amount of time in which to expect resolution of a typical TWIC reader or communication systems malfunction.

19. We request comments from the public on the proposal to exempt all vessels with 14 or fewer TWIC-holding crewmembers from TWIC reader requirements, including whether 14 is an appropriate cut-off number. Please explain and provide available data to support your comments.

20. We request comments from the public on whether any or all of petroleum refineries, non-CDC bulk hazardous materials facilities, and petroleum storage facilities should be categorized in Risk Group A. We also request comments from the public on how to define these facilities for the purpose of this rulemaking.

21. We request comments from the public on whether there is a population of State-licensed vessel pilots that are not otherwise required to obtain a TWIC because they access secure areas of MTSA-regulated vessels.

22. We request comments from the public on the proposal for Risk Group A to update CCL information at different frequencies (weekly or daily) depending on MARSEC Level.

23. We request comments from the public on whether this rule may help to reduce criminal activity at ports and on vessels. Please describe any anecdotal evidence or data to support your comments.

24. We request comments from the public on the characterizations and conclusions in the preamble to this NPRM of the TWIC Pilot, and how we used the findings from the TWIC Pilot to inform the NPRM.

25. We request comments from the public on any other matters relevant to the proposals in this NPRM and whether there are additional data sources that we should consider. If there are, please include information in your comments about these data sources and the reason for their relevance.

## V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

### *A. Regulatory Planning and Review*

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review. OMB has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. A draft Assessment is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. A summary of the Assessment follows:

We propose amending our regulations on certain MTSA-regulated vessels and facilities to include requirements for electronic TWIC readers to be used for access control for unescorted access to secure areas.

The following table summarizes the costs and benefits of this proposed rule.

TABLE 1—SUMMARY OF COSTS AND BENEFITS [82]

| Category | NPRM |
|---|---|
| Applicability | High-risk MTSA-regulated facilities and high risk MTSA-regulated vessels with greater than 14 TWIC-holding crew. |
| Affected Population | 38 vessels.<br>532 facilities. |
| Costs ($ millions, 7% discount rate) | $26.5 (annualized).<br>$186.1 (10-year). |
| Costs (Qualitative) | Time to retrieve or replace lost PINs for use with TWICs. |
| Benefits (Qualitative) | Standardization of access control and credential verification throughout industry.<br>Enhanced access control and security at U.S. maritime facilities and onboard U.S. flagged vessels.<br>Reduction of human error when checking identification and manning access points. |

In this NPRM, we propose to require owners and operators of certain vessels and facilities regulated by the Coast Guard under 33 CFR Chapter I, subchapter H, to use electronic readers designed to work with TWIC as an access control measure. This NPRM also proposes additional requirements associated with electronic TWIC readers, including recordkeeping requirements for those owners and operators required to use an electronic TWIC reader, and amendments to security plans previously approved by the Coast Guard to incorporate TWIC requirements.

The proposals in this NPRM, once final, would enhance the security of vessels, ports, and other facilities by ensuring that only individuals who hold TWICs are granted unescorted access to secure areas at those locations. It would also further implement the MTSA transportation security card requirement, as well as the SAFE Port Act electronic TWIC reader requirements.

We estimate that this proposed rule would specifically affect owners and operators of MTSA-regulated vessels and facilities in Risk Group A with additional costs. As previously discussed, Risk Group A would consist of those vessels and facilities with highest consequence for a TSI. Affected facilities in Risk Group A would include: (1) Facilities that handle CDC in bulk; (2) Facilities that receive vessels certificated to carry more than 1,000 passengers; and (3) Barge fleeting facilities that receive barges carrying CDC in bulk. Affected vessels in Risk Group A would include: (1) Vessels that carry CDC in bulk; (2) Vessels certificated to carry more than 1,000 passengers; and (3) Towing vessels engaged in towing barges subject to (1) or (2). In addition, this proposal provides a TWIC Reader exemption for vessels with 14 or fewer TWIC-holding crewmembers, further reducing the number of affected vessels in Risk Group A.

Based on the risk-based hierarchy described in the preamble of this NPRM and data from the Coast Guard's MISLE database, we estimate this proposed rule would affect 532 facilities and 38 vessels with additional costs. All of these facilities and vessels are in Risk Group A.

To estimate the costs for this proposal, we use data from the TWIC Pilot, which was broken down by facility type, to estimate a cost per TWIC reader deployed for installation, integration, and PACS integration, where applicable. By distilling the costs from the TWIC Pilot down to a per TWIC reader cost by facility type, we are able to smooth out the varied costs in the TWIC Pilot and effectively normalize the TWIC Pilot costs before extrapolating out over the full affected population of this rulemaking.

The primary cost driver for this proposed rule is the capital cost associated with the purchase and installation of TWIC readers into access control systems. These costs include the cost of TWIC reader hardware and software, as well as costs associated with the installation, infrastructure, and integration with a PACS. Operational costs associated with this rulemaking, include security plan amendments, recordkeeping, CCL updates, training, and system maintenance. We also include operational and maintenance costs, which we estimate to be five percent of the cost of the TWIC reader hardware and software and are incurred annually. Table 2 shows the 10-year period of analysis for the total costs by facility type. These facility costs do not include costs associated with delays or replacement of TWICs, which are discussed later. These estimates include capital replacement costs for TWIC reader hardware and software beginning 5 years after implementation.

TABLE 2—10-YEAR TOTAL COSTS, BY FACILITY TYPE *

[$ Millions]

| Year | Bulk liquid | Break bulk and solids | Container | Large passenger | Small passenger | Mixed use | Total |
|---|---|---|---|---|---|---|---|
| 1 | $37.2 | $2.7 | $0.9 | $11.3 | $5.0 | $5.0 | $62.2 |
| 2 | 38.1 | 2.8 | 0.9 | 11.6 | 5.2 | 5.2 | 63.8 |
| 3 | 2.0 | 0.1 | 0.0 | 0.6 | 0.3 | 0.3 | 3.3 |
| 4 | 2.0 | 0.1 | 0.0 | 0.6 | 0.3 | 0.3 | 3.3 |
| 5 | 2.0 | 0.1 | 0.0 | 0.6 | 0.3 | 0.3 | 3.3 |
| 6 | 14.1 | 1.0 | 0.3 | 4.3 | 1.9 | 1.9 | 23.6 |
| 7 | 14.1 | 1.0 | 0.3 | 4.3 | 1.9 | 1.9 | 23.6 |
| 8 | 2.0 | 0.1 | 0.0 | 0.6 | 0.3 | 0.3 | 3.3 |
| 9 | 2.0 | 0.1 | 0.0 | 0.6 | 0.3 | 0.3 | 3.3 |

[82] For a more detailed discussion of costs and benefits, see the full Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis available on the docket for this rulemaking. Appendix G of that document outlines the costs by provision and also discusses the complementary nature of the provisions and the subsequent difficulty in distinguishing independent benefits from individual provisions.

TABLE 2—10-YEAR TOTAL COSTS, BY FACILITY TYPE *—Continued

[$ Millions]

| Year | Bulk liquid | Break bulk and solids | Container | Large passenger | Small passenger | Mixed use | Total |
|---|---|---|---|---|---|---|---|
| 10 | 2.0 | 0.1 | 0.0 | 0.6 | 0.3 | 0.3 | 3.3 |
| Total Undiscounted | 115.3 | 8.4 | 2.7 | 35.2 | 15.7 | 15.6 | 193.0 |
| *Total Discounted at 7%* | *94.0* | *6.9* | *2.2* | *28.7* | *12.8* | *12.7* | *157.2* |
| *Total Discounted at 3%* | *105.1* | *7.7* | *2.5* | *32.1* | *14.3* | *14.2* | *175.9* |

Note: Numbers may not total due to rounding.

* These facilities are regulated because they handle CDC or more than 1,000 passengers. In the U.S. marine transportation system, facilities often handle a variety of commodities and provide a variety of commercial services. These facility types have different costs based on physical characteristics, such as the number of access points that would require TWIC readers, and other data received from the TWIC Pilot Study. See the Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis for details on different facility types and data from the TWIC Pilot Study.

To account for potential opportunity costs associated with the delays as a result of the TWIC reader requirements, we estimate a cost of delay associated with failed reads.[83] We provide a range of delay costs based on different delays in seconds and also based on the number of times a TWIC-holder may have their card read on a weekly basis. By using a range of delay costs, we are able to account for multiple scenarios where an invalid TWIC reader transaction would lead to the use of a secondary processing operation, such as a visual inspection, additional identification validation, or other provisions as set forth in the FSP.[84]

TABLE 3—COST OF DELAYS DUE TO INVALID TRANSACTION PER YEAR, FOR RISK GROUP A FACILITIES

| | 1 Read per week | 2 Reads per week | 3 Reads per week | 4 Reads per week | 5 Reads per week | Average |
|---|---|---|---|---|---|---|
| 6 Seconds | $91,244 | $182,489 | $273,733 | $364,977 | $456,221 | $273,733 |
| 14 Seconds | 212,903 | 425,807 | 638,710 | 851,613 | 1,064,517 | 638,710 |
| 30 Seconds | 456,221 | 912,443 | 1,368,664 | 1,824,886 | 2,281,107 | 1,368,664 |
| 60 Seconds | 912,443 | 1,824,886 | 2,737,328 | 3,649,771 | 4,562,214 | 2,737,328 |
| 120 Seconds | 1,824,886 | 3,649,771 | 5,474,657 | 7,299,543 | 9,124,428 | 5,474,657 |
| Average | 699,539 | 1,399,079 | 2,098,618 | 2,798,158 | 3,497,697 | 2,098,618 |

For the purposes of this analysis, we used the cost of delay estimate of $2.1 million per year, which represents the average delay across all iterations of delay times and TWIC reader transactions.

The use of TWIC readers would also increase the likelihood of faulty TWICs (TWICs that are not machine readable) being identified and the need for secondary screening procedures so affected workers and operators can address these issues.[85] If a TWIC-holder's card is faulty and cannot be read, the TWIC-holder would need to travel to a TWIC Enrollment Center to get a replacement TWIC, which results in additional travel and replacement costs. To account for this, we estimate a cost for a percentage of TWIC-holders to obtain replacement TWICs.

Based on information from the TWIC Pilot, we estimate that approximately five percent of TWIC-holders associated with Risk Group A would need to replace TWICs that cannot be read. We estimate that this would cost approximately $262.37 per TWIC-holder to travel to a TWIC Enrollment center and get a replacement TWIC.[86] Overall, we estimate that TWIC replacement would cost approximately $1.9 million per year for TWIC transactions involving Risk Group A facilities. We assume this is an annual cost, though we anticipate that the rate of TWIC replacements will decrease as TWIC reader use increases, since the number of unreadable TWICs initially identified will decrease as the regular use of TWIC readers will serve to enhance TWIC validity and readability.

Table 4 shows the average initial phase-in and annual recurring costs per facility by facility type. This includes capital, operational, delay, and TWIC replacement costs due to invalid TWIC reader transactions. It does not, however, account for vessel costs. Table 5 shows the total cost to facilities over the 10-year period of analysis by facility type. This includes capital, operational, delay, and TWIC replacement costs due to invalid TWIC reader transactions.

[83] Delays may result from operational, human- or weather-related factors.

[84] The Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis contains a discussion of the different failure mode scenarios where an invalid TWIC reader transaction would lead to potential delays and the use of secondary processing.

[85] Although current regulations require that TWICs be valid and readable upon request by DHS or law enforcement personnel, we anticipate that widespread use of TWIC readers will initially identify more unreadable cards. However, we expect the regular use of TWIC readers to ultimately serve to enhance compliance with current TWIC card validity and readability requirements.

[86] This cost is explained in greater detail in the Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis. It includes an estimated $202.37 for the average TWIC-holder to travel to a TWIC Enrollment Center, cost to be away from work, wait time at the Enrollment Center, and the $60 fee for a replacement TWIC. Some TWIC-holders may not need to pay a replacement fee if the TWIC is determined faulty as a result of the card production process. However, these TWIC-holders would still need to travel to a TWIC Enrollment Center to get a replacement TWIC.

TABLE 4—PER FACILITY COST, BY FACILITY TYPE

| Phase-in & recurring costs | Bulk liquid | Break bulk and solids | Container | Large passenger | Small passenger | Mixed use |
|---|---|---|---|---|---|---|
| Initial Phase-in Cost | $256,267 | $347,901 | $604,007 | $252,324 | $164,011 | $169,136 |
| Annual Recurring cost | 14,531 | 19,727 | 34,248 | 14,307 | 9,300 | 9,590 |
| Annual Recurring cost *with* Equipment Replacement | 94,399 | 128,154 | 222,493 | 92,947 | 60,415 | 62,303 |

TABLE 5—10-YEAR TOTAL COST RISK GROUP A FACILITIES, BY FACILITY TYPE *

[$ Millions]

| Year | Bulk liquid | Break bulk and solids | Container | Large passenger | Small passenger | Mixed use | Total |
|---|---|---|---|---|---|---|---|
| 1 | $38.3 | $2.8 | $0.9 | $11.7 | $5.2 | $5.2 | $64.2 |
| 2 | 40.5 | 3.0 | 1.0 | 12.4 | 5.5 | 5.5 | 67.8 |
| 3 | 4.3 | 0.3 | 0.1 | 1.3 | 0.6 | 0.6 | 7.3 |
| 4 | 4.3 | 0.3 | 0.1 | 1.3 | 0.6 | 0.6 | 7.3 |
| 5 | 4.3 | 0.3 | 0.1 | 1.3 | 0.6 | 0.6 | 7.3 |
| 6 | 16.5 | 1.2 | 0.4 | 5.0 | 2.2 | 2.2 | 27.6 |
| 7 | 16.5 | 1.2 | 0.4 | 5.0 | 2.2 | 2.2 | 27.6 |
| 8 | 4.3 | 0.3 | 0.1 | 1.3 | 0.6 | 0.6 | 7.3 |
| 9 | 4.3 | 0.3 | 0.1 | 1.3 | 0.6 | 0.6 | 7.3 |
| 10 | 4.3 | 0.3 | 0.1 | 1.3 | 0.6 | 0.6 | 7.3 |
| Total Undiscounted | 137.9 | 10.1 | 3.3 | 42.1 | 18.7 | 18.7 | 230.8 |
| *Total Discounted at 7%* | *$109.6* | *$8.0* | *$2.6* | *$33.4* | *$14.9* | *$14.9* | *$183.3* |
| *Total Discounted at 3%* | *$124.2* | *$9.1* | *$3.0* | *$37.9* | *$16.9* | *$16.8* | *$207.9* |

* This table includes the costs to facilities as well as additional costs such as delay, travel, and TWIC replacement costs due to TWIC failures.

For the 38 Risk Group A vessels with greater than 14 TWIC-holding crewmembers, we assume that each vessel will comply with the requirements by purchasing two portable TWIC readers and deploying them at the main access points of the vessel. We estimate the annualized costs to vessels of this rulemaking to be approximately $0.4 million at a 7 percent discount rate. These costs are shown in Table 6.

TABLE 6—TOTAL VESSEL COSTS

[Risk Group A with more than 14 TWIC-holding crewmembers] *

| Year | Undiscounted | 7% | 3% |
|---|---|---|---|
| 1 | $1,257,866 | $1,175,576 | $1,221,229 |
| 2 | 132,114 | 115,394 | 124,530 |
| 3 | 132,114 | 107,845 | 120,903 |
| 4 | 132,114 | 100,789 | 117,382 |
| 5 | 132,114 | 94,196 | 113,963 |
| 6 | 1,145,036 | 762,986 | 958,949 |
| 7 | 132,114 | 82,274 | 107,421 |
| 8 | 132,114 | 76,892 | 104,292 |
| 9 | 132,114 | 71,861 | 101,255 |
| 10 | 132,114 | 67,160 | 98,305 |
| Total | $3,459,815 | $2,654,972 | $3,068,229 |
| Annualized | ..... | 378,008 | 359,690 |

* Because the affected population is relatively small, we assume that all 38 vessels will comply within the first year of implementation. However, owners and operators of these vessels would have 2 years to comply with the rulemaking.

We estimate the annualized cost of this proposed rule to industry over 10 years to be about $26.5 million at a 7 percent discount rate. The main cost drivers of this proposed rule are the acquisition and installation of TWIC readers and the maintenance of the affected entity's TWIC reader system. Initial costs, which would be distributed over a 2-year implementation phase, consist predominantly of the costs to purchase and install TWIC readers and to integrate them with owners' and operators' PACS. Annual costs would be driven by costs associated with CCL updates, recordkeeping, training, system maintenance and opportunity costs associated with failed reader transactions.

We estimated the present value average costs of this proposed rule on industry for a 10-year period as summarized in Table 7. The costs were discounted at 3 and 7 percent as set forth by guidance in OMB Circular A–4.

TABLE 7—TOTAL INDUSTRY COST, RISK GROUP A

[$ Millions]

| Year | Facility | Vessel | Additional costs* | Undiscounted | 7% | 3% |
|---|---|---|---|---|---|---|
| 1 | $62.2 | $1.3 | $2.0 | $65.4 | $61.1 | $63.5 |
| 2 | 63.8 | 0.1 | 4.0 | 67.9 | 59.3 | 64.0 |
| 3 | 3.3 | 0.1 | 4.0 | 7.4 | 6.0 | 6.8 |
| 4 | 3.3 | 0.1 | 4.0 | 7.4 | 5.6 | 6.6 |
| 5 | 3.3 | 0.1 | 4.0 | 7.4 | 5.3 | 6.4 |
| 6 | 23.6 | 1.1 | 4.0 | 28.7 | 19.2 | 24.1 |
| 7 | 23.6 | 0.1 | 4.0 | 27.7 | 17.3 | 22.6 |
| 8 | 3.3 | 0.1 | 4.0 | 7.4 | 4.3 | 5.8 |
| 9 | 3.3 | 0.1 | 4.0 | 7.4 | 4.0 | 5.7 |
| 10 | 3.3 | 0.1 | 4.0 | 7.4 | 3.8 | 5.5 |
| Total | 193.0 | 3.5 | 37.8 | 234.2 | 186.0 | 210.9 |
| Annualized | | | | | 26.5 | 24.7 |

* This includes additional delay, travel, and TWIC replacement costs due to TWIC failures.

As this rule would require amendments to FSPs and VSPs, we estimate a cost to the government to review these amendments during the implementation period. We do not anticipate any additional annual cost to the government from this rulemaking. For the total implementation period, the total government cost would be $98,226 at a 7 percent discount rate. Table 8 shows the 10-year government costs.

TABLE 8—GOVERNMENT COSTS *

| | FSP | VSP | Total undiscounted | 7% | 3% |
|---|---|---|---|---|---|
| 1 | $51,072 | $6,299 | $57,371 | $53,617 | $56,507 |
| 2 | 51,072 | 0 | 51,072 | 44,608 | 50,208 |
| 3 | 0 | 0 | 0 | 0 | 0 |
| 4 | 0 | 0 | 0 | 0 | 0 |
| 5 | 0 | 0 | 0 | 0 | 0 |
| 6 | 0 | 0 | 0 | 0 | 0 |
| 7 | 0 | 0 | 0 | 0 | 0 |
| 8 | 0 | 0 | 0 | 0 | 0 |
| 9 | 0 | 0 | 0 | 0 | 0 |
| 10 | 0 | 0 | 0 | 0 | 0 |
| Total | 102,144 | 6,299 | 108,443 | 98,226 | 103,840 |
| Annualized | | | | 13,985 | 12,173 |

* After implementation, we estimate there would be no additional government costs for plan review as additional updates would be covered under existing plan review requirements and resources.

Based on the proposals in this NPRM and recent data, we estimated the average first-year cost of this NPRM (combined industry and government) to be about $61.2 million or $63.6 million at a 7 or 3 percent discount rate, respectively. The undiscounted annual recurring cost for this proposal is approximately $7.4 million in every year except years 6 and 7, due to equipment replacement 5 years after implementation. The annualized cost of this proposed rule is $26.5 million at 7 percent and $24.7 million at 3 percent. The 10-year cost to industry of this proposed rule is approximately $186.1 million at a 7 percent discount rate, and $211.0 million at a 3 percent discount rate, respectively.

The benefits of the proposed rule include enhancing the security of vessels, ports, and other facilities by ensuring that only individuals who hold TWICs are granted unescorted access to secure areas at those locations.

TWIC readers will make identification, validation, and verification of individuals attempting to gain unescorted access to a secure area more reliable and also will help to alleviate potential sources of human error when checking credentials at access points. Identity verification ensures that the individual presenting the TWIC is the same person to whom the TWIC was issued. Card authentication ensures that the TWIC is not counterfeit, and card validation ensures that the TWIC has not expired or been revoked by TSA, or reported as lost, stolen, or damaged. Furthermore, the standardization of TWIC readers on a national scale could provide additional benefits in the form of efficiency gains in implementing access control systems throughout port facilities and nationally for companies operating in multiple locations.

The proposed rule would also further implement the MTSA provision for the transportation security card requirement, as well as the SAFE Port Act electronic TWIC reader requirements. Due to current data limitations, we do not estimate monetized benefits of this proposed rule. We present qualitative benefits and a break-even analysis in this preliminary analysis.

Break-even analysis is useful when it is not possible to quantify the benefits

of a regulatory action.[87] OMB Circular A–4 recommends a ''threshold'' or ''break-even'' analysis when non-quantified benefits are important to evaluating the benefits of a regulation. Threshold or break-even analysis answers the question, ''How small could the value of the non-quantified benefits be (or how large would the value of the non-quantified costs need to be) before the rule would yield zero net benefits?'' [88] For this rulemaking, we calculate a potential range of break-even results from the estimated consequences of the three attack scenarios that are most likely to be mitigated by the use of TWIC readers. Because the primary function of the TWIC card and TWIC reader is to enhance access control and identity verification and validation, the attack scenarios evaluated within MSRAM to provide the consequence data for this analysis were limited to the following:

- Truck Bomb
  - Armed terrorists use a truck loaded with explosives to attack the target focal point. The terrorists will attempt to overcome guards and barriers if they encounter them.
- Terrorist Assault Team
  - A team of terrorists using weapons and explosives attack the target focal point. Assume the terrorists have done prior planning and surveillance, but have no insider support of assault.
- Passenger/Passerby Explosives/ Improvised Explosive Device
  - Terrorists exploit inadequate access control and detonate carried explosives at the target focal point. Assume the terrorists approach the target under cover of legitimate presence and are not armed. Note: for this attack mode, terrorist is not an insider.

The focus on these three attack scenarios allows us to look at specific attack scenarios that are most likely to be mitigated by the use of TWIC readers. We base our analysis on the highest consequence scenario of these three for each target. These scenarios were chosen because they represent the scenarios most likely to benefit from the enhanced access control afforded by TWIC readers, as they require would-be attackers gaining access to the target in question. For these three attack types, the aggressor would first need to gain access to the facility to inflict maximum damage. Because the function of the TWIC reader is to enhance access control, the deployment of TWIC readers would increase the likelihood of identifying and denying access to an individual attempting nefarious acts. The consequence of an attack scenario is dependent on both the target and the attack mode. The attack modes selected for this analysis, as described above, serve to limit the potential maximum consequence compared to other potential attack modes. Typically, one or more threat, vulnerability, or consequence drivers will contribute significantly more to a target's risk scores than others; these are known as major risk drivers. The local COTPs document major risk drivers such as inherent limitations on access control or the potential death and injury during the analysis process.

For the break-even analysis, we estimate the consequences of these three scenarios by estimating the number of casualties and serious injuries that would occur had the attack been successful. To monetize the value of fatalities prevented, we use the concept of ''value of a statistical life'' (VSL), which is commonly used in safety and security analyses. The VSL does not represent the dollar value of a person's life, but the amount society would be willing to pay to reduce the probability of death. We currently use a value of $6.3 million as an estimate of VSL.[89] This break-even analysis does not consider any property damage, environmental damage, indirect or macroeconomic consequences these terrorist attacks might cause. Consequently, the economic impacts of the terrorist attacks estimated for this series of break-even analyses would be higher if these other impacts were considered. See Table 9 for the average maximum consequence [90] of the three attack scenarios on Group A facilities.

TABLE 9—ANNUAL RISK REDUCTION AND ATTACKS AVERTED REQUIRED FOR COSTS TO EQUAL BENEFITS, NPRM ALTERNATIVE

| | Annualized cost, 7% discount rate ($ millions) | Average consequence ($ millions) | Required reduction in risk | Frequency of attacks averted |
|---|---|---|---|---|
| NPRM Alternative | $26.5 | $3,468.7 | 0.8% | One every 130.9 years. |

As shown in Table 9, an avoided terrorist attack at an average target is equivalent to $3,468.7 million in avoided consequences. Using the estimated annualized cost of this regulation, the annual reduction in the probability of attack to a Risk Group A facility that would just equate avoided consequences with cost is less than 1 percent. To state this in another way, if implementing this regulation would lower the likelihood of a successful terrorist attack by more than 1 percent each year, then this would be a socially efficient use of resources. This proposed rule is estimated to cost approximately $26.5 million annually. This proposed rule would be cost effective if it prevented one terrorist attack with consequence equal to the average every 130.9 years ($3,468.7/$26.5). These small changes in risk reduction suggest the potential benefits of the proposed rule justify the costs.

For the NPRM alternative, we assess that all Risk Group A facilities will be required to install and use TWIC readers. On the vessel side, we assess that all Risk Group A vessels with a crew size greater than 14 TWIC-holding crewmembers will likely carry two portable TWIC readers. For this alternatives analysis, we look at several different ways to implement TWIC reader requirements based on the risk group hierarchy. These alternatives include requiring TWIC readers for Risk Group A and B facilities, along with Risk Group A vessels with more than 14 TWIC-holding crewmembers, Risk

[87] In order to monetize the benefits from an anti-terrorism regulation, we would need to know the incremental reduction in risk of a successful terrorist attack that would accrue from the regulatory action being analyzed. However, the data needed to estimate this reduction in risk are not available.

[88] U.S. Office of Management and Budget, Circular A–4, September 17, 2003.

[89] ''Valuing Mortality Risk Reductions in Homeland Security Regulatory Analyses,'' prepared for the U.S. Customs and Border Protection, June 2008. See *www.regulations.gov,* search on docket USCG–2005–21869–003.

[90] The average maximum consequence is the average of the highest consequence attack scenario for each target in the referenced target group. The average maximum consequence compares the results from the three analyzed attack modes for each target and averages the maximum consequence for all targets.

Group A and container facilities, along with Risk Group A vessels with more than 14 TWIC-holding crewmembers, adding certain high-risk facilities to Risk Group A, including petroleum refineries, non-CDC bulk hazardous materials facilities, and petroleum storage facilities, and Risk Group A facilities and all self-propelled Risk Group A vessels. Table 10 summarizes the alternatives considered. The costs displayed are the 10-year costs and the 10-year annualized cost, each discounted at 7 percent.

TABLE 10—REGULATORY ALTERNATIVES

| | Description | Facility population | Vessel population | Total cost ($ millions, at 7% discount rate) | Annualized cost ($ millions, at 7% discount rate) |
|---|---|---|---|---|---|
| NPRM Alternative | All Risk Group A facilities and Risk Group A vessels with more than 14 crewmembers. | 532 | 38 | $186.1 | $26.5 |
| Alternative 2 | All Risk Group A facilities and Risk Group A vessels (except barges). | 532 | 138 | 197.7 | 28.2 |
| Alternative 3 | Risk Group A and all container facilities and Risk Group A vessels with more than 14 crewmembers. | 651 | 38 | 624.9 | 89.0 |
| Alternative 4 | All Risk Group A facilities, plus additional high consequence facilities including petroleum refineries, non-CDC bulk hazardous materials facilities, and petroleum storage facilities, and Risk Group A vessels with more than 14 crewmembers. | 1,174 | 38 | 419.6 | 59.7 |
| Alternative 5 | Risk Group A and B Facilities and Risk Group A vessels with more than 14 crewmembers. | 2,173 | 38 | 991.6 | 141.2 |

When comparing alternatives, we also looked at the results of the break-even analysis for these alternatives. As Table 11 shows, for the overall average maximum consequence, the NPRM alternative would require the lowest reduction in risk for the costs of the rule to be justified. As the purpose of this rulemaking is to enhance security to mitigate a TSI, we assess the break-even for the overall consequence of a TSI. It is assumed that the highest consequence targets will be the most attractive targets for potential terrorist attack.

TABLE 11—SUMMARY OF REQUIRED RISK REDUCTION AND ATTACKS AVERTED BY REGULATORY ALTERNATIVE, OVERALL

[In $ millions]

| | Annualized cost, 7% discount rate | Average consequence | Required reduction in risk (percent) | Frequency of attacks averted |
|---|---|---|---|---|
| NPRM Alternative | $26.5 | $3,468.7 | 0.8 | One every 130.9 years. |
| Risk Group A facilities and all Risk Group A vessels, except barges. | 28.2 | 3,468.7 | 0.8 | One every 123.2 years. |
| Risk Group A and all container facilities and Risk Group A vessels with more than 14 crewmembers. | 89.0 | 2,878.9 | 3.1 | One every 32.4 years. |
| All Risk Group A facilities, plus additional high consequence facilities including petroleum refineries, non-CDC bulk hazardous materials facilities, and petroleum storage facilities, and Risk Group A vessels with more than 14 crewmembers. | 59.7 | 1,776.9 | 3.4 | One every 29.8 years. |
| Risk Groups A and B facilities and Risk Group A vessels with more than 14 crewmembers. | 141.2 | 1,143.3 | 12.4 | One every 8.1 years. |

NPRM Alternative—Risk Group A Facilities and Risk Group A Vessels With More Than 14 TWIC-Holding Crewmembers

The analysis for this alternative is discussed in detail previously in this section, as it is the alternative we propose in this NPRM.

Alternative 2—Risk Group A Facilities and All Risk Group A Vessels, Except Barges

This alternative would require TWIC readers to be used at all Risk Group A facilities and for all Risk Group A vessels, except barges. This alternative would increase the burden on industry and small entities by increasing the affected population from 38 vessels to 138 vessels. The number of facilities would be the same as in the NPRM alternative. Under this alternative, annualized cost of this rulemaking would increase from $26.5 million to $28.2 million, at a 7 percent discount rate. The discounted 10-year costs would go from $186.1 million to $197.7 million. While this alternative does not lead to a significant increase in costs, we reject it because requiring TWIC readers on vessels with 14 or fewer TWIC-holding crewmembers is unnecessary, as crews with that few members are known to all on the vessel. This crewmember limit was proposed in the ANPRM and was based on a recommendation from TSAC. In an effort to reduce unnecessary burden and minimize costs of this rulemaking, we estimate this is the most efficient way to regulate Risk Group A vessels. See the discussion in the NPRM on ''Recurring

Unescorted Access'' and ''TWIC Reader Requirements on Vessels'' for more details.

Alternative 3—Risk Group A and All Container Facilities and Risk Group A Vessels With More Than 14 TWIC-Holding Crewmembers

For this alternative, we assumed that only those facilities in Risk Group A, as previously defined, and all container facilities will require TWIC readers. This alternative would increase the burden on industry and small entities by increasing the affected population from 532 facilities to 651 facilities. Under this scenario, the annualized cost of this rulemaking would increase from $26.5 million to $89.0 million, at a 7 percent discount rate. The discounted 10-year costs would go from $186.1 million to $624.9 million. The inclusion of container facilities would also potentially have adverse environmental impacts due to increased air emissions due to longer wait (''cueing'') times and congestion at facilities.

We considered this alternative because container facilities are perceived to pose a unique threat to the maritime sector due to the transfer risk associated with containers. As discussed in the preamble of this NPRM, many of the high-risk threat scenarios at container facilities would not be mitigated by TWIC readers. The costs for TWIC readers at container facilities would not be justified by the amount of potential risk reduction at these facilities. While container facilities pose an increased transfer risk (i.e., there is a greater risk of a threat coming through a container facility and inflicting harm or damage elsewhere than with any other facility type), such threats are not mitigated by the use of TWIC readers. Furthermore, the use of TWIC readers, or other access control features, would not mitigate the threat associated with the contents of a container. The TWIC reader serves as an additional access control measure, but would not improve screening of cargoes for dangerous substances or devices. We request data and informed input regarding this assessment.

Alternative 4—Adding Certain High Consequence Facilities to Risk Group A (These Additional Facilities To Include Petroleum Refineries, Non-CDC Bulk Hazardous Materials Facilities, and Petroleum Storage Facilities)

For this alternative, we moved three facility categories—petroleum refineries, non-CDC bulk hazardous materials facilities, and petroleum storage facilities—into Risk Group A from Risk Group B based on the average maximum consequence for these facility types. This alternative would increase the burden on industry by increasing the affected population from 532 facilities to 1,174 facilities. Under this scenario, the annualized cost of this rulemaking would increase from $26.5 million to $59.7 million, at a 7 percent discount rate. The discounted 10-year costs would go from $186.1 million to $419.6 million.

We considered this alternative based on the high MSRAM consequence scores associated with these three facility types, as well as due to the perception that petroleum facilities pose a greater security risk than other facility types. Despite the high MSRAM consequence scores for these facility types, the overall risk scores as determined in the analytical hierarchy process (AHP) were not as high as those in the current Risk Group A, and therefore, we rejected this alternative and maintained the AHP-based risk groupings.

Alternative 5—Risk Group A and Risk Group B Facilities and Risk Group A Vessels With More Than 14 Crewmembers

Alternative 5 would require TWIC readers to be used at all Risk Group A and Risk Group B facilities, and Risk Group A vessels with greater than 14 TWIC-holding crewmembers. This alternative would increase the burden on industry and small entities by increasing the affected population from 532 facilities to 2,173 facilities. This increase in facilities would extend the affected population to facilities that fall under the second risk tier. Under this alternative, annualized cost of this rulemaking would increase from $26.5 million to $141.2 million, at a 7 percent discount rate. The discounted 10-year costs would go from $186.1 million to $991.6 million. Based on a recent study by HSI, as discussed in the preamble to this NPRM, the difference in risk between facilities in Risk Groups A and B is clearly defined, indicating that the two risk groups do not require the same level of TWIC requirements. Further, as discussed in the benefits section of this analysis, the break-even point, or the amount of risk that would need to be reduced for costs to equal benefits, for this alternative is much higher than that of the NPRM alternative. Moreover, we understand many of the comments opposing TWIC reader requirements represented the interests of owners and operators of vessels or facilities assigned to Risk Group B. For these reasons, we rejected this alternative.

The provisions in this proposed rule are taken in order to meet requirements set forth in MTSA and the SAFE Port Act. The proposal, as presented, represents the lowest cost alternative, as discussed above. We have focused this rulemaking on the highest risk population so as to reduce the impacts of this rule as much as possible. Also, we have created a performance standard that allows the affected population to implement the requirements in a manner most conducive to their own business practices. By allowing for flexibilities, such as the use of fixed or portable readers, and removing vessels with 14 or fewer TWIC-holding crewmembers from the requirements, we have reduced potential burden on all entities, including small entities. Furthermore, we believe that providing any additional relief for small entities would conflict with the purpose of this rulemaking, as the objective is to enhance access control and reduce risk of a TSI. Providing relief of the proposed requirements based on entity size would contradict that stated purpose and leave small entities, which may possess as great a risk as entities that exceed the Small Business Administration (SBA) size standards, more vulnerable to a TSI.

*B. Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000. An Initial Regulatory Flexibility Analysis discussing the impacts of this proposed rule on small entities is available in the docket where indicated under the **ADDRESSES** Section.

For this proposed rule, we estimated mandatory TWIC reader requirement costs for approximately 38 vessels and 532 facilities based on the risk assessment hierarchy and current data from the Coast Guard's MISLE database. Of these 532 facilities that would be affected by the TWIC reader requirements, we found 311 unique owners. Among these 311 unique owners, there were 31 government-owned entities, 119 companies that exceeded SBA small business size standards, 88 companies considered small by SBA size standards, and 73 companies for which no information was available. For the purposes of this analysis, we consider all entities for which information was not available to

be small. There were no not-for-profit entities in our affected population. Of the 31 government jurisdictions that would be affected by this proposed rule, 24 exceed the 50,000 population threshold as defined by the Regulatory Flexibility Act to be considered small and seven have government revenue levels such that there would not be an impact greater that 1 percent of government revenue.[91]

We were able to find revenue information for 64 of the 88 businesses deemed small by SBA size standards.[92] We then determined the impacts of the proposed rule on these companies by comparing the cost of the proposed rule to the average per facility cost of this rulemaking. To determine the average per facility cost, we average the per facility cost for all facility types using the same cost per facility type breakdown as used to assess the costs of this proposal. We then found what percent impact on revenue the proposed rule would have based on implementation costs (including capital costs) and annual recurring costs (including CCL updates, recordkeeping, and training). We estimate these costs to be, on average $233,736 per facility during the implementation period and $6,186 per facility in annual recurring cost.[93] We base our impact analysis on average cost to regulated entities due to the flexibility afforded by this proposed rule to individual facilities to determine how best to implement TWIC reader requirements.[94] Table 12 shows the potential revenue impacts for small businesses impacted by this rulemaking.

TABLE 12—REVENUE IMPACTS ON AFFECTED SMALL BUSINESSES—FACILITIES

| Revenue impact range | Impacts from implementation costs | | Impacts from recurring annual costs | |
|---|---|---|---|---|
| | Number of entities | Percent of entities | Number of entities | Percent of entities |
| 0% < Impact ≤ 1% | 27 | 42 | 57 | 89 |
| 1% < Impact ≤ 3% | 10 | 16 | 6 | 9 |
| 3% < Impact ≤ 5% | 5 | 8 | 1 | 2 |
| 5% < Impact ≤ 10% | 8 | 13 | 0 | 0 |
| Above 10% | 14 | 22 | 0 | 0 |
| Total | 64 | 100 | 64 | 100 |

The greatest impact is expected to occur during the implementation phase when 58 percent of small businesses that we were able to find revenue data on will experience an impact of greater than 1 percent, and 22 percent of small businesses that we were able to find revenue data on will experience an impact greater than 10 percent. After implementation, the impacts decrease and 89 percent of affected small businesses will see an impact less than 1 percent. We expect the revenue impacts for years with equipment replacement to be between those for implementation and annual impacts. During those years with equipment replacement, we estimate that approximately 44 percent of businesses would see an impact greater than 1 percent, and 13 percent would see an impact greater than 10 percent.[95]

For vessels, we found that for the 38 vessels that would be affected by this proposed rule, there were 10 unique owners, all of which were businesses. We were able to find employee and revenue data for all but one of the companies. Out of the nine companies for which we were able to find data, only two qualified as small businesses by SBA size standards. We estimate these costs to be, on average $33,102 per vessel during the implementation period, and $3,477 per vessel in annual cost. We base our impact analysis on average cost per vessel due to the flexibility afforded to vessels and the subsequent assumption that all vessels will deploy, on average, two portable TWIC readers. Both of these businesses would experience impacts less than 1 percent of revenue for both previously mentioned impact analyses.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

*C. 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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Loan T. O'Brien, Coast Guard, telephone 202–372–1133. We will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*D. Collection of Information*

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and

[91] ''Government revenues'' used for this analysis include tax revenues, and in some cases, operating revenues for government owned waterfront facilities.

[92] SBA small business standards are based on either company revenue or number of employees. Many companies in our sample have employee numbers determining them small, but we were unable to find annual revenue data to pair with the employee data.

[93] These are weighted averages, based on the per facility cost displayed in Table 4 and the number of facilities by type.

[94] We do not know how a specific facility with comply with this rulemaking in regards to type and number of readers installed, number of personnel requiring training at a given facility, etc.

[95] We estimate an average cost per facility in years with equipment replacement to be $48,110.

completing and reviewing the collection.

Under the provisions of the proposed rule, the affected facilities and vessels would be required to update their FSPs and VSPs, as well as create and maintain a system of recordkeeping within 2 years of promulgation of the final rule. This requirement would be added to an existing collection with OMB control number 1625–0077.

*Title:* Security Plans for Ports, Vessels, Facilities, Outer Continental Shelf Facilities and Other Security-Related Requirements

*OMB Control Number:* 1625–0077.

*Summary of the Collection of Information:* This information collection is associated with the maritime security requirements mandated by MTSA. Security assessments, security plans, and other security-related requirements are found in 33 CFR chapter I, subchapter H. The proposed rule would require certain vessels and facilities to use electronic readers designed to work with the TWIC as an access control measure. Affected owners and operators would also face requirements associated with electronic TWIC readers, including recordkeeping requirements for those owners and operators required to use an electronic TWIC reader, and security plan amendments to incorporate TWIC requirements.

*Need for Information:* The information is necessary to show evidence that affected vessels and facilities are complying with the TWIC reader requirements.

*Proposed Use of Information:* We would use this information to ensure that facilities and vessels are properly implementing and utilizing TWIC readers.

*Description of the Respondents:* The respondents are owners and operators of certain vessels and facilities regulated by the Coast Guard under 33 CFR Chapter I, subchapter H.

*Number of Respondents:* The adjusted number of respondents is 13,825 for vessels, 3,270 for facilities, and 56 for OCS facilities. Of these 3,270 facilities and 13,825 vessels, approximately 532 facilities that are considered ''high risk'' would be required to modify their existing FSPs and approximately 38 vessels would be required to modify their VSPs to account for the TWIC reader requirements. These same populations would be required to create and maintain recordkeeping systems as well.

*Frequency of Response:* The FSP and VSP would need to be amended within 2 years of promulgation to include TWIC reader-related procedures. Recordkeeping requirements would need to be met along a similar timeline.

*Burden of Response:* The estimated burden for facilities would be 17,290 hours in the first year, 18,886 hours in the second year and 3,192 hours in the third year and all subsequent years. The burden for vessels would be 2,470 burden hours in year one, and 288 burden hours for all subsequent years. This includes an estimated 25 burden hours to amend the FSP or VSP, along with an implementation period burden of 40 hours and an annual burden of 6 hours for designing and maintaining a system of records for each facility or vessel, to include recordkeeping related to the CCL.

Estimate of Total Annual Burden

*Facilities:* The estimated burden over the 2-year implementation period for facilities is 25 hours per FSP amendment. Since there are currently 532 facilities that will need to amend their FSPs, the total burden on facilities would be 13,300 hours (532 FSPs × 25 hours per amendment) during the 2-year implementation period, or 6,650 hours each of the first 2 years. Facilities would also face a recordkeeping burden of 21,280 hours during the 2-year implementation period (532 facilities × 40 hours per recordkeeping system), or 10,640 hours each year over the first 2 years. There would also be an annual recordkeeping burden of 3,192 hours (532 facilities × 6 hours per year), starting in the third year. In the second year, the 266 facilities that implemented in the first year would incur the 6 hours of annual recordkeeping, at a burden of 1,596 (266 facilities × 6 hours). The total burden for facilities is estimated at 17,290 (6,650 + 10,640) in Year 1, 18,886 in Year 2 (6,650 + 10,640 + 1,596), and 3,192 in Year 3.

*Vessels:* For the 38 vessels, the burden in the first year would be 950 hours (38 VSPs × 25 hour per amendment). Vessels would also face a recordkeeping burden of 1,520 hours during the 1-year implementation period (38 vessels × 40 hours per recordkeeping system). There would also be an annual recordkeeping burden of 228 hours (38 vessels × 6 hours per year). The total burden for vessels is estimated at 2,470 (950 + 1,520) in Year 1 and 228 hours in Years 2 and 3.

*Total:* The total additional burden due to the TWIC Reader rule is estimated at 19,760 (2,470 for vessels and 17,290 for facilities) in Year 1, 19,114 (228 for vessels and 18,886 for facilities) in Year 2, and 3,420 (228 for vessels and 3,192 for facilities) in Year 3. The current annual burden listed in this collection of information is 1,108,043. The new burden, as a result of this proposed rulemaking, in Year 1 is 1,127,803 (1,108,043 + 19,760). The new burden, as a result of this proposed rule, is 1,127,803 (1,108,043 + 19,760). The total change in monetized burden in Year 1 is approximately $1.3 million. The total burden in Year 2 is 1,127,157 (1,108,043 + 19,114) and in Year 3 is 1,111,463 (1,108,043 + 3,420). The average annual additional burden across the 3 years is 14,098 and the average total burden is 1,122,141 (14,098 + 1,108,043).

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is—whether it can help us perform our functions better, whether it is readily available elsewhere, how accurate our estimate of the burden of collection is, how valid our methods for determining burden are, how we can improve the quality, usefulness, and clarity of the information, and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the proposed collection.

*E. 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. This proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 13132, and as discussed earlier in the preamble, it has been determined that this proposed rule does have Federalism implications or a substantial direct effect on the States.

This proposed rule would update existing regulations by creating a risk-based analysis of MTSA-regulated vessels and facilities. Based on this analysis, each vessel or facility is

classified according to its risk level, which then determines whether the vessel or facility would be required to use TWIC readers. Additionally, this proposed rule would amend recordkeeping requirements and add requirements to amend security plans in order to ensure compliance.

It is well-settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well-settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within fields foreclosed from regulation by the States or local governments. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).)

The Coast Guard believes the Federalism principles articulated in *Locke* apply to this proposed rule since it would require certain MTSA-regulated vessels to carry TWIC readers (i.e., required equipment), and to conform to recordkeeping and security plan requirements. Therefore, States and local governments are foreclosed from regulating within this field. This principle also applies to MTSA-regulated facilities, at least insofar as a State or local law or regulation applicable to these same facilities for the purpose of their protection, would conflict with a Federal regulation (i.e., it would either actually conflict or would frustrate an overriding Federal need for uniformity).

Although State and local governments are foreclosed from regulating within this specific field, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, Sections 4 and 6 of Executive Order 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected State and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Therefore, we invite affected State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to this notice. In accordance with Executive Order 13132, the Coast Guard will provide a Federalism impact statement to document: (1) The extent of the Coast Guard's consultation with State and local officials that submit comments in response to this proposed rule; (2) a summary of the nature of any concerns raised by State or local governments and the Coast Guard's position thereon; and (3) a statement of the extent to which the concerns of State and local officials have been met.

*F. Unfunded Mandates Reform Act*

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

*G. Taking of Private Property*

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

*H. Civil Justice Reform*

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

*I. Protection of Children*

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. Though this proposed rule is a ''significant regulatory action'' under Executive Order 12866, it would not create an environmental risk to health or a risk to safety that might disproportionately affect children.

*J. Indian Tribal Governments*

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

*K. Energy Effects*

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

*L. Technical Standards*

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

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

The Federal government is developing the TWIC reader standards. Under NTTAA and OMB Circular A–119, NIST is tasked with the role of encouraging and coordinating Federal agency use of voluntary consensus standards and participation in the development of relevant standards, as well as promoting coordination between the public and private sectors in the development of standards and in conformity assessment activities. NIST is assisting TSA with the establishment of a conformity assessment framework in support of a QTL for identity and privilege credential products, to be managed by TSA. NIST is also assisting TSA with the establishment of a testing suite for qualifying products in conformity to specified standards and TSA specifications.

If you are aware of voluntary consensus standards that might apply to this rule, please send a comment to the

docket using one of the methods under **ADDRESSES**. In your comment, please explain why you disagree with our analysis and/or identify voluntary consensus standards we have not listed that might apply.

*M. Environment*

We have analyzed this proposed rule under DHS Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A ''Draft Programmatic Environmental Assessment'' (DPEA) and a draft ''Finding of No Significant Impact'' (FONSI) are available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. Our analysis indicates that TWIC reader operations would have insignificant direct, indirect or cumulative impacts on environmental resources, with special attention to potential air quality issues. We encourage the public to submit comments on the DPEA and draft FONSI.

**List of Subjects**

*33 CFR Part 101*

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

*33 CFR Part 104*

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

*33 CFR Part 105*

Maritime security, Reporting and recordkeeping requirements, Security measures.

*33 CFR Part 106*

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

For the reasons discussed in the preamble, we propose to amend 33 CFR parts 101, 104, 105, and 106 as follows:

## PART 101—MARITIME SECURITY: GENERAL

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

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

■ 2. Amend § 101.105, as follows:

■ a. Add, in alphabetical order, definitions for the terms ''Biometric match'', ''Canceled Card List (CCL)'', ''Card authentication'', ''Card Holder Unique Identifier (CHUID)'', ''Card validity check'', ''Mobile Offshore Drilling Unit (MODU)'', ''Offshore Supply Vessel (OSV)'', ''Physical Access Control System (PACS)'', ''Risk Group'', and ''TWIC reader''; and

■ b. Remove the definition for the term ''Recurring unescorted access''.

The additions read as follows:

**§ 101.105 Definitions.**

* * * * *

*Biometric match* means a confirmation that: one of the two biometric (fingerprint) templates stored in the Transportation Worker Identification Credential (TWIC) matches the scanned fingerprint of the person presenting the TWIC; or the alternate biometric stored in a PACS matches the corresponding biometric of the person.

* * * * *

*Canceled Card List (CCL)* means the list of TWIC Federal Agency Smart Credential-Numbers (FASC—Ns) that have been invalidated or revoked because TSA has determined that the TWIC-holder may pose a security threat, or because the card has been reported lost, stolen, or damaged.

* * * * *

*Card authentication* means electronic verification that the TWIC is a valid credential issued by TSA, containing the Card Holder Unique Identifier (CHUID) and the correct digital signature.

*Card Holder Unique Identifier (CHUID)* means the standardized data object comprised of the FASC—N, globally unique identifier, expiration date, and certificate used to validate the data integrity of other data objects on the credential.

*Card validity check* means electronic verification that the TWIC has not been invalidated or revoked by checking the TWIC against the Canceled Card List or, for vessels and facilities assigned to Risk Group B or C according to §§ 104.263 or 105.253 of this subchapter, by verifying that the expiration date on the face of the TWIC has not passed.

* * * * *

*Mobile Offshore Drilling Unit (MODU)* means the same as defined in 33 CFR 140.10.

* * * * *

*Offshore Supply Vessel (OSV)* means the same as defined in 46 CFR 125.160.

* * * * *

*Physical Access Control System (PACS)* means a system, including devices, personnel, and policies, that controls access to and within a facility or vessel.

* * * * *

*Risk Group* means the risk ranking assigned to a vessel, facility, or OCS facility according to §§ 104.263, 105.253, or 106.258 of this subchapter, for the purpose of the TWIC requirements in this subchapter.

* * * * *

*TWIC reader* means an electronic device listed on TSA's Qualified Technology List (QTL) and used to verify and validate: the authenticity of a TWIC; the identity of the TWIC-holder as the legitimate bearer of the credential; that the TWIC is not expired; and that the TWIC is not on the CCL. TSA's QTL of acceptable TWIC readers may be accessed online at http://(TBD).

* * * * *

■ 3. Add § 101.112 to read as follows:

**§ 101.112 Federalism.**

(a) The regulations in 33 CFR parts 101, 103, 104, and 106 have preemptive effect over State or local regulation within the same field.

(b) The regulations in 33 CFR part 105 have preemptive effect over State or local regulations insofar as a State or local law or regulation applicable to the facilities covered by part 105 would conflict with the regulations in part 105, either by actually conflicting or frustrating an overriding Federal need for uniformity.

**§ 101.514 [Amended]**

■ 4. In § 101.514, remove paragraph (e).

■ 5. Revise § 101.515(d)(2) to read as follows:

**§ 101.515 TWIC/Personal identification.**

* * * * *

(d) * * *

(2) Each person who has been issued or who possesses a TWIC must allow their TWIC to be read by a TWIC reader and must submit their reference biometric, such as a fingerprint, and any other required information, such as a Personal Identification Number (PIN), to the TWIC reader, upon a request from TSA, the Coast Guard, any other authorized DHS representative, or a Federal, State, or local law enforcement officer.

■ 6. Add § 101.520 to read as follows:

**§ 101.520 TWIC reader requirements for Risk Group A.**

Owners or operators of vessels or facilities subject to part 104 or 105 of this subchapter that are assigned to Risk Group A in §§ 104.263 or 105.253 of this

subchapter must ensure that a Transportation Worker Identification Credential (TWIC) program is implemented as follows:

(a) *Maritime Security (MARSEC) Level 1.* (1) Prior to each entry, all persons must present their TWICs for inspection using a TWIC reader, with or without a Physical Access Control System (PACS), before being granted unescorted access to secure areas. The TWIC inspection must include an identity verification including a biometric match, card authentication, and card validity check using Canceled Card List (CCL) information that is no more than 7 days old.

(2) With a PACS, biometrics other than the fingerprint templates stored in the TWIC may be used to perform the identity verification, provided that the owner or operator links the person, the TWIC, and the alternate biometric in the PACS. To do this, a one-time initial biometric match and card authentication using a TWIC reader must be performed. Owners and operators must update their security plans to explain how the PACS performs the required security functions and how they protect sensitive security information.

(b) *MARSEC Levels 2 and 3.* At these MARSEC Levels, the same procedures outlined in paragraph (a) of this section must be used, except that the card validity check must use CCL information that is no more than 1 day old.

(c) The CCL information used to verify card validity must be updated within 12 hours of any increase in MARSEC Level, no matter when the information was last updated.

(d) Only the most recently obtained CCL information shall be used to conduct card validity checks.

(e) Vessels in Risk Group A with more than 14 crewmembers required to hold a TWIC must comply with the applicable TWIC reader requirements in this subchapter. All vessels with 14 or fewer TWIC-holding crewmembers are exempt from the TWIC reader requirements in this subchapter. Owners or operators of vessels with 14 or fewer TWIC-holding crewmembers are required to perform the following TWIC visual inspection requirements, prior to each entry, on persons seeking unescorted access to secure areas:

(1) Visually match the photograph on the TWIC to the person presenting the TWIC.

(2) Visually check the various security features present on the card to determine whether the TWIC has been tampered with or forged.

(3) Visually verify that the expiration date on the face of the TWIC has not passed.

(f) If the COTP determines that TWIC reader requirements are causing delays at a facility that result in excessive vehicle build-up or other consequence, the COTP is authorized to temporarily suspend TWIC reader requirements at that facility, and permit the owner or operator to satisfy the requirements of this section by performing the following TWIC visual inspections, prior to each entry, on persons seeking unescorted access to secure areas:

(1) Visually match the photograph on the TWIC to the person presenting the TWIC.

(2) Visually check the various security features present on the card to determine whether the TWIC has been tampered with or forged.

(3) Visually verify that the expiration date on the face of the TWIC has not passed.

■ 7. Add § 101.525 to read as follows:

**§ 101.525 TWIC inspection requirements for Risk Group B.**

Owners or operators of vessels, facilities, or Outer Continental Shelf facilities subject to part 104, 105, or 106 of this subchapter that are assigned to Risk Group B in §§ 104.263, 105.253, or 106.258 of this subchapter must ensure that at all Maritime Security (MARSEC) Levels, prior to each entry, all persons seeking unescorted access to secure areas present their Transportation Worker Identification Credentials (TWICs) for inspection before being granted such unescorted access.

(a) Inspection must include—

(1) A visual match of the photograph on the TWIC to the person presenting the TWIC;

(2) A visual check of the various security features present on the card to determine whether the TWIC has been tampered with or forged; and

(3) A visual verification that the expiration date on the face of the TWIC has not passed.

(b) Nothing in this section shall be read to prohibit an owner or operator from implementing the TWIC requirements of a higher Risk Group for their vessel or facility.

■ 8. Add § 101.530 to read as follows:

**§ 101.530 TWIC inspection requirements for Risk Group C.**

Owners or operators of vessels or facilities subject to part 104 or 105 of this subchapter that are assigned to Risk Group C in §§ 104.263 or 105.253 of this subchapter must ensure that at all Maritime Security (MARSEC) Levels, prior to each entry, all persons seeking unescorted access to secure areas present their TWICs for inspection before being granted such unescorted access.

(a) TWIC inspection must include—

(1) A visual match of the photograph on the TWIC to the person presenting the TWIC;

(2) A visual check of the various security features present on the card to determine whether the TWIC has been tampered with or forged; and

(3) A visual verification that the expiration date on the face of the TWIC has not passed.

(b) Nothing in this section shall be read to prohibit an owner or operator from implementing the TWIC requirements of a higher Risk Group for their vessel or facility.

■ 9. Add § 101.535 to read as follows:

**§ 101.535 TWIC inspection requirements in special circumstances.**

Owners or operators of any vessel, facility, or Outer Continental Shelf (OCS) facility subject to part 104, 105, or 106 of this subchapter must ensure that a TWIC program is implemented as follows:

(a) If a person cannot present a Transportation Worker Identification Credential (TWIC) because it has been lost, damaged, or stolen, and the person has previously been granted unescorted access to secure areas and is known to have had a TWIC, the person may be granted unescorted access to secure areas for a period of no longer than 7 consecutive calendar days if—

(1) The person has reported the TWIC as lost, damaged, or stolen to TSA as required in 49 CFR 1572.19(f);

(2) The person can present another identification credential that meets the requirements of § 101.515 of this part; and

(3) There are no other suspicious circumstances associated with the person's claim that the TWIC was lost, damaged, or stolen.

(b) If a person's fingerprints are not able to be read by a TWIC reader or Physical Access Control System (PACS) due to technology malfunction, poor fingerprint quality, or no fingerprint minutiae, the owner or operator may grant the person unescorted access to secure areas based on either of the following secondary authentication procedures:

(1) The owner or operator may require the person to provide their Personal Identification Number (PIN); or

(2) The owner or operator may require the person to present an alternative biometric that has been incorporated into the PACS.

(c) If a TWIC reader malfunctions, and a person seeking unescorted access to

secure areas has previously been granted such unescorted access and is known to have a TWIC, the person may be granted unescorted access to secure areas for a period of no longer than 7 consecutive calendar days. During that period, the owner or operator must perform the following inspections prior to each entry:

(1) A visual match of the photograph on the TWIC to the person presenting the TWIC.

(2) A visual check of the various security features present on the card to determine whether the TWIC has been tampered with or forged.

(3) A visual verification that the expiration date on the face of the TWIC has not passed.

(d) If a person cannot present a TWIC for any other reason than those outlined in paragraph (a) of this section, the person must not be granted unescorted access to secure areas. The person must be under escort, at all times, while in a secure area.

(e) With the exception of persons granted access according to paragraph (a) of this section, all persons granted unescorted access to secure areas of a vessel, facility, or OCS facility must be able to produce their TWICs upon request from the Transportation Safety Administration, the Coast Guard, other authorized Department of Homeland Security representatives, or a Federal, State, or local law enforcement officer.

(f) There must be disciplinary measures in place to prevent fraud and abuse.

(g) Owners or operators must establish the frequency of the application of any security measures for access control in their approved security plans, particularly if these security measures are applied on a random or occasional basis.

(h) The vessel, facility, or OCS facility's TWIC program should be coordinated, when practicable, with identification and TWIC access control measures of other entities that interface with the vessel, facility, or OCS facility.

## PART 104—MARITIME SECURITY: VESSELS

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

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

### § 104.105 [Amended]

■ 11. In § 104.105(d), remove the words ''this part'', and add, in their place, the words ''parts 101 and 104 of this subchapter''.

■ 12. Amend § 104.115 by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising newly redesignated paragraph (c) to read as follows:

### § 104.115 Compliance.

* * * * *

(c) By (2 YEARS AFTER DATE OF PUBLICATION OF FINAL RULE), owners and operators of vessels subject to this part must amend their security plans, if necessary, to indicate how they will implement the TWIC reader requirements in this subchapter. By (2 YEARS AFTER DATE OF PUBLICATION OF FINAL RULE), owners and operators of Risk Group A vessels subject to this part must operate in accordance with the TWIC reader provisions found within this subchapter.

### § 104.200 [Amended]

■ 13. Amend § 104.200 as follows:

■ a. In paragraph (b)(12) introductory text, remove the word ''part'', and add, in its place, the word ''subchapter''; and

■ b. In paragraph (b)(14), remove the words ''§ 104.265(c) of this part'', and add, in their place, the words ''§ 101.535(a) of this subchapter''.

■ 14. Amend § 104.235 as follows:

■ a. In paragraph (b)(7), following the words ''of its effective period;'', remove the word ''and'';

■ b. In paragraph (b)(8), following the words ''the audit was completed'', remove the symbol ''.'' and add, in its place, the word ''; and'';

■ c. Add paragraph (b)(9); and

■ d. In paragraph (c), add a sentence to the end of the paragraph.

The additions read as follows:

### § 104.235 Vessel recordkeeping requirements.

* * * * *

(b) * * *

(9) *TWIC Reader/PACS.* For each individual granted unescorted access to a secure area, the: FASC–N; date and time that unescorted access was granted; and, if captured, the individual's name. Additionally, documentation to demonstrate that the owner or operator has updated the CCL with the frequency required in § 101.520 of this subchapter.

(c) * * * TWIC reader records and similar records in a PACS are sensitive security information and must be protected in accordance with 49 CFR part 1520.

■ 15. Add § 104.263 to read as follows:

### § 104.263 Risk Group classifications for vessels.

(a) For purposes of the Transportation Worker Identification Credential (TWIC) requirements of this subchapter, the following vessels subject to this part are in Risk Group A:

(1) Vessels that carry Certain Dangerous Cargoes (CDC) in bulk.

(2) Vessels certificated to carry more than 1,000 passengers.

(3) Towing vessels engaged in towing a barge or barges subject to paragraph (a)(1) or vessels subject to paragraph (a)(2) of this section.

(b) For purposes of the TWIC requirements of this subchapter, the following vessels subject to this part are in Risk Group B:

(1) Vessels that carry hazardous materials other than CDC in bulk.

(2) Vessels subject to 46 CFR chapter I, subchapter D, that carry any flammable or combustible liquid cargoes or residues.

(3) Vessels certificated to carry 500 to 1,000 passengers.

(4) Towing vessels engaged in towing a barge or barges subject to paragraph (b)(1), (b)(2), or vessels subject to paragraph (b)(3) of this section.

(c) For purposes of the TWIC requirements of this subchapter, the following vessels subject to this part are in Risk Group C:

(1) Vessels carrying non-hazardous cargoes that are required to have a vessel security plan (VSP).

(2) Vessels certificated to carry less than 500 passengers.

(3) Towing vessels engaged in towing a barge or barges subject to paragraph (c)(1) or vessels subject to paragraph (c)(2) of this section.

(4) Mobile Offshore Drilling Units (MODUs).

(5) Offshore Supply Vessels (OSVs) subject to 46 CFR chapter I, subchapter L or I.

(d) Vessels may move from one Risk Group classification to another, based on the cargo they are carrying or handling at any given time. An owner or operator expecting a vessel to move between Risk Groups must explain, in the VSP, the timing of such movements, as well as how the vessel will move between the requirements of the higher and lower Risk Groups, with particular attention to the security measures to be taken when moving from a lower Risk Group to a higher Risk Group.

■ 16. Amend § 104.265 as follows:

■ a. Revise paragraph (a)(4);

■ b. Remove paragraphs (c) and (d);

■ c. Redesignate paragraphs (e) through (h) as paragraphs (c) through (f), respectively;

■ d. Revise newly redesignated paragraph (d)(1);

■ e. In newly redesignated paragraph (e)(6), remove the word ''and'';

■ f. In newly redesignated paragraph (e)(7), following the words ''cooperation

with the facility'', remove the symbol ''.'' and add, in its place, the word ''; and'';

■ g. Add paragraph (e)(8);

■ h. In newly redesignated paragraph (f)(9), remove the word ''or'';

■ i. In newly redesignated paragraph (f)(10), following the words ''search of the vessel'', remove the symbol ''.'' and add, in its place, the word ''; or''; and

■ j. Add paragraph (f)(11).

The revisions and additions read as follows:

**§ 104.265 Security measures for access control.**

(a) * * *

(4) Prevent an unescorted individual from entering an area of the vessel that is designated as a secure area unless the individual holds a duly issued TWIC and is authorized to be in the area. Depending on a vessel's Risk Group, TWICs must be checked either visually or electronically using a TWIC reader or as integrated into a PACS at the locations where TWIC-holders embark the vessel.

* * * * *

(d) * * *

(1) Implement TWIC as set out in §§ 101.520, 101.525, or 101.530 of this subchapter, as applicable, and in accordance with the vessel's assigned Risk Group, as set out in § 104.263 of this part;

* * * * *

(e) * * *

(8) Implementing additional TWIC requirements, as required by § 104.263 of this part and §§ 101.520, 101.525, or 101.530 of this subchapter, if relevant.

* * * * *

(f) * * *

(11) Implementing additional TWIC requirements, as required by § 104.263 of this part and §§ 101.520, 101.525 or 101.530 of this subchapter, if relevant.

**§ 104.267 [Amended]**

■ 17. In § 104.267(a), remove the last sentence.

**§ 104.292 [Amended]**

■ 18. Amend § 104.292 as follows:

■ a. In paragraph (b) introductory text, remove the words ''(f)(2), (f)(4), and (f)(9)'' and add, in its place, the words ''(d)(2), (d)(4), and (d)(9)'';

■ b. In paragraph (e)(3), remove the words ''§ 104.265(f)(4) and (g)(1)'', and add, in their place, the words ''§ 104.265(d)(4) and (e)(1)''; and

■ c. In paragraph (f), remove the words ''§ 104.265(f)(4) and (h)(1)'', and add, in their place, the words ''§ 104.265(d)(4) and (f)(1)''.

■ 19. Amend § 104.405 as follows:

■ a. Revise paragraph (a)(10); and

■ b. In paragraph (b), remove the last sentence.

The revisions read as follows:

**§ 104.405 Format of the Vessel Security Plan (VSP).**

(a) * * *

(10) Security measures for access control, including the vessel's TWIC program, designated passenger access areas, and employee access areas;

* * * * *

## PART 105—MARITIME SECURITY: FACILITIES

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 21. Amend § 105.110 by revising paragraph (b) to read as follows:

**§ 105.110 Exemptions.**

* * * * *

(b) A public access area designated under § 105.106 is exempt from the requirements for screening of persons, baggage, and personal effects and identification of persons in §§ 101.520, 101.525, or 101.530 of this subchapter, as applicable, and § 105.255(c)(1), (c)(3), (d)(1), and (e)(1) and § 105.285(a)(1).

* * * * *

■ 22. Amend § 105.115 as follows:

■ a. In paragraph (c), following the words ''§ 105.415 of this part'', remove the words '', by September 4, 2007''; and

■ b. Remove paragraph (d), redesignate paragraph (e) as paragraph (d), and revise newly redesignated paragraph (d) to read as follows:

**§ 105.115 Compliance.**

* * * * *

(d) By (2 YEARS AFTER DATE OF PUBLICATION OF FINAL RULE), owners and operators of facilities subject to this part must amend their security plans, if necessary, to indicate how they will implement the TWIC reader requirements in this subchapter. By (2 YEARS AFTER DATE OF PUBLICATION OF FINAL RULE), owners and operators of Risk Group A facilities subject to this part must be operating in accordance with the TWIC reader provisions found within this subchapter.

**§ 105.200 [Amended]**

■ 23. Amend § 105.200 as follows:

■ a. In paragraph (b)(6) introductory text, remove the word ''part'', and add, in its place, the word ''subchapter''; and

■ b. In paragraph (b)(15), remove the words ''section 105.255(c) of this part'', and add, in their place, the words ''§ 101.535(a) of this subchapter''.

■ 24. Amend § 105.225 as follows:

■ a. In paragraph (b)(7), following the words ''of its effective period;'', remove the word ''and'';

■ b. In paragraph (b)(8), following the words ''the audit was completed'', remove the symbol ''.'' and add, in its place, the word ''; and'';

■ c. Add paragraph (b)(9); and

■ d. In paragraph (c), add a sentence to the end of the paragraph.

The additions read as follows:

**§ 105.225 Facility recordkeeping requirements.**

* * * * *

(b) * * *

(9) *TWIC Reader/PACS.* For each individual granted unescorted access to a secure area, the: FASC–N; date and time that unescorted access was granted; and, if captured, the individual's name. Additionally, documentation to demonstrate that the owner or operator has updated the CCL with the frequency required in § 101.520 of this subchapter.

(c) * * * TWIC reader records and similar records in a PACS are sensitive security information and must be protected in accordance with 49 CFR part 1520.

■ 25. Add § 105.253 to read as follows:

**§ 105.253 Risk Group classifications for facilities.**

(a) For purposes of the Transportation Worker Identification Credential (TWIC) requirements of this subchapter, the following facilities subject to this part are in Risk Group A:

(1) Facilities that handle Certain Dangerous Cargoes (CDC) in bulk.

(2) Facilities that receive vessels certificated to carry more than 1,000 passengers.

(3) Barge fleeting facilities that receive barges carrying CDC in bulk.

(b) For purposes of the TWIC requirements of this subchapter, the following facilities subject to this part are in Risk Group B:

(1) Facilities that receive vessels that carry hazardous materials other than CDC in bulk.

(2) Facilities that receive vessels subject to 46 CFR chapter I, subchapter D, that carry any flammable or combustible liquid cargoes or residues.

(3) Facilities that receive vessels certificated to carry 500 to 1,000 passengers.

(4) Facilities that receive towing vessels engaged in towing a barge or barges carrying hazardous materials other than CDC in bulk, crude oil, or towing vessels certificated to carry 500 to 1,000 passengers.

(c) For purposes of the TWIC requirements of this subchapter, the following facilities subject to this part are in Risk Group C:

(1) Facilities that receive vessels carrying non-hazardous cargoes not otherwise included in paragraph (a) or (b) of this section.

(2) Facilities that receive vessels certificated to carry less than 500 passengers.

(3) Facilities that receive towing vessels engaged in towing a barge carrying non-hazardous cargoes or less than 500 passengers.

(d) Facilities may move from one Risk Group classification to another, based on the material they handle or the types of vessels they receive at any given time. An owner or operator of a facility expected to move between Risk Groups must explain, in the facility security plan, the timing of such movements, as well as how the facility will move between the requirements of the higher and lower Risk Groups, with particular attention to the security measures to be taken when moving from a lower Risk Group to a higher Risk Group.

■ 26. Amend § 105.255 as follows:

■ a. Revise paragraph (a)(4);

■ b. Remove paragraphs (c) and (d);

■ c. Redesignate paragraphs (e) through (h) as paragraphs (c) through (f), respectively;

■ d. Revise newly redesignated paragraph (d)(1);

■ e. In newly redesignated paragraph (c), remove the words ''Facility Security Plan (FSP)'' and add, in their place, the word ''FSP''.

■ f. In newly redesignated paragraph (e)(6), remove the word ''or'';

■ g. In newly redesignated paragraph (e)(7), following the words ''in the approved FSP'', remove the symbol ''.'' and add, in its place, the word ''; or'';

■ h. Add paragraph (e)(8);

■ i. In newly redesignated paragraph (f)(8), remove the word ''or'';

■ j. In newly redesignated paragraph (f)(9), following the words ''within the facility'', remove the symbol ''.'' and add, in its place, the word ''; or''; and

■ k. Add paragraph (f)(10) as follows:

The revisions and additions read as follows:

**§ 105.255 Security measures for access control.**

(a) * * *

(4) Prevent an unescorted individual from entering an area of the facility that is designated as a secure area unless the individual holds a duly issued TWIC and is authorized to be in the area. Depending on a facility's Risk Group, TWICs must be inspected either visually or electronically using a TWIC reader or as integrated into a PACS at the access points to the secure areas designated in the facility security plan (FSP).

* * * * *

(d) * * *

(1) Implement TWIC as set out in §§ 101.520, 101.525, or 101.530 of this subchapter, as applicable, and in accordance with the facility's assigned Risk Group, as set out in § 105.253 of this part;

* * * * *

(e) * * *

(8) Implementing additional TWIC requirements, as required by § 105.253 of this part and §§ 101.520, 101.525, or 101.530 of this subchapter, if relevant.

* * * * *

(f) * * *

(10) Implementing additional TWIC requirements, as required by § 105.253 of this part and § 101.520, 101.525, or 101.530 of this subchapter, if relevant.

**§ 105.257 [Amended]**

■ 27. In § 105.257(a), remove the last sentence.

■ 28. Revise § 105.290(b) to read as follows:

**§ 105.290 Additional requirements—cruise ship terminals.**

* * * * *

(b) Check the identification of all persons seeking to enter the facility. Persons holding a TWIC shall be checked as set forth in §§ 101.520, 101.525 or 101.530 of this subchapter, as applicable, in accordance with the facility's assigned Risk Group, as set out in § 105.253 of this part. For persons not holding a TWIC, this check includes confirming the reason for boarding by examining passenger tickets, boarding passes, government identification or visitor badges, or work orders;

* * * * *

■ 29. Revise § 105.296(a)(4) to read as follows:

**§ 105.296 Additional requirements-barge fleeting facilities.**

(a) * * *

(4) Control access to the barges once tied to the fleeting area by implementing TWIC as described in §§ 101.520, 101.525 or 101.530 of this subchapter, as applicable, in accordance with the facility's assigned Risk Group, as set out in § 105.253 of this part.

* * * * *

■ 30. Amend § 105.405 as follows:

■ a. Revise paragraph (a)(10); and

■ b. In paragraph (b), remove the last sentence.

The revisions read as follows:

**§ 105.405 Format and content of the Facility Security Plan (FSP).**

(a) * * *

(10) Security measures for access control, including the facility's TWIC program and designated public access areas;

* * * * *

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

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

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

**§ 106.110 [Amended]**

■ 32. In § 106.110, remove paragraphs (d) and (e).

**§ 106.200 [Amended]**

■ 33. Amend § 106.200 as follows:

■ a. In paragraph (b)(6) introductory text, remove the word ''part'', and add, in its place, the word ''subchapter''; and

■ b. In paragraph (b)(12), remove the words ''§ 106.260(c) of this part'', and add, in their place, the words ''§ 101.535 of this subchapter''.

■ 34. Add § 106.258 to read as follows:

**§ 106.258 Risk Group classifications for OCS facilities.**

For purposes of the Transportation Worker Identification Credential requirements of this subchapter, all Outer Continental Shelf facilities subject to this part are classified in Risk Group B.

■ 35. Amend § 106.260 as follows:

■ a. Remove paragraphs (c) and (d);

■ b. Redesignate paragraphs (e) through (h) as paragraphs (c) through (f), respectively;

■ c. Revise newly redesignated paragraph (d)(1);

■ d. In newly redesignated paragraph (e)(3), remove the word ''or'';

■ e. In newly redesignated paragraph (e)(4), following the words ''providing boat patrols'', remove the symbol ''.'' and add, in its place, the word ''; or'';

■ f. Add paragraph (e)(5);

■ g. In newly redesignated paragraph (f)(7), remove the word ''or'';

■ h. In newly redesignated paragraph (f)(8), following the words ''search of the OCS facility'', remove the symbol ''.'' and add, in its place, the word ''; or''; and

■ i. Add paragraph (f)(9).

The revisions and additions read as follows:

**§ 106.260 Security measures for access control.**

* * * * *

(d) * * *

(1) Implement TWIC as set out in § 101.525 of this subchapter in

accordance with the OCS facility's assigned Risk Group, as set out in § 106.258 of this part.

* * * * *

(e) * * *

(5) Implementing additional TWIC requirements, as required by § 106.258 of this part and § 101.525 of this subchapter.

* * * * *

(f) * * *

(9) Implementing additional TWIC requirements, as required by § 106.258 of this part and § 101.525 of this subchapter.

**§ 106.262 [Amended]**

■ 36. In § 106.262(a), remove the last sentence.

■ 37. Amend § 106.405 as follows:

■ a. Revise paragraph (a)(10); and

■ b. In paragraph (b), remove the last sentence.

The revisions read as follows:

**§ 106.405 Format of the Facility Security Plan (FSP).**

(a) * * *

(10) Security measures for access control, including the OCS facility's TWIC program;

* * * * *

Dated: March 13, 2013.

**Admiral Robert J. Papp Jr.,**

*Commandant, U.S. Coast Guard.*

[FR Doc. 2013–06182 Filed 3–21–13; 8:45 am]

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Part III

## Environmental Protection Agency

40 CFR Part 49

Approval and Promulgation of Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nation), North Dakota; Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 49**

**[EPA–R08–OAR–2012–0479; FRL–9789–3]**

# Approval and Promulgation of Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nation), North Dakota

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action to promulgate a Reservation-specific Federal Implementation Plan in order to regulate emissions from oil and natural gas production facilities located on the Fort Berthold Indian Reservation in North Dakota. The Federal Implementation Plan includes basic air quality regulations for the protection of communities in and adjacent to the Fort Berthold Indian Reservation. The Federal Implementation Plan requires owners and operators of oil and natural gas production facilities to reduce emissions of volatile organic compounds emanating from well completions, recompletions, and production and storage operations. This Federal Implementation Plan will be implemented by the EPA, or a delegated tribal authority, until replaced by a Tribal Implementation Plan. The EPA proposed a Reservation-specific Federal Implementation Plan concurrently with an interim final rule on August 15, 2012. This final Federal Implementation Plan replaces the interim final rule in all intents and purposes on the effective date of the final rule. The EPA is taking this action pursuant to the Clean Air Act (CAA).

**DATES:** This final rule is effective on April 22, 2013.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2012–0479. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov,* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Deirdre Rothery, U.S. Environmental Protection Agency, Region 8, Air Program, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6431, *rothery.deirdre@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we'', ''us'', and ''our'' refer to the EPA.

## Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

i. The initials *APA* mean or refer to the Administrative Procedure Act.
ii. The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
iii. The initials *BTU* mean or refer to British Thermal Unit.
iv. The initials *CAFOs* mean or refer to Consent Agreement Final Orders.
v. The initials *CDPHE* mean or refer to Colorado Department of Public Health and Environment Air Pollution Control Division.
vi. The initials *CO* mean or refer to carbon monoxide.
vii. The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.
viii. The words Reservation or the initials *FBIR* mean or refer to the Fort Berthold Indian Reservation.
ix. The initials *FIP* mean or refer to Federal Implementation Plan.
x. The initials *GOR* mean or refer to gas-to-oil ratio.
xi. The initials *LACT* mean or refer to lease automatic custody transfer.
xii. The initials *MDEQ* mean or refer to Montana Department of Environmental Quality.
xiii. The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.
xiv. The initials *NAICS* mean or refer to the North American Industry Classification System.
xv. The initials *NDDoH* mean or refer to the North Dakota Department of Health.
xvi. The initials *NDIC* mean or refer to the North Dakota Industrial Commission.
xvii. The initials *NESHAP* mean or refer to National Emission Standards for Hazardous Air Pollutants.
xviii. The initials *NMED* mean or refer to New Mexico Environment Department Air Quality Bureau.
xix. The initials $NO_X$ mean or refer to nitrogen oxides.
xx. The initials $NO_2$ mean or refer to nitrogen dioxide.
xxi. The initials *NSPS* mean or refer to New Source Performance Standards.
xxii. The initials *NSR* mean or refer to new source review.
xxiii. The initials *ODEQ* mean or refer to Oklahoma Department of Environmental Quality Air Quality Division.
xxiv. The initials *PM* mean or refer to particulate matter.
xxv. The initials *PSD* mean or refer to prevention of significant deterioration.
xxvi. The initials *PTE* mean or refer to potential to emit.
xxvii. The initials *RCT* mean or refer to Railroad Commission of Texas, Oil and Gas Division.
xxviii. The initials *SCADA* mean or refer to Supervisory Control and Data Acquisition.
xxix. The initials *SIP* mean or refer to State Implementation Plan.
xxx. The initials $SO_2$ mean or refer to sulfur dioxide.
xxxi. The initials *TAR* mean or refer to Tribal Authority Rule.
xxxii. The initials *TAS* mean or refer to treatment as state.
xxxiii. The initials *TIP* mean or refer to Tribal Implementation Plan.
xxxiv. The initials *UDEQ* mean or refer to Utah Department of Environmental Quality.
xxxv. The initials *VOC* mean or refer to volatile organic compound(s).
xxxvi. The initials *VRU* mean or refer to vapor recovery unit.
xxxvii. The initials *WDEQ* mean or refer to Wyoming Department of Environmental Quality Air Quality Division.

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## I. Background

On August 1, 2012, we signed a proposed rulemaking to establish a Federal Implementation Plan (FIP) for oil and natural gas production facilities located on the Fort Berthold Indian Reservation (FBIR). We also signed an interim final rule concurrent with the proposed action because we found good cause under Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* that notice-and-comment are impracticable, unnecessary or contrary to the public interest in this instance. The proposal and concurrent interim final rule were published in the **Federal Register** on August 15, 2012 (77 FR 48878), and residents of the FBIR, as well as industry representatives and environmental groups commented on the proposed rule. During the 60-day comment period that ended on October 15, 2012, we also held a public hearing in New Town, North Dakota on September 12, 2012. We received seven written comments during the comment period and 12 people provided oral testimony at the public hearing. This **Federal Register** action announces our final action on the proposed regulations.

In promulgating this rule, the EPA is exercising its discretionary authority under Sections 301(a) and 301(d)(4) of the Clean Air Act (CAA) to promulgate regulations as necessary to protect tribal air resources. Promulgating this final rule addresses an important initial step to fill a regulatory gap between state and federal requirements with regard to controlling volatile organic compound (VOC) emissions from oil and natural gas operations on the FBIR. There is no other federal rule, including the recently finalized New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) for the Oil and Natural Gas Sector (NSPS OOOO and NESHAP HH),[1] that establishes regulations for the particular oil and natural gas production operations that exist on the FBIR. This is in contrast to oil and natural gas operations off the Reservation, which are governed by the North Dakota Department of Health (NDDoH) regulations and North Dakota Industrial Commission (NDIC) regulations within the State of North Dakota's jurisdiction. The NDDoH requirements were developed with an understanding of the high VOC emissions and infrastructure constraints that exist in the region. Consistent with the regulatory structure that exists off the FBIR, and NSPS OOOO, this rule has requirements for VOC emissions control and reductions, monitoring, recordkeeping, and reporting. This rule also establishes requirements that are clear and legally and practicably enforceable.

We developed this rule in consultation with the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation. As part of this consultation, we evaluated the oil and natural gas activities and sources of VOC emissions that could impact air resources on the Reservation and the differences in the VOC emission reduction requirements for those facilities operating on the FBIR compared to those facilities operating in NDDoH jurisdiction. The final rule we are promulgating today establishes regulations for oil and natural gas production and storage operations specific to the FBIR and applies to all lands on the FBIR, which is defined by the Act of March 3, 1891 (26 Statute 1032) and which includes all lands added to the Reservation by Executive Order of June 17, 1982.

We drafted the requirements that are consistent to the greatest extent practicable with the most relevant aspects of neighboring state and local rules concerning the air pollutant emitting activities on the FBIR. We do not intend, nor do we expect, this regulation to impose significantly different regulatory burdens upon industry or the residents of the FBIR than those imposed by the rules of state and local air agencies in the surrounding areas. We evaluated the regulations imposed by other oil and natural gas producing state jurisdictions, NDDoH, NDIC, and NSPS OOOO. Included in the docket for this rule are copies of the regulations and guidance that we considered in this process, as well as a technical support document[2] (TSD) explaining the requirements.

We requested comments on all aspects of our proposed action and provided a 60-day comment period. During the comment period, we received comments on our proposed rule that supported our proposed action and that were critical of our proposed action. After evaluating all the comments that were received, we are taking final action to respond to the comments we have received, explain the basis for our action, and promulgate the final rule. In this final rule, also referred to as the Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa, and Arikara Nation), North Dakota, we are making certain revisions based on the information provided by commenters and regulated entities. This preamble to the final rule responds to the issues raised by commenters and describes the final rule and significant changes from the proposed rule.

## II. Basis for Final Action

This **Federal Register** action announces the EPA's final action on the proposed regulations of August 15, 2012. In promulgating this rule, the EPA is exercising its discretionary authority under Sections 301(a) and 301(d)(4) of the CAA to promulgate such implementation plan provisions as are necessary or appropriate to protect air quality within the FBIR, specifically identified in 40 CFR part 49, subpart K—Implementation Plans for Tribes—Region VIII. After evaluating air quality issues for the FBIR, the EPA was concerned that there was a gap in air quality requirements for oil and natural gas production facilities on the FBIR under the CAA and its implementing regulations.

Our proposed rule in August 2012 was generally based upon the aspects of neighboring NDIC and NDDoH regulations most relevant to the oil and natural gas production VOC-emitting activities occurring on the FBIR. We acknowledged that there were some differences between the requirements in the proposed rule and those in the NDIC and NDDoH regulations, most notably additional monitoring requirements. These differences were necessary to meet the standards for promulgating FIPs. Included in the docket for the proposed rulemaking were copies of all of the state rules that the EPA considered in this process, as well as a TSD comparing the proposed regulations with the state regulations and a description of why the EPA believed the proposed rule was appropriate.

During the public comment period, a number of FBIR residents, industry representatives and the regulated entities, environmental and resident advocate organizations, and tribal government agencies submitted comments on the rule proposed by the EPA and offered suggestions for improving the proposed rule. We have fully considered all substantive public comments on our proposal and have

[1] "Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Review, Final Rule" **Federal Register** 77:159 (16 August 2012) p. 49490. The regulations can be accessed at *http://www.epa.gov/airquality/oilandgas/actions.html* and are included in the docket for this rule.

[2] The Technical Support Document includes a more detailed explanation of the development of this FIP. It can be found in the docket for this rule, Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

concluded that certain changes are warranted. Those changes are discussed in Section V of this notice. However, the EPA does not intend, nor does it expect, these regulations to impose significantly different regulatory burdens upon industry or the residents within the FBIR than those imposed by the rules of the NDIC and NDDoH in the surrounding areas.

## III. Final Action

In this action, we are promulgating a Reservation-specific FIP to establish enforceable control requirements for reducing VOC emissions from oil and natural gas production activities on the FBIR in North Dakota. This final rule replaces the interim final rule promulgated on August 15, 2012 (77 FR 48878) in all intents and purposes on the effective date of the final rule.

## IV. Major Issues Raised by Commenters and EPA's Response

### *A. Purpose and Scope of FIP*

*Comment:* Multiple commenters described the ways in which the existing oil and natural gas development had negatively affected their communities. For example, commenters described black smoke, visible soot, and strong gas odors. Other commenters expressed support of the EPA's decision to cover existing wells in the FIP.

*Response:* We acknowledge the concerns expressed by the commenters related to oil and natural gas production activities on the FBIR. The purpose of this FIP, in part, is to address the potential impacts of VOC emissions caused by the oil and natural gas production occurring in the region. By requiring process equipment at oil and natural gas production facilities to be operated with specific air emission controls, under specific operating conditions and following specific procedures, this FIP will help address these concerns. We are requiring that operations at these facilities be monitored and records be kept such that any improper process or emission control equipment operated by the owner or operator at a facility can be identified and remedied by the EPA through enforcement of this FIP. The public can report possible harmful environmental activity on the EPA's Web site at *http://www.epa.gov/tips/.*

We acknowledge the commenters support of the FIP to cover existing wells. As discussed in the TSD, one goal of this FIP was to provide an avenue of compliance with the CAA for those companies subject to CAFO agreements. Our primary goal, as always is with regard to regulations developed under the CAA, was to ensure increased protection to the public health and the environment. This FIP provides these benefits through promulgation of enforceable requirements to limit VOC emissions from facilities that constructed prior to the effective date of the interim final FIP.

*Comment:* One commenter stated that the EPA needs to control air quality because hydraulic fracturing (''fracking'') is under-regulated.

*Response:* The majority of oil and natural gas wells drilled today are hydraulically fractured. Hydraulic fracturing occurs when wells are being completed and recompleted. NSPS OOOO ensures that VOC emissions are controlled from the completion and recompletion of natural gas wells. Additionally, this FIP requires that owners and operators of oil and natural gas production facilities on the FBIR reduce by at least 90% the VOC emissions from casinghead natural gas during the completion or recompletion of any oil and natural gas well. Together, these recent regulatory actions will provide significant control of emissions from hydraulic fracturing activities.

*Comment:* Several commenters stated that the EPA should set methane standards in the final FIP noting that methane is a greenhouse gas (GHG) with a high carbon dioxide ($CO_2$) equivalent, and that leaked methane therefore negatively influences climate change. These same commenters also stated that the EPA already requires control technologies that could facilitate emissions standards for methane and that tribes have particular interest in mitigating climate change because they are disproportionately impacted by it.[3] The commenters also stated that leaked methane decreases a potentially significant revenue stream for producers. Another commenter stated that flaring creates significant $CO_2$ pollution, which contributes to climate change.

*Response:* We had a very specific purpose for developing this FIP, which was to regulate VOC emissions from oil and natural gas production operations on the FBIR which represented the largest source of air quality concerns at this time. While this rule does not directly regulate other pollutants subject to regulation under the CAA, such as the GHGs methane and $CO_2$, it does result in significant reductions of GHGs because of the substantial methane reduction as a co-benefit of the required VOC control.

*Comment:* Other commenters expressed concern about the dust now prevalent in the area. The commenters stated that excessive dust was often seen in the air as well as on trees and grass. Some commenters insisted that oil and trucking companies should participate in control of dust in the area. One commenter stated that visible emissions have not been responded to by the EPA or the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation.

*Response:* This FIP is focused on emissions of VOCs, and regulating fugitive dust resulting from oil and natural gas production activities on the FBIR was not within the scope of the rulemaking. If the EPA determines it is necessary to regulate other pollutants, we will address those at that time. Generally, dust from road traffic is a local issue and the public should contact the local environmental or health agency with these concerns. The public can report possible harmful environmental activity on the EPA's Web site at *http://www.epa.gov/tips/.*

*Comment:* Several commenters noted a significant increase in truck traffic since oil and natural gas production on the FBIR had begun. One commenter noted that the incidence of traffic accidents, often fatal, has significantly increased on the FBIR since production has begun.

*Response:* Traffic in North Dakota and on the FBIR is regulated by the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation or the United States Department of Transportation, and not by the EPA and thus is not within the EPA's authority to address.

*Comment:* One commenter discussed being bothered by noticeable diesel emissions from the increased truck traffic. Another commenter noted that an oil rig was polluting in close proximity to a school.

*Response:* This FIP does not regulate the exhaust emissions from the trucks or oil rigs. These sources of emissions meet the definition of on-road and non-road motor vehicles (mobile sources) under the CAA and are subject to regulations under those provisions. This FIP only regulates stationary oil and natural gas production sources. A stationary source is defined in the CAA (42 U.S.C. 7602(z)) to mean ''generally any source of an air pollutant.'' The definition specifically excludes those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in 42 U.S.C. 7550. This rule however does not

[3] Commenter cites ''EPA Tribal Science Council, Tribal Science Priority'' at 1 (June 2011). A copy of the document is included in the docket for this rule, Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

exempt the owners and operators from any other requirements under the CAA to minimize pollutants and control emissions from these sources.

*Comment:* Some commenters stated that oil and natural gas development had also negatively impacted water quality. One commenter stated that the water at her house is undrinkable and is often too poor to be used for other common functions like laundry. Some commenters stated that they had witnessed trucks dumping waste from oil and natural gas production in unauthorized locations, including the ground near Skunk Bay.

*Response:* We acknowledge the concerns expressed by the commenters in regard to the effect that oil and natural gas production activities may have on water quality. Our authority to issue this rule, however, falls under the CAA. Water pollution on the FBIR is addressed through separate regulations established under the Clean Water Act (CWA). Additional information about the CWA can be found at *http://www.epa.gov/regulations/laws/cwa.html.* In addition, the public can report possible harmful environmental activity on the EPA's Web site at *http://www.epa.gov/tips/.*

*Comment:* One commenter recommended that the EPA explore voluntary partnerships with FBIR producers in order to deploy best practices for gas capture and use. Commenter stated that this may allow FBIR producers to demonstrate the feasibility and benefits of comprehensive gas capture at co-producing sites, and in doing so encourage these practices for other producers in the Bakken and elsewhere.

*Response:* We appreciate the commenter's suggestion; however, such a partnership is outside of the scope of this FIP and 40 CFR part 49. The comment is more appropriately addressed through the EPA's voluntary programs, such as the Natural GasSTAR Program.[4] Therefore we have forwarded this comment on to the Natural GasSTAR Program for their consideration.

*B. Legal Basis and Authority*

*Comment:* Some commenters disagreed with our assertion that the rule is needed and justified to mitigate hazards to the public health and the environment, stating that actual emissions are much lower than potential emissions, and are low enough to present no hazard to public health or the environment. The commenters further stated that rather than the protection of the public health and environment, the purpose of this FIP is to solve the ''legal and hypothetical problem'' of ensuring potential emissions do not exceed regulatory applicability thresholds, such as the PSD thresholds. The commenters stated that the EPA proposed the FIP not to improve already good air quality[5] or to satisfy CAA requirements, but because many FBIR operators need preconstruction permits and the EPA lacks adequate time or resources to issue those permits by the time the Consent Agreement and Final Orders (CAFOs)[6] governing the sources expire.

Several commenters support the proposed FIP and also agree that we have just cause to mitigate hazards to the public health and the environment and with our assertion and that we are acting in accordance with our trust responsibilities to protect the public health and environment in Indian country.

*Response:* The purpose of this FIP is to address potential impacts to the public health and the environment. It also solves some of the unusual challenges that owners and operators on the FBIR face with regard to compliance with the permitting requirements of the CAA. However, our primary purpose for developing rules to regulate air emissions is to meet the requirements of the CAA to protect the public health and the environment by providing those living on the Reservation the same level of air quality and health protection as people living outside the Reservation. So, while this FIP solves some of the challenges that the owners and operators on the FBIR face with regard to requirements of the CAA, or more specifically the PSD permitting requirements, the primary focus is to prevent the potential degradation of the air quality on the FBIR.

The CAA is a comprehensive federal law that regulates air emissions from stationary and mobile sources. Among other things, this law authorizes us to establish National Ambient Air Quality Standards (NAAQS) to protect public health and the environment. Amendments to the CAA codified the PSD preconstruction permitting program to protect the public health and the environment from any actual or potential adverse effects which may reasonably be anticipated to occur notwithstanding attainment and maintenance of the NAAQS.

Because of the high quantity of VOC emissions present in the oil and natural gas operations in the Bakken formation, the absence of infrastructure to capture excess volatile liquids, and the regulatory gap that rendered the use of control technology unenforceable prior to the FIP, some sources had potential emissions that would have required major source permits. These preconstruction PSD permits are one mechanism available to the EPA to assure that emissions increases associated with economic development do not threaten the NAAQS. Under the Federal Tribal NSR rule, sources located on the FBIR may also obtain synthetic minor NSR permits to limit their emissions below major source levels. Either of these options would require that the EPA review and issue several hundred air permits to emissions limitations similar to those required by this FIP. We determined, therefore, that issuing this FIP, and imposing emission limitations for these sources at one time was a more efficient and streamlined mechanism than issuing individual permits. We believe that this is the best way to address the potential harm that these previously unregulated VOC emissions would create, and ensure that we are not inhibiting the growth of oil and natural gas due to the permitting process, which could put the Tribe at an economic disadvantage.

Finally, while actual emissions for some sources may be lower than potential emissions, there are no federally and practicably enforceable emission control requirements for the affected equipment limiting the potential to emit. This rule imposes emission limitations that are federally and practicably enforceable.

*Comment:* Several commenters stated that by proposing to adopt this FIP, the EPA is stepping into the shoes of the Tribes and acting as the local air pollution control authority. The FIP includes a comprehensive set of control measures for oil and natural gas operations—imposing requirements on such operations merely because they exist and not because they have engaged in an activity that triggers a regulatory requirement, such as building a new source or modifying an existing source such that a PSD permit or a synthetic minor NSR permit is needed. In other words, the EPA is adopting what would otherwise amount to a State Implementation Plan (SIP) or TIP for the FBIR. The authority for such a control program necessarily flows from section 110(a), which specifies the measures that a SIP may include. This section of

[4] Information on the EPA's Natural Gas STAR Program is available online at: *http://www.epa.gov/gasstar/,* Accessed November 15, 2012.

[5] Commenter references the interim final rule at 77 FR 48886.

[6] The FBIR CAFOs are included in the docket for this rule, Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

the CAA specifies that a SIP may ''include enforceable emission limitations and other control measures, means, or techniques * * * *as may be necessary or appropriate* to meet the applicable requirements of this chapter.'' CAA section 110(a)(2)(A) (emphasis added). Thus, the EPA may adopt as part of this FIP only those measures that are needed to attain or maintain NAAQS or to meet other specified CAA applicable requirements.

*Response:* We disagree; the commenter is mistaken that the underlying authority for this FIP is found in Section 110(a) of the Act. Section 301(d) of the CAA, 42 U.S.C. 7601(d), directs us to promulgate regulations specifying the provisions of the Act for which it is appropriate to treat Indian tribes in the same manner as states. Pursuant to this statutory directive, the EPA promulgated regulations entitled, ''Indian Tribes: Air Quality Planning and Management'' (TAR) (63 FR 7254, February 12, 1998). Our regulations delineate the CAA provisions for which it is appropriate to treat tribes in the same manner as a state. *See* 40 CFR 49.3, 49.4. Among those provisions for which we determined such treatment was inappropriate are CAA section 110(a)(1) (SIP submittal and implementation deadlines) and CAA section 110(c)(1) (directing the EPA to promulgate a Federal Implementation Plan (FIP) ''within 2 years'' after we find that a state has failed to submit a required plan, or has submitted an incomplete plan, or within 2 years after we disapproved all or a portion of a plan). *See* 40 CFR 49.4(a), (d); 63 FR 7262–7266, February 12, 1998.

The TAR preamble clarified that by including CAA section 110(c)(1) on the § 49.4 list, ''EPA is not relieved of its general obligation under the CAA to ensure the protection of air quality throughout the nation, including throughout Indian country. In the absence of an express statutory requirement, EPA may act to protect air quality pursuant to its ''gap-filling'' authority under the Act as a whole. *See, e.g.* CAA section 301(a).'' (63 FR 7265, February 12, 1998). The preamble confirmed that ''EPA will continue to be subject to the basic requirement to issue a FIP for affected tribal areas within some reasonable time.'' *Id.* (referencing § 49.11(a) which provides that the Agency will promulgate a FIP to protect tribal air quality within a reasonable time if tribal efforts do not result in adoption and approval of tribal plans or program).[7]

The preamble to the TAR set forth our view articulated in the proposed rule that, based on the ''general purpose and scope of the CAA, the requirements of which apply nationally, and on the specific language of Sections 301(a) and 301(d)(4), Congress intended to give to the Agency broad authority to protect tribal air resources.'' *Id.* at 63 FR 7262. It further discussed our intent to ''use its authority under the CAA 'to protect air quality throughout Indian country' by directly implementing the Act's requirements in instances where tribes choose not to develop a program, fail to adopt an adequate program or fail to adequately implement an air program.'' *Id.*

The NDDoH, the CAA permitting authority for areas of North Dakota outside of Indian country, including outside of the FBIR, has promulgated rules to control emissions from oil and natural gas production facilities. Since there is not currently an approved TIP specifically covering the reduction of VOC emissions related to natural gas emissions from oil and natural gas production facilities on the FBIR, a lack of regulation exists with regard to such facilities operating within the exterior boundaries of the Reservation. This FIP establishes legally and practicably enforceable requirements to control and reduce VOC emissions. Therefore, in this rule, we determined that it is necessary and appropriate to exercise our discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate a FIP to remedy an existing regulatory gap under the Act with respect to oil and natural gas operations on the FBIR.

*Comment:* One commenter was concerned that the Tribe would have enforcement authority and be allowed to act arbitrarily and capriciously with regard to shutting down operations and requested that the requirements of this rule be enforced by the federal government. The commenter stated that the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation should not be allowed to enforce the rule because its elected officials have economic interest in the oil and natural gas industry, making them conflicted.

*Response:* At this time, EPA has not delegated to the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation the authority under these regulatory provisions to enforce the provisions of this FIP. The provisions in § 49.4162 of the Code of Federal Regulations establish the steps by which the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation may request delegation to assist us with the administration of this rule. As described in the regulatory provisions and the preamble to the proposed rule, any such delegation will be accomplished through a delegation of authority agreement between the EPA Region 8 Administrator and the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation. In the event such an agreement is reached, the rule would continue to operate under federal authority throughout the FBIR, and the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation would assist us with administration of the rule to the extent specified in the delegation agreement.

### *C. Rule Development and Implementation*

*Comment:* One commenter indicated that the State of North Dakota was issuing permits to drill on the FBIR and asserted that the State has been giving out drilling permits ''like candy,'' leading to an overwhelming level of oil and natural gas development and increase in pollution on the FBIR. The commenter stated that the Tribe did not have, nor did they develop, necessary regulations when development began, and that the Tribe, as well as the EPA, is now playing ''catch-up.''

*Response:* We acknowledge the commenter's concern with increased oil and natural gas development on the FBIR, as well as increased development under the State of North Dakota's jurisdiction and the need for reservation-specific regulations to protect public health and the environment. We note that the State of North Dakota does not have jurisdiction over development on the FBIR. As discussed in the preamble for the interim final rule, we first became aware of the need to address VOC emissions from these operations in August of 2011. At that time, a significant number of entities engaged in oil and natural gas operations on the FBIR informed us that the emissions of regulated air pollutants, including VOC, were significantly larger than previously understood and larger than emissions in other areas, due to the geologic characteristics and infrastructure challenges in the Bakken formation. At

[7] Section 49.11(a) states that the Agency, ''[s]hall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 301(a) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan.'' 40 CFR 49.11(a).

that time, we immediately took measures to ensure that VOC emissions were appropriately controlled by entering into CAFOs with the owners/operators to implement VOC controls. We then developed and promulgated this FIP as an interim final rule to immediately establish federally and practicably enforceable emission control requirements for the affected equipment. In addition, given the number of existing facilities that were operating as unregulated sources, we determined that existing facilities should also be subject to the FIP. We believe the series of actions taken to address the unregulated sources of VOC emissions on the FBIR occurred as soon as practicable after becoming aware of the issue.

*Comment:* One commenter stated that the EPA had accelerated development of this FIP without consideration of its impact on the community to avoid disrupting the pace of oil and natural gas development. Another commenter stated that this FIP is not strict enough, citing the estimated potential long-term development of 1,000 oil and natural gas facilities by 2029 as discussed in the interim final rule (77 FR 48887).

*Response:* We disagree with the assertion that the expedited process for developing this FIP did not take into consideration the impacts of oil and natural gas development on the community. The mitigation of the air quality impact of oil and natural gas development on the FBIR was a priority when developing this rule. This rule will reduce VOC emissions from existing operations and limit the amount of VOC emissions from potential new development. Our intent is to level the health protections between the residents living on the FBIR and the residents living in the State of North Dakota. In other words, the EPA intends that the FBIR residents receive equivalent air quality protections as those residing in the State. We acted quickly in developing this FIP in order to provide those protections as soon as possible and avoid unnecessary disruption to oil and natural gas development. While the FIP development process has been quick, as discussed in this notice we have provided for full public participation and fully responded to all concerns.

We also disagree that the FIP is not strict enough. This FIP establishes requirements to control air pollution in the form of VOC emissions from oil and natural gas production and storage operations on the FBIR, comparable to those requirements developed by state permitting authorities. In addition, this FIP imposes emission reduction requirements that are robust and consistent with the control technology requirements for the oil and natural gas production and storage industry under NSPS OOOO.

*Comment:* One commenter stated that an environmental impact statement (EIS) was not required prior to leasing the tribal land for oil and natural gas development. The commenter noted that a programmatic environmental assessment (EA) is being conducted, but insisted that the more rigorous EIS should have been required. The commenter questioned whether it was legal for the EIS requirement to be bypassed, and stated that the requirements of the National Environmental Policy Act (NEPA) had been ''minimized.'' Therefore, the commenter asserted that area residents were denied the opportunity to make statements regarding the impact of oil and natural gas development on their lives. Another commenter stated that the lack of adequate public notice for the EA was not compliant with NEPA and environmental justice.

*Response:* This FIP only regulates the VOC air pollutant emissions generated by the well completion and production and storage operations on the FBIR and is not subject to the requirements of NEPA (EIS or EA). A FIP is an action under the CAA and Section 7(c) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 793(c)(1)) exempts actions under the CAA from the requirements of NEPA, specifically this section reads ''* * * (c) Major federal actions significantly affecting the quality of the human environment (1) No action taken under the Clean Air Act [42 U.S.C. 7401 et seq.] shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].'' Therefore a NEPA analysis is not required for this FIP.

Leasing of the mineral rights and drilling of the oil and natural gas wells is regulated by the Bureau of Indian Affairs (BIA) and the Bureau of Land Management (BLM). Those federal agencies are undertaking any applicable NEPA requirements when approving leasing and drilling activities.

*Comment:* Many commenters asserted that this FIP falls short of its stated purpose because some facilities' potential to emit (PTE) of VOCs or any other regulated NSR pollutant may exceed the applicability thresholds for PSD permitting resulting in the need for a synthetic minor NSR permit issued under Federal Tribal NSR Rule (if PSD permitting is to be avoided) even after applying the legally and practicably enforceable emission reductions provided in this rule (77 FR 48885). Several commenters stated that the EPA should declare in the final FIP that all sources that become minor under the Federal Tribal NSR rule will be considered ''true minor'' sources. More specifically, commenters claim that sources treated as synthetic minor sources under this FIP could not install new wells for the foreseeable future because the EPA has not developed an expeditious process for issuing synthetic minor NSR permits.

Another commenter questioned why owners and operators working within the FBIR would be allowed to exceed VOC emission standards.[8] The commenter asked if there was any point in setting these standards if permits could be obtained to exceed them.

*Response:* The owners and operators subject to this FIP are not allowed to exceed established standards, and nothing in this FIP is intended to relieve the owners and operators of the responsibility to comply with all federal environmental laws and rules. This rule does not replace any requirement to obtain permission to construct under the PSD regulations at 40 CFR 52.21 or the Federal Tribal NSR regulations at 40 CFR 49.151; therefore, this FIP does not automatically create ''true minor'' status for those sources that become minor under the Federal Tribal NSR Rule. Owners and operators complying with this rule may still be required to obtain preconstruction permits to further reduce VOC emissions or the emissions of other pollutants that are regulated by the PSD and Federal Tribal NSR permitting regulations if the emissions thresholds for these regulations are exceeded. Further, this rule does not automatically make sources synthetic minor sources for purposes of the PSD regulations. A synthetic minor source is generally understood to include any source that would be major but for a requested enforceable limitation. For example, a source can become a synthetic minor source when the owner or operator requests a synthetic minor NSR permit through the Federal Tribal NSR regulations to avoid major source requirements of PSD and that request is approved and the permit is issued.

This rule is similar to NSPS OOOO promulgated at 40 CFR part 60, NESHAP HH promulgated at 40 CFR part 63, and the NDDoH regulations specific to oil and natural gas production operations at Chapters 33–

[8] The commenter is referring to the interim final rule Section III.E. ''Effect on Permitting of Facilities.'' (77 FR 48885).

15–07 and 33–15–20 of the North Dakota Administrative Code, none of which replace CAA permitting requirements. Similar to the NSPS, NESHAPs, and NDDoH regulations, this rule provides legally and practicably enforceable restrictions for VOC emissions on an emission unit specific basis. Any reductions realized by complying with this rule can then be used to calculate the PTE of VOCs when determining whether any CAA permitting may be required. In addition, the rule only requires controls on VOC emissions, because of the high amount of associated natural gas in the crude oil from the FBIR and the absence of infrastructure to capture the natural gas emissions. Therefore, any potential emissions of VOCs or any other criteria pollutant that exceed the PSD permitting thresholds after taking credit for the enforceable restrictions in this rule would still result in the requirement to obtain a PSD permit for permission to construct. A synthetic minor NSR permit to avoid the PSD permitting requirements can still be requested through the Federal Tribal NSR regulations. Those facilities with potential emissions of VOCs and all other criteria pollutants that are below the PSD permitting thresholds and above the Federal Tribal NSR permitting thresholds after complying with the requirements of this FIP would be considered true minor sources under the Federal Tribal NSR regulations.

Finally, regarding the commenter's claim that sources treated as synthetic minor sources under this FIP could not install new wells for the foreseeable future because the EPA has not developed an expeditious process for issuing synthetic minor permits, the EPA has issued and continues to issue synthetic minor permits to sources on the FBIR to those who request them.

*Comment:* Several commenters requested that the EPA clarify that a stationary source and corresponding minor NSR permitting requirements apply to operations and equipment on a well pad and immediately appurtenant operations. These commenters also urged the EPA to clarify that geographically separated ''well pads and related operations'' should not be aggregated into one stationary source simply because they are connected by gathering or production lines. The commenters asserted that the EPA's use of the term ''integrally connected'' (77 FR 48885) could create confusion as to what equipment and activities are considered part of a facility. The commenters cited *Summit Petroleum Corp.* v. *EPA* [9] as an example of the EPA incorrectly aggregating multiple wells, well pads and related facilities that were geographically widespread into one single facility for the purposes of the CAA. The commenters stated that such an approach is ''nonsensical'' and inconsistent with the CAA definition of ''stationary source.'' The commenters also requested that the EPA explain the limited circumstances in which aggregation into a ''facility'' or ''stationary source'' is appropriate, and suggested the following as those circumstances; When: (1) The operations share a single two-digit major SIC code; (2) the operations are under common ownership or control; and (3) the operations are physically contiguous or physically proximate. The EPA should specify that functional interrelatedness should not be used to determine physical proximity.

*Response:* This action affects facilities operating on the FBIR in North Dakota, and thus the 6th Circuit's *Summit Petroleum* decision cited by the commenters does not apply.[10] When the EPA issues permits to sources that are also subject to this rule, the ultimate determination regarding the scope of the stationary source to be permitted will be made by implementing the stationary source definition contained in the federal NSR and Title V regulations (40 CFR 52.21(b)(5) and (6), 71.2). Such determinations are highly fact specific and will continue to be made on a case-by-case basis, applying the relevant regulatory criteria to the facts of the oil and natural gas production activities being permitted.

*Comment:* Several commenters stated that the final FIP should refer to Bakken Pool wells located on the FBIR simply as ''oil wells'' or ''Fort Berthold Indian Reservation wells'' rather than using the phrases ''oil and natural gas production wells'' or ''oil and natural gas production facilities.'' The commenters asserted that using the characterization ''oil wells'' is consistent with related EPA rules.[11] One commenter also stated that North Dakota permits refer to these as oil wells. On the other hand, two commenters stated that they support the inclusion of co-producing oil and natural gas wells, which are defined as ''oil and natural gas production facilities'' in this FIP.

*Response:* The reference to the Bakken Pool [12] production facilities as oil and natural gas production facilities in this FIP is consistent with: (1) NDDoH regulations at 33–15–20 which defines an oil well as ''any well capable of producing oil or oil and casinghead gas from a common source of supply''; and (2) the NDDoH's Bakken Pool Guidance [13] (Bakken Pool Guidance) which refers to the facilities as oil and gas production facilities, both of which form the basis of this rule. We believe this reference adequately describes the affected facilities under the FIP and is consistent with NDDoH regulations and guidance.

We acknowledge the commenter's assertions that the facilities may be described differently in other EPA regulations. Although the Bakken Pool production wells on the FBIR would be considered oil wells based on the discussions in NSPS OOOO and Subpart W (76 FR 80567), those discussions do not adequately reflect the volume of natural gas coproduced from a Bakken Pool well. NSPS OOOO and Subpart W are national rules, and therefore, the discussions they contain must be broad enough to apply nationwide. Since this a reservation-specific FIP, we believe it is appropriate to use a more focused definition, as did the State of North Dakota in the Bakken Pool Guidance, due to the unique nature of the oil being produced from the Bakken Pool.

### *D. Applicability*

*Comment:* Several commenters stated that the FIP should establish a minimum emissions threshold for applicability, which exists in NSPS OOOO.

*Response:* The only minimum emission threshold for applicability that

[9] *Summit Petroleum Corp.* v. *EPA,* Nos. 0904348, 10–4572 (Sixth Cir. 2012) at 1. The document is included in the docket for this rule, Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

[10] Memo from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1–10, *Applicability of the Summit Decision to EPA Title V and NSR Source Determinations* (Dec. 21, 2012), *available at http://epa.gov/nsr/documents/SummitDecision.pdf* and included in the docket for this rule, Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

[11] Commenter specifically mentions the ''New Source Performance Standards for Crude Oil and Natural Gas Production, Transmission and Distribution'' (40 CFR part 60, subpart OOOO) and the ''Greenhouse Gas Reporting Rule'' (40 CFR part 98, subpart W).

[12] The Bakken Pool is defined as a compilation of crude oil formations consisting of Bakken, Sanish and Three Forks formations.

[13] *Bakken Pool Oil and Gas Production Facilities Air Pollution Control Permitting & Compliance Guidance,* NDDoH Air Quality Division, May 2, 2011. This guidance document was developed by the Bakken VOC Task Force. The Bakken VOC Task Force was a collaboration between the NDDoH and the owners and operators of oil and gas operations producing from the Bakken Pool. A copy of the guidance document is included in the docket for this rule, Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

exists in NSPS OOOO and could apply to emission units regulated under this FIP is the 6 tpy applicability threshold for storage tanks. While this FIP does not provide the same applicability threshold for tanks as that found in NSPS OOOO, it does exempt storage tanks that are or become subject to the requirements of NSPS OOOO. *See* § 49.4164(f). However, several tanks operating on the FBIR prior to the applicability date of NSPS OOOO are not subject to NSPS OOOO. Therefore, since these tanks are not subject to NSPS OOOO and do not have a minimum emissions threshold for applicability, we decided that it was appropriate to regulate these tanks in a manner consistent with NDDoH requirements for tanks at oil and natural gas production facilities outside the FBIR. Specifically, the Bakken Pool Guidance at Appendix D and this FIP at § 49.4164(d)(2)(ii), allow for a reduced VOC destruction efficiency and the use of pit flares where the PTE of VOCs from the aggregate of all produced oil storage tanks and produced water storage tanks interconnected with produced oil storage tanks at an oil and natural gas production facility is less than, and reasonably expected to remain below, 20 tons in any consecutive 12-month period. The commenters failed to provide any supporting information on appropriate applicability thresholds for the other production equipment regulated under this FIP. As previously discussed, we believe the volume of VOC emissions from oil and natural gas operations on the FBIR warrants specially tailored regulation, which we have developed in this FIP, and which NDDoH developed in their Bakken Pool Guidance. At this time, we do not have sufficient information to establish minimum thresholds for other production equipment.

*Comment:* Several commenters stated that the EPA should clarify that the FIP statements ''[t]he completion date is considered the date that construction at an oil and natural gas production facility has commenced'' (77 FR 48885), and ''[t]he recompletion date is considered the date that a modification has occurred at an oil and natural gas production facility'' (77 FR 48885) are for the purposes of determining whether this FIP applies to a particular oil production facility and does not apply to other EPA rules or programs.

*Response:* We agree that the suggested clarification is necessary. We have added language to the applicable provision (§ 49.4161(b)) to indicate that the correlation of the initiation of well completion operations and well recompletion operations to the dates that construction and modifications commence is specific to this rule. In addition, we have changed the language to clarify that the compliance date is upon initiation of well completion operations and well recompletion operations.

*Comment:* Several commenters disagree with the EPA's assertion contained in the NSPS OOOO that recompletion of an existing well constitutes a modification. Because the EPA acts in accordance with the NSPS OOOO regarding this position, the commenters restated the position they had voiced in comments on the proposed NSPS OOOO. The commenters concluded that this same error should not be perpetuated in the final FIP.

*Response:* The issue of what constitutes modifications under CAA section 111 was decided by EPA in the prior rulemaking and is not being reopened here. While we are not statutorily compelled to use the same definition here, we think it is appropriate to do so and commenters have not provided a policy basis on which to revisit EPA's conclusion. As explained in detail in section IX.A. of the preamble for the final **Federal Register** notice of NSPS OOOO (77 FR 49510), a completion operation associated with refracturing is considered a modification under CAA section 111(a) because a physical change occurs to the well resulting in emissions increases during the recompletion operation. When determining applicability for the rule, we used August 12, 2007, which is the earliest well completion date identified in the CAFOs and thus the earliest well completion date information available to the EPA at the time of the rulemaking. Due to the nature of operations producing from the Bakken Pool and the significant amount of co-produced natural gas emissions, it is important that modified facilities are required to control emissions from affected equipment. We believe including the definition of a modified facility in the final FIP is important because it will require the control of emissions from the recompletion of any existing well that was completed prior to August 12, 2007 that the agency may not have been aware of at the time of the rulemaking and that would not be subject to the rule prior to a modification.

*Comment:* One commenter urged the EPA to include pollution control requirements for dehydration units, pneumatic controllers and pumps, and compressors, stating that these sources could be significant sources of pollution. The commenter requested that the EPA incorporate the requirements for compressors and pneumatics from the NSPS OOOO, at a minimum.

*Response:* We agree with the commenter that dehydration units, pneumatic controllers and pumps, and compressors are other sources of air pollution that may be operating at the oil and natural gas production facilities on the FBIR. We reviewed information provided in 154 applications for synthetic minor NSR permits submitted to the Region 8 office [14] during the development of the FIP. Based on these applications, we were able to determine that the most significant sources of the VOC emissions are the pieces of equipment used to produce the oil and natural gas during well completions, phase separation of the extracted reservoir fluids (heater-treater), and the temporary storage of the crude oil (tanks). The information in the applications indicates pneumatic devices, dehydration units, compressors, and associated fugitive emissions listed in the applications were minor sources of VOC emissions when compared to other emission units. Therefore, requirements for this equipment have not been included in this rule. If we determine at a later date that there is a need for control of VOC emissions from oil and natural gas production equipment and operations not covered by this rule, we may propose additional FIPs or propose supplements to this FIP.

*Comment:* Several commenters stated that the EPA should remove all requirements applicable to heater-treater combustion devices from the FIP. The commenters asserted that the use of heater-treater combustion devices can already be taken into account when determining PTE because they are ''inherent process equipment,'' and that additional requirements for these devices are therefore unnecessary. The commenters cited criteria from the EPA letters [15] and the Compliance Assurance Monitoring (CAM) rulemaking [16] to

[14] The applications can be found in the docket for this rule, Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at *http://www.regulations.gov.*

[15] Letter from EPA to Mr. Timothy J Mahin, Intel Government Affairs, dated November 27, 1995; see also Letter from EPA to Edward R. Herbert III, Director of Environmental Affairs, National Ready Mixed Concrete Association, July 10, 2002, included in the docket for this rule under Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

[16] ''CAM Response to Comments, Part III,'' at 6–7, October 2, 1997, available online at *http://www.epa.gov/airtoxics/cam/ricam.html* and included in the docket for this rule under Docket

Continued

argue that heater-treater combustion devices must be considered inherent process equipment based on those criteria.

The commenters stated that the EPA's description of the heater-treater combustion device requirement in the FIP mandates the use of such devices at oil facilities, primarily for safety and product recovery, and does not address air quality concerns (77 FR 48883–48884).

The commenters also stated that the possibility of some oil facilities operating without heater-treater devices is not an appropriate justification for the FIP requirements, because any facilities operating as such would be in clear violation of standard operating procedures which ensure safe working conditions. The commenters insisted that the EPA should not base this justification on ''unsupported assumptions'' that standing laws are being violated or inadequately enforced.

*Response:* We acknowledge that the preamble at 77 FR 48883 states that the oil/natural gas/water emulsion from the production wells is transported through 2-phase separators (separators), which are an inherent component of the pipeline. We also state in the same paragraph that following the 2-phase separator, the emulsion enters a 3-phase separator (heater-treater), which is a necessary step in the production process and produces gas that is separated from the emulsion. However, until the separated gas from the heater-treater is captured as product or used in some other beneficial way at the facility (e.g., a fuel source for gas burning equipment) it is a significant source of the high volume VOC emissions we determined requires control to protect public health and the environment on the FBIR. Throughout the rulemaking process, one of our priorities was to equalize the requirements that apply to sources operating in the State of North Dakota's jurisdiction with the requirements that apply to sources outside of the State's jurisdiction. The NDIC regulations found in the Control of Oil and Gas Resources at Chapter 38–08–06 require that natural gas from the heater-treaters be routed to a natural gas gathering pipeline as soon as practicable. When a pipeline is not available, the natural gas produced in the heater-treater process is required to be routed to a control system or device. While we acknowledged in the preamble for the interim final rule that the purpose of the NDIC requirements was principally for safety and product recovery reasons, we also acknowledged that the requirements for heater-treaters were modeled after the Bakken Pool Guidance which requires that the emissions from heater-treaters be controlled.

*E. Control Equipment and Requirements*

*Comment:* One commenter stated that flares of roughly 40 feet are a usual sight in Mandaree and can be a nuisance to area residents because of light and noise pollution. Another commenter stated that flares were not being lit when they should have.

*Response:* We acknowledge the concerns expressed by the commenters and offer a clarified explanation of the purpose and operation of the flares being used by operators of oil and natural gas production facilities on the FBIR.

The purpose of flaring the natural gas that is coproduced when extracting oil from the FBIR wells is to prevent the emission of VOC gases that might otherwise be vented to the ambient air when the natural gas cannot be captured and injected into a sales pipeline. The flames from the flares indicate that the VOCs are actually being combusted. The flares should be lit at all times that co-produced natural gas is being routed to them rather than to the sales pipeline. In situations where production facilities are able to take advantage of existing infrastructure and inject produced gas into a pipeline, flaring is significantly reduced, in some cases to the point of only occurring as a backup control measure in the event that pipeline injections of all or part of the produced natural gas becomes temporarily infeasible. Situations at production facilities that are unable to route the gas to a sales pipeline and where flares are not visibly operating may indicate the flares are not being operated properly and gas is being vented directly to the ambient air. This FIP has appropriate monitoring, recordkeeping, and reporting requirements to ensure that the flares are operating properly. Further, because the FIP intends to limit the use of flares in favor of capture and injection of the produced natural gas into sales pipelines as soon as practicable, secondary impacts such as noise and light pollution from combustion of gas are expected to be reduced by the owner or operator complying with the rule.

*Comment:* One commenter speculated that the level of emissions from flares is above the allotted amount.

*Response:* It is unclear what is meant by the term ''allotted amount.'' The majority of oil and natural gas production facilities currently in operation on the FBIR do not hold any air pollution control permits that specify any ''allotted amount'' of emissions from the flares. Should the combustion emissions from flaring exceed the major source permitting thresholds under PSD specified at 40 CFR 52.21, the owner or operator would be required to obtain a PSD permit or may opt to obtain a minor NSR permit to become synthetically minor for purposes of PSD prior to beginning actual construction, independently of this FIP. Either of these permits would require the installation of control technology sufficient to ensure protection of air quality.

*Comment:* Several commenters stated that the EPA should eliminate the 500 hour limitation on pit flare usage because it is inconsistent with the Bakken Pool Guidance and unnecessary. One commenter wondered why use of the pit flare was limited to 500 hours per year and not something different. The commenters also asserted that only being allowed to assume 90% VOC destruction and removal efficiency (DRE) for pit flares already limits the amount of pit flaring that could occur without exceeding major source thresholds. The commenters also stated that a limitation on the use of pit flares punishes operators that inject recovered produced natural gas and natural gas emissions into existing pipeline infrastructure to sell it, because 98% VOC DRE control devices are more costly. Another commenter asked who will monitor the pit flare operations and what the repercussions are if a source exceeds the limit of 500 hours of operation in any consecutive 12-month period?

*Response:* We disagree with the commenters that the 500 hour limitation on pit flare usage is unnecessary. The purpose of the 500-hour per year limit on use of a pit flare as a backup control device in instances where injection of produced natural gas and natural gas emissions is temporarily infeasible is to discourage the use of pit flares as a primary control device. Based on past EPA guidance [17] that addresses backup situations, we have concluded that applying a 500 hour per year limit to the oil and natural gas production facilities for the use of a pit flare in backup situations is reasonable and consistent with backup operation timeframes

ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

[17] Memo from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1–10, *Calculating Potential to Emit (PTE) for Emergency Generators* (September 6, 1995), available at *http://epa.gov/region07/air/title5/t5memos/emgen.pdf* and included in the docket for this rule under Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

allowed for other industry sectors. In addition, past EPA enforcement settlements [18] [19] that address backup situations have led us to conclude that 500 hours (or 21 days) is a reasonable period of time for owners and operators of oil and natural gas production facilities to address these situations and maintain compliance with the rule. During development of the draft synthetic minor NSR permits prior to this rule, we had discussions with owners and operators indicating that many oil and natural gas production facilities on the FBIR regularly utilize temporary 98% VOC DRE control devices while they are preparing a facility for permanent production and storage operations;[20] therefore, we concluded it is reasonable to expect that an owner or operator could acquire one of these temporary control devices in situations where use of the pipeline may be infeasible for more than 500 hours.

The final rule requires the owners and operators to monitor and keep records of the hours that a pit flare is operated, a description of the justification for use and the volume of gas sent to it, to ensure that the EPA can make a determination, if necessary, that injection of produced natural gas and natural gas emissions into a pipeline for sale or other beneficial purpose, or the use of the primary control device, has been maximized. Any deviations of these requirements must be reported to the EPA.

*Comment:* Several commenters stated that the EPA should clarify that 98% DRE utility flares and combustors are not required to be installed as backup control devices if an operator chooses to route vapors to a production line and use a 90% VOC DRE control device as backup. The commenters stated that such a clarification would prevent operators tied into a sales line from keeping utility flares or combustors idle and on-site for infrequent backup use.

*Response:* We agree. While the rule does not require the use of utility flares and combustors as back-up control devices if the owner or operator is routing produced natural gas and natural gas emissions to a sales line, the rule does not clearly state this. The rule has been clarified.

*Comment:* Commenters stated that control requirements during completions, recompletions, and for the first 90 days of production are insufficient. The commenters urged the EPA to require that any flaring under the FIP be performed using an enclosed vent system, along with a utility flare or a similar device, which is capable of 98% VOC DRE.

*Response:* We disagree with the commenter that control requirements during completions, recompletions, and for the first 90 days of production are insufficient. This FIP establishes requirements to control air pollution in the form of VOC emissions from oil and natural gas production and storage operations on the FBIR, comparable to those requirements developed by state permitting authorities. In other words, we were motivated to level the playing field for the regulated community. With that in mind, the NDIC and NDDoH allow the use of pit flares or other 90% VOC DRE control devices during completions and recompletions. Shared by both the State of North Dakota and the EPA, another reason to limit the required VOC destruction efficiency to 90% VOC DRE is that an owner or operator may be put at a significant economic disadvantage if they purchase and install the much more expensive 98% VOC DRE control devices and within the first 90 days after the first date of production a well is found to be too low producing to justify continued production and must be shut-in.

*Comment:* Several commenters stated that the EPA must clarify that emissions from completion and recompletion operations do not need to be vented to a flare until the level of VOC is sufficient to support combustion. The commenters asserted that one might interpret the FIP language which required each owner or operator to ''route all casinghead natural gas to a utility flare or a pit flare capable of reducing the mass content of VOC by at least 90%''(77 FR 48895) to include venting materials that are not flammable and therefore unable to sustain combustion. The commenters stated that such an interpretation would make compliance with the rule impossible, as vented materials are typically not flammable in the early stages of completion or recompletion. The commenters cite ''Letter to Mr. Matthew Todd from Peter Tsirigotis, Director, Sector Policies and Programs Division (Sept. 28, 2012)'' as evidence that the EPA recently reached a similar conclusion.[21]

*Response:* While the regulatory language at § 49.4164(b) in the interim final rule is not specific on this point, the recordkeeping requirements for well completion and recompletion operations in § 49.4167(a)(4)(ii) of the interim final rule specifically require logging the date, time, and duration of any venting of casinghead natural gas from the oil and natural gas well; and specific reasons for each instance of venting in lieu of capture or combustion. Therefore, this requirement allows some degree of venting materials that may not be flammable during well completion and recompletion operations.

*Comment:* Several commenters stated that this FIP is inconsistent with NSPS OOOO and adds further confusion for operators who will be required to comply with both sets of requirements.

[18] Consent Decree *United States of America* v. *Marathon Petroleum Company, LP, and Catlettsburg Refining, LLC,* available at: *http://epa.gov/compliance/resources/decrees/civil/caa/marathonrefining-cd.pdf* and included in the docket for this rule under Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

[19] Consent Decree *United States of America, and the State of Indiana, and Plaintiff Intervenors* v. *BP Products North America, Inc,* available at: *http://epa.gov/compliance/resources/decrees/civil/caa/whiting-cd.pdf* and included in the docket for this rule under Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

[20] As discussed in the preamble for the interim final rule (77 FR 48880), the EPA Region 8 air permit and enforcement programs hosted a Fort Berthold Oil and Natural Gas Production Minor NSR Permitting Process Meeting with the oil producers in late August 2011. Representatives from the Tribes were invited and attended in person and by phone. Discussions included the anticipated permitting timeline for permit applications submitted by the oil producers. Between August 23 and September 1, 2011, a draft example synthetic minor permit was sent by EPA to the meeting attendees and the Tribes in preparation for the next meeting on September 1, 2011. Then, on September 1, 2011, Region 8 hosted a permitting workshop. Representatives from the various oil producers and the Tribes were invited and attended. Representatives of the NDDoH also participated by phone. The minor NSR permitting process was discussed, as well as questions that the companies submitted ahead of time. The group began discussions on the draft example permit and set up a workshop specifically to delve into the specific permit conditions for the following week. On September 7 and 8, 2011, the EPA hosted a two-day follow-up permitting workshop. All previous meeting attendees were invited, including the Tribes. Participants included the oil producers and their consultants. NDDoH representatives were also on the phone. At this meeting the group went through the draft example permit and discussed the proposed conditions and appropriate edits. Also discussed was what would constitute a complete application (administrative and technical) and the various methods of PTE calculation proposed by the companies in attendance. The EPA Region 8 hosted an additional meeting on November 30, 2011 to discuss the revised example permit, and representatives from the various oil producers and the Tribes were invited and attended. During these permitting workshops, it was brought to our attention that owners and operators routinely use temporary, portable utility flares capable of achieving a 98% VOC DRE for the initial period when a new oil and natural gas production facility is being prepared for permanent operations. A copy of the attendee list for each meeting has been included in the docket for this rule under Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

[21] A copy of the letter has been included in the docket for this rule under Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

These commenters further state that for all sources to which NSPS OOOO applies, the FIP should mirror NSPS OOOO requirements for oil and produced water tank control devices. Specifically, the commenters stated that because the NSPS OOOO does not take effect for tanks for one year, the inconsistency results in an unnecessary burden. The commenters also asserted that since NSPS OOOO does not apply to heater-treaters, the requirements in the FIP for heater-treaters should mirror the requirements of the NDDoH regulations precisely. The commenter also expressed concern that the terms of NSPS OOOO are still subject to challenges that have not been resolved, although the commenter indicated that the EPA was in discussions with industry representatives to resolve those issues.

*Response:* We disagree that differences between this FIP and NSPS OOOO result in an ''unnecessary burden'' to owners or operators affected by the rules. Where there are differences between this FIP and NSPS OOOO, NDDoH requirements, and NDIC requirements, they exist for a specific reason. For example the requirements in this FIP for produced oil and produced water storage tanks provide legally and practicably enforceable control requirements for facilities currently operating on the FBIR until applicable storage tank requirements become effective under NSPS OOOO. At that time, the provisions in the NSPS OOOO for produced oil and produced water storage tanks will supersede the produced oil and produced water storage tank requirements in the FIP at § 49.4164(f), and owners or operators will never be required to comply with both sets of requirements since duplicate requirements do not apply to the affected equipment. In addition, we are addressing emissions controls for heater-treaters because we determined such controls are cost effective and have been demonstrated to be effective in light of the air quality concerns at play in the area. Specifically, we included the provision in the FIP at § 49.4164(d)(2)(iii), which requires aggregate storage tank VOC emissions at any facility that are greater than 20 tpy to be reduced by at least 98%, and VOC emissions less than 20 tpy to be controlled by at least 90%. We evaluated and adopted this FIP provision, which is consistent with the requirements for the heater-treaters found in the NDIC requirements at 38–08–06.4 and the heater-treater requirements in the Bakken Pool Guidance. We acknowledge that the 98% VOC DRE control requirement for heater-treaters in this FIP is at the upper end of the 90–98% range in the Bakken Pool Guidance. However, the owners and operators of oil and natural gas production facilities on the FBIR have indicated that a 98% VOC DRE is achievable and committed in their synthetic minor NSR applications to reduce the mass content of VOC emissions routed to the enclosed combustors or utility flares used for both produced gas from heater-treaters and flashing gas from storage tanks by at least 98%. With this reduction, the owners and operators demonstrated that for most of their facilities the potential emissions would not trigger the requirements to obtain a PSD and/or Part 71 permit when accounting for the requested federally enforceable restrictions. The 98% level of control is necessary because of the high volume of VOC emissions that must be controlled.

The commenter did not specifically state which ''challenges'' to NSPS OOOO they were referring to in their comment. However, current petitions filed concerning NSPS OOOO are outside of the scope of this rule. Regardless of any future changes to NSPS OOOO, the primary intent of FIP is to provide environmental protection on the FBIR by creating federally enforceable control requirements for oil and natural gas operations on the FBIR. Additionally, as discussed above, these FIP requirements are consistent with the State's requirements.

*Comment:* Multiple commenters stated that completion and recompletion requirements should be removed from the FIP because completion and recompletion requirements in NSPS OOOO only apply to hydraulically fractured natural gas wells, and that the application of these activities to oil wells in the FIP is therefore inconsistent with NSPS OOOO.

*Response:* This FIP requires owners or operators to route emissions from well completion and recompletion operations to a combustion device. This is similar to the requirements for hydraulically fractured gas wells in NSPS OOOO prior to January 1, 2015. While requirements for completions and recompletions in the NSPS OOOO only apply to natural gas wells, the FIP includes this requirement for the oil and natural gas wells on the FBIR because of the high amount of associated natural gas in the crude oil. This is a significant source of VOC emissions that required control in the FIP and we think such a requirement is appropriate given the emissions characteristics of these wells in the Bakken formation, regardless of the emissions characteristics of other oil and natural gas production wells nationwide.

*Comment:* Commenter stated that the EPA should require recompleted oil and natural gas wells on the FBIR to perform reduced emission completions (RECs). The commenter asserted that many states including Colorado and Wyoming currently require RECs, and that both states have thriving oil and natural gas industries.[22] The commenter also stated that several natural gas companies currently employ use of RECs despite the fact that they are not required. The commenter insisted that, if RECs are determined not to be economical in areas like the FBIR with limited natural gas pipeline and gathering line infrastructure, the EPA must find alternative local uses for the natural gas. Commenter stated that the EPA should at least require RECs on the FBIR in the near future, similar to the NSPS. Commenter stated that the EPA's NSPS OOOO will require RECs at all new and modified gas wells beginning in 2015. Furthermore, another commenter stated that if the FIP were to require green completions, advanced notice of completion or recompletion as is included in the NSPS OOOO would be a critical requirement in the FIP.

*Response:* RECs cannot be performed if there is no gathering line available to convey natural gas produced during the completion flowback. Such lines are not likely to be available if the well location has no access to a natural gas gathering system. Although pipeline infrastructure is currently being developed on the FBIR, we do not believe there is currently sufficient access to natural gas gathering pipelines in all development areas of the FBIR to require RECs at this time. We recognize the potential for VOC emissions from well completion and recompletion operations and have maintained the requirement in the final rule to reduce these emissions by at least 90%. If we determine at a later date that there is a need for additional control of VOC emissions from well completion and recompletion operations, we may propose additional FIPs or propose supplements to this FIP.

*Comment:* One commenter stated that the emission control requirements of the FIP will not exceed the current NDIC emission control requirements,

[22] Commenter cites William C. Allison, Director, Air Pollution Control Division, Colorado Department of Public Health and the Environment, Testimony before the United States Senate, Environment and Public Works Committee, Clean Air and Nuclear Safety Subcommittee, June 19, 2012. A copy of this transcript has been included in the docket for the rule under Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

providing a ''smooth transition'' for the owners or operators. Another commenter requested more stringent emission limits be required than the NDIC requirements. A third commenter expressed concern that the regulations of the proposed FIP are equal to the NDDoH regulations and noted that the FBIR is its own nation, and therefore the FIP regulations are pertinent to the residents of the FBIR and not individuals outside the FBIR's boundaries.

*Response:* One of the goals of this FIP is to provide air quality protection for the residents of the FBIR, while also allow for continued development of mineral resources. The FIP requirements are consistent with the most relevant aspects of the North Dakota rules based on our evaluation that the level of control was appropriate for meeting these goals while ensuring the enforceability required by a federal rule. We also evaluated over 150 synthetic minor NSR permit applications [23] to identify the most significant sources of VOC emissions and associated control equipment employed by the operators to ensure that the control requirements in this FIP are based on the nature of oil and natural gas production and storage operations on the FBIR.

*Comment:* Several commenters stated that the requirements of the FIP are too stringent. The commenters also noted that since FBIR is in attainment with all applicable NAAQS, highly stringent controls are neither appropriate nor necessary. The commenters stated that the 98% control required in the FIP is above the 90–98% range the EPA allowed in recent CAFOs. The commenters also stated that the requirements of the FIP are inconsistent with the requirements that currently apply to operators of the same type of facilities through NDDoH regulations, specifically the Bakken Pool Guidance. The commenters asserted that the more burdensome requirements of the FIP as compared to those outside the FBIR may discourage expansion of operations within the FBIR.

On the other hand, other commenters stated their support of the EPA's requirements in the FIP, and encouraged the EPA to retain the 98% VOC DRE requirement for flaring at storage tanks, restating the EPA's position that this level is appropriate considering the unique geochemistry of the Bakken formation.

*Response:* We disagree that the requirement to reduce VOC emissions from production and storage operations by 98% is too stringent or burdensome. The owners and operators of oil and natural gas production facilities on the FBIR have indicated that a 98% VOC DRE is achievable and have even committed to it in their synthetic minor NSR applications to reduce the mass content of VOC emissions routed to the enclosed combustors or utility flares used for both produced gas from heater-treaters and flashing gas from storage tanks by that amount. The high VOC content of the oil and natural gas produced from Bakken Pool operations allows for a higher DRE. Many of the owners and operators of oil and natural gas production facilities indicated that a DRE of 98% was imperative to limit the applicability of permitting requirements that may result if only a 90% creditable reduction of VOC emissions is allowed. We also evaluated regulations in other oil and natural gas producing states within Region 8 and note that this FIP is consistent with Wyoming's requirements to control both storage tank and separation vessels by 98%.

*Comment:* Multiple commenters expressed concern with the requirements in § 49.4164 which states that, beginning with the first date of production, facilities subject to the rule are required to route natural gas emissions from production operations and storage operations to a 90% emissions reduction device. Within 90 days of the first date of production, this device must be either replaced with a 98% emissions reduction device or tied to a gas sales line. The 90-day time frame listed in the rule should be extended to at least 180 days, to allow operators time to get the required equipment. There is added concern that given the number of devices that may need to be purchased for new facilities, particularly with the impending implementation of NSPS Subpart OOOO, equipment shortages will be expected. Further, commenters stated that the EPA should include a provision here that allows for an extension of the 180-day time limit for upgrading to a sales line or 98% control device in the event such equipment is unavailable.

*Response:* We disagree with the commenter that we should change the 90-day timeframe allotted to either replace a 90% emissions reduction device with a 98% emissions reduction device or inject produced natural gas and natural gas emissions to a gas sales line. One of the goals of this FIP is to protect human health and the environment and the required VOC emission control should be achieved as expeditiously as possible. Furthermore, when evaluating the estimated emissions provided by the oil and natural gas production operators for the facilities covered by the August 2011 CAFOs (77 FR 48879), we found that in many cases, the difference in controlled heater-treater emissions between only 90% VOC DRE for 90 days or less versus more than 90 days is the difference between being a true minor source of VOC emissions under the Federal Tribal NSR regulations and being a major source of VOC emissions under the PSD regulations based on the high VOC emissions from these oil and natural gas operations on the FBIR.

We recognize that some owners and operators might need time to acquire equipment that achieves the required VOC control and we believe, based on the information in permit applications provided by the owners and operators on the FBIR that 90 days is a reasonable timeframe to acquire the necessary control equipment. The interim final FIP contains a provision that the owner or operator may use 98% VOC DRE control devices other than those specified in the FIP upon prior written approval from the EPA. Based on information submitted to date by an operator requesting alternative control device approval, it is possible to economically engineer shop-built flares that can be demonstrated to meet the required VOC DRE and that can be used until a utility flare becomes available, if insertion of the produced natural gas to a sales pipeline or use of the produced natural gas for other beneficial purpose is demonstrated to not be feasible.[24]

### *F. Monitoring and Recordkeeping Requirements*

*Comment:* Multiple commenters stated that the EPA should impose less burdensome monitoring and recordkeeping requirements for minor sources. The commenters asserted that the level of detail required in the FIP is generally required only for major sources, and that it is higher than the detail required for minor sources by NDDoH regulations and the Bakken Pool Guidance. The commenters stated that the FIP should mirror NDDoH regulations regarding heater-treater control devices, meaning that monitoring and recordkeeping requirements should be eliminated. The commenters stated that the cost of monitoring and recordkeeping in the

[23] The information reviewed was contained in synthetic minor NSR applications submitted to EPA, which are included in the docket for this rule under Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

[24] A copy of the submittal from Lisa Decker, WPX Energy, to Carl Daly, EPA Region 8 Air Program Director, on November 13, 2012 has been added to docket for the rule under Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

FIP is high compared to the benefit, and that these factors will create a disincentive to expand drilling on the FBIR. Although one commenter stated that the EPA's monitoring and reporting requirements are reasonable and will facilitate compliance while also gathering pertinent information on operations. Yet another commenter stated that the EPA's monitoring and reporting requirements could be even more stringent to include leak monitoring of the closed vent systems and advanced notification prior to performing a well completion or recompletion.

*Response:* We acknowledged in the **Federal Register** notice and the TSD for the interim final FIP that monitoring, reporting, and recordkeeping (MRR) requirements were an area where the FIP would differ from the NDIC and NDDoH regulations, and the Bakken Pool Guidance. Federal regulations must contain requirements that are legally and practicably enforceable; and therefore this FIP contains legally and practicably enforceable provisions that are necessary to meet the requirements for federal regulations. Recognizing that this FIP regulates different oil and natural gas production equipment than NSPS OOOO, the approach we took in developing MRR requirements for oil and natural gas production emission control equipment is similar to the approach the Agency used in developing MRR requirements for gas well production emission control equipment. Therefore, we do not believe the requirements are any more burdensome than requirements for similar equipment in NSPS OOOO.

*Comment:* Several commenters stated that the EPA should allow an operator to make a visual inspection only once per quarter, and should require that operator to conduct a one-hour Method 22 evaluation only if the control device is actually smoking. The commenters asserted that the amount of time it would take just to conduct quarterly monitoring without this change could potentially require three full-time equivalent operators for that task alone.

The commenters requested that the EPA make two additional changes to the FIP's current requirements for monitoring smoking combustion devices, though the commenters ultimately stated that the resource burden to meet the smoke monitoring requirements would still be extreme regardless of whether the two changes were made. The first change is that the EPA increase the amount of time a control device can smoke before being considered a ''smoking'' device from two minutes to five minutes for consistency.[25] The second change is that the EPA remove the phrase ''whenever an operator is on site'' from § 49.4166(g)(3). The commenter stated that this phrase is ambiguous when read in conjunction with the phrase ''at a minimum quarterly.'' The commenters also stated that it would be extremely burdensome for an operator to observe a flare for an entire hour each time that operator was on site. The commenters ultimately stated that even with this change, the requirement would still be extremely burdensome.

*Response:* We agree with the commenters that the EPA should only require an operator to conduct a Method 22 evaluation if visible smoke emissions are observed. We also agree with the commenter's request that we increase the amount of time a control device can smoke before being considered a ''smoking'' device from two minutes to five minutes. This is consistent with the specification in NSPS OOOO at § 60.5415(e)(vii)(C) and (e)(vii)(D)(3), and the general provisions at § 60.18(b) for visible emissions testing of combustion control devices (77 FR 49556). However, we do not agree that one-hour observations are suitable, as both § 60.18(b) and NSPS OOOO require two-hour observations and we have no reason to conclude that a different approach is appropriate here.

We have revised the applicable condition in this final FIP to require the owner or operator to monitor for visible smoke and to only conduct a Method 22 evaluation if visible smoke emissions are observed. We have also revised the provision to specify that visible smoke emissions are present if smoke is observed more than five minutes in any 2 consecutive hours. We have not removed the requirement to conduct on site inspections of the operation of the device when an operator is onsite, but not less frequently than quarterly, because we disagree that this requirement is ambiguous. In addition, since we changed the monitoring provision to require observations for visible smoke before triggering the requirement for Method 22 evaluations, the commenters' concern that the requirements are burdensome has been addressed.

*Comment:* Several commenters stated that the EPA should allow the operator to make frequent onsite checks or use other alternatives to meet the continuous recording device requirement in § 49.4165(c)(6)(v) for utility flares and enclosed combustors. The commenters asserted that there are significant challenges with obtaining the appropriate continuous monitoring equipment, and that operator checks should therefore be accepted as fully meeting the requirement, or at least as meeting the requirement in the interim.

*Response:* We agree that there needs to be an opportunity to perform alternative monitoring upon prior written EPA approval. We have revised the applicable provision at § 49.4166(i) to reflect this in the final rule.

*Comment:* One commenter stated that the EPA should ''require regulated entities to regularly monitor VOC emissions from the components of closed-vent systems, using well-established methods and leak thresholds.'' The commenter stated that in the preamble and proposed regulatory text, the EPA required proper maintenance and operation of vent lines, connections, fittings, valves, relief valves, or any other appurtenance employed to contain, collect and transport gases, and required that these components be designed to operate with no detectable natural gas emissions (77 FR 48889, 48896). However, the EPA failed to require producers to demonstrate or verify that the required closed-vent systems are ''maintained and operated properly'' or ''operate with no detectable natural gas emissions.'' Commenter stated that without a monitoring or verification requirement, the requirements for closed-vent systems ''will be unenforceable and largely hortatory in nature.''

Commenter also stated that the lack of monitoring or verification requirements for closed-vent systems is at odds with the goal of the FIP, which is to establish emission limits at oil and natural gas facilities that are legal and practically enforceable. Commenter asserted that absent these verification requirements, a producer could not guarantee natural gas is controlled at 90% or 98%, and the EPA could not guarantee that the projected emission reductions have been achieved. Commenter stated that the EPA requires closed-vent monitoring techniques in other regulations, including NSPS OOOO and the ''National Uniform Emission Standards.''[26] Commenter recommended that, at a minimum, the EPA use the approach proposed by the agency in the National Uniform Emission Standards.

[25] Commenter does not list the rule with which such a change would maintain consistency.

[26] ''National Uniform Emission Standards for Storage Vessel and Transfer Operations, Equipment Leaks, and Closed Vent Systems and Control Devices; and Revisions to the National Uniform Emission Standards General Provisions,'' 77 FR 17,898, 17,943 and 18,009 (proposed Mar. 26, 2012) (proposed 40 CFR 65.429(a)).

*Response:* We disagree that leak detection and repair (LDAR) requirements should be included in this FIP. As discussed in the preamble and TSD for NSPS OOOO, it was determined that LDAR monitoring was not cost effective for smaller oil and natural gas production facilities and we have no information from which to conclude that the same is not the case here. To demonstrate compliance with the requirements for closed-vent systems, the final rule requires all vent lines, connections, fittings, valves, relief valves, or any other appurtenance on tank covers and closed-vent systems be maintained and operated properly at all times and that they are visually inspected at least quarterly while the equipment is operating. Further, each bypass devices on all closed-vent systems are required to be equipped with a flow meter to continuously monitor the volume of natural gas emissions that are diverted from the natural gas gathering pipeline, or required control device. The final rule requires that the owners and operators keep records of all monitoring parameters and report instance where construction and operation was not performed in compliance with the requirements specified in the final rule.

*G. Reporting Requirements*

*Comment:* Commenter recommended that the EPA require a self-certification mechanism, which would require a senior company official to certify as to the truth, accuracy and completeness of its annual report. Commenter suggested that the EPA draw on the example of the NSPS OOOO in developing this mechanism.

*Response:* We agree that self-certification is an important mechanism for assuring the public that the information submitted by each facility is accurate and have added a provision in the rule requiring owners or operators to certify as to the truth, accuracy and completeness of the annual reports. The EPA already requires a similar certification in the NSPS OOOO; therefore, we concluded that it is not unreasonable to require the certification for reports submitted under this FIP.

*H. Cost Analysis*

*Comment:* One commenter agreed with the EPA's position that the FIP does not impose a significant cost on operators. Another commenter noted the benefits of the FIP, specifically citing the substantial and cost-effective VOC reductions that the EPA estimated in the FIP.

*Response:* We acknowledge the support of these commenters for this FIP. We have included information regarding the cost-effectiveness of this FIP in the TSD for the interim final rule.[27]

*Comment:* Commenter stated that the EPA does not address the economic benefits of natural gas capture when estimating the costs and benefits of the FIP. The commenter stated that ''producers are very likely to derive substantial amounts of revenue by installing vapor recovery units and gathering lines to route excess natural gas that is captured by voluntary RECs and through other regulatory requirements to reduce leaks.'' The commenter referenced an NRDC report[28] and the NSPS OOOO (77 FR 49534, 49537) to support this point. The commenter also stated that the EPA noted this revenue opportunity in the FIP TSD, though it did not address it in the FIP itself. The commenter stated that it is especially important to consider these benefits because the EPA notes that its analysis already overestimates costs, and also generally stated that gas is a valuable commodity that should not be wasted.

*Response:* We did not discuss the use of RECs in the cost analysis in the TSD, as there is not currently adequate access to pipeline gathering systems on the FBIR to require RECs from well completion and recompletion operations, thus the current infrastructure is not amenable to this technique at this time. However, if we determine at a later date that there is a need for additional control of VOC emissions during oil and natural gas production well completion and recompletion operations on the FBIR, we may propose additional FIPs or propose supplements to this FIP.

*Comment:* Commenter stated that the EPA failed to quantify the economic benefits of protecting public health and ecosystems from pollution in the FIP. Commenter stated that increased oil and natural gas production leads to increased levels of ozone in the surrounding area, risking public health.[29] Commenter stated that the EPA must consider the medical and other public health costs associated with oil and natural gas production and resulting ozone in order to provide an accurate economic impact assessment for the FIP.

*Response:* Given the accelerated development in this area, the high VOC emissions associated with the oil and natural gas operations and the absence of infrastructure on the FBIR, we determined the FIP should be effective immediately upon promulgation to ensure the protection of public health and the environment from exposure to air pollution, avoid fire hazards and protect the public from hazardous conditions. This FIP establishes regulations that significantly reduce VOC emissions from oil and natural gas production facilities on the FBIR, thereby protecting public health and the environment. This FIP is not a significant regulatory action under Executive Order 12866 and therefore an analysis of the potential costs and benefits associated with this action is not required. While we did not specifically quantify the economic benefits of protecting public health and the environment in the cost analysis, the control equipment required by this FIP is already extremely cost effective at less than $15/ton, and any additional cost benefits due to possible reduced public health costs would only result in increased cost effectiveness. Therefore, we believe the cost analysis sufficiently addresses the economic impacts for this action.

*I. Public Notice*

*Comment:* A commenter stated that the EPA did not provide the public with proper notice of the hearing, and therefore failed to ensure public participation in the rulemaking process. The commenter stated that the notice of the hearing in the tribal newspapers mistakenly referred to the hearing as a ''meeting,'' which the commenter noted is quite different than a hearing. The commenter also stated that information about the hearing should have been advertised on the radio, and noted that many residents in the FBIR have limited internet access. Some commenters blamed lack of adequate notice on what they observed to be a low turnout at the hearing(s). One commenter stated that the oil companies had been given adequate notice, but the public had not. One commenter urged the EPA to come back and host more hearings. Several commenters requested an extension of the comment period, but none specified a suggested length of extension.

*Response:* We disagree with these comments. We have exceeded the CAA

[27] The TSD includes a more detailed explanation of the cost analysis for this FIP. It can be found in the docket for this rule, Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

[28] ''Natural Resources Defense Council, Leaking Profits: The U.S. Oil and Gas Industry Can Reduce Pollution, Conserve Resources, and Make Money by Preventing Methane Waste,'' 2012. A copy of this document has been included in the docket for this rule under Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

[29] Commenter provides several examples in which oil and gas development drives up ozone emissions. See NRDC comments in the docket for this rule for specific citations.

public notice requirements for rulemaking. Under Section 307, the EPA is required to allow any person to submit written comments, data, or documentary information, as well as give interested persons an opportunity for the oral presentation of data, views, or arguments. The EPA is required to keep a transcript of any oral presentations and keep the record of the proceeding open for 30 days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information. The EPA is required to allow a reasonable period of at least 30 days for public participation.

As explained earlier in this notice, in promulgating this rule, the EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA to promulgate regulations as necessary to protect tribal air resources. Therefore, while the Title I planning requirements of the CAA applicable to states do not directly apply to the EPA in promulgating a FIP in Indian Country, the EPA used the public notice requirements found within the planning requirements as a guide in developing this FIP. For this FIP, the EPA also followed the public hearing and public notice regulations in 40 CFR 51.102 as a guide. According to CAA sections 301(a) and 301(d)(4) and 40 CFR 51.102, notice given to the public is to be provided by prominent advertisement in the affected area announcing the date(s), times(s), and place(s) of such hearings. Each proposed plan is to be made available for public inspection in at least one location in each region that it will apply.

The proposed FIP was published in the **Federal Register** on August 15, 2012. The **Federal Register** notice stated that public hearings would be held on September 12, 2012 from 1–4 p.m. and again at 6–8 p.m. at the 4 Bears Casino and Lodge in New Town, ND. An address for the location and contact information was provided. The **Federal Register** notice provided for a 60-day comment period, which required that public comments be received by the EPA Region 8 by October 15, 2012 and provided instructions for submitting comments. Two locations for review of publically available supporting docket materials for this FIP were listed including one at the EPA Region 8 office in Denver and one at the Environmental Division office of the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation, in New Town, ND. A link for publically available electronic docket materials was listed in the **Federal Register** notice.

A public notice was posted in the following newspapers regarding the availability of this FIP for public comment on August 15 and 17, 2012: Bismarck Tribune, Dickinson Press, Minot Daily News, New Town News, Williston Herald, MHA Times, and Mountrail County Record. This public notice included all of the information about the public hearings, docket review locations (including internet link), contact information, and the instructions for submittal of comments that was contained in the **Federal Register** notice. Additionally, this public notice listed seven locations and addresses where the public could review copies of this FIP and all supporting docket materials in addition to the two listed in the **Federal Register** notice, including: Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation's Administration Office, New Town, ND; Fort Berthold Community College Library, New Town, ND; Mandaree Community Center, Mandaree, ND; Parshall Segment Office, Parshall, ND; Twin Buttes Memorial Hall, Halliday, ND; White Shield Segment Office, Roseglen, ND; and Four Bears Community Building, Four Bears Village, ND. The EPA confirmed that this public notice was published in each of the seven local newspapers. We confirmed that copies of the FIP and administrative records were received on August 13, 2012 by each of the nine locations listed above.

We also prepared a public notice and request for comment bulletin. A copy of the bulletin was provided to the Director of the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation Environmental Programs Office in New Town, ND on August 10, 2012 with a request that it be posted in prominent locations throughout the Reservation and affected area. The bulletin provided a summary of the proposed rule, the contacts, the nine locations where the proposed rule and administrative records could be viewed, the date, times and location of the public hearings and referred the public to a link for publically available electronic docket materials.

Additionally, we prepared a Public Service Announcement (PSA) for the local radio station, KMHA 91.3 FM Radio, Fort Berthold, New Town, ND. A copy of the PSA was provided to the Director of the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation Environmental Programs Office in New Town, ND on August 10, 2012 with a request that it be provided to the local radio station for broadcasting throughout the Reservation and affected area. The PSA provided a brief summary of the proposed rule, requested public comment through October 15, 2012, provided a contact, listed the eight locations on the FBIR where the proposed rule and administrative records could be viewed, and provided date, time(s) and location information for the September 12, 2012 public hearings. One of the commenters noted the PSA was aired on the local radio station. This is documented on Page 30 of the public hearing transcript for September 12, 2012 at 6 p.m.

Transcripts for both public hearings held on September 12, 2012 were generated and placed into the docket for this FIP. The comment period was kept open for 30 days after the public hearing. We verified that the seven newspaper notices published on August 15 and 17, 2012 referenced the public hearings held on September 12, 2012 as ''public hearing'' and not as a ''public meeting.'' This included the New Town News and the MHA Times in New Town, ND. The commenter may have intended to refer to the PSA instead of the newspaper regarding reference to a ''public meeting'' instead of a ''public hearing.'' The PSA inadvertently referred to the ''public hearing'' as a ''public meeting.''

These opportunities for public participation were provided equally to the public and the regulated community. All residents and the regulated community were given the same opportunities to request and access information, comment and participate in this rule making process. Based on the **Federal Register** notice, newspaper notices, posting public notice and request for comment bulletin at locations on the reservation, holding two public hearings, making public hearing transcripts publically available, providing a 60-day public comment period, PSA, and links for publically available electronic docket materials, the EPA has exceeded all legal requirements for proper public notice of this FIP. We therefore decided not to hold additional hearings and meetings, or extend the public comment period.

*Comment:* Another commenter stated that the lack of adequate public notice was not compliant with environmental justice.

*Response:* We disagree with this comment. Environmental justice is one of the Agency's highest priorities and we believe the process used in developing this rule fully complies with the requirements of Executive Order 12898 (59 FR 7629, February 16, 1994), which establishes federal executive policy on environmental justice (EJ). Its main provision directs federal agencies, to the greatest extent practicable and

permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA defines environmental justice as providing fair treatment and meaningful participation in environmental decision making. As detailed above, EPA exceeded CAA public notice requirements for rulemaking, and the record reflects extensive efforts to ensure meaningful participation in this case. The EPA's Action Development Process, Interim Guidance for Considering Environmental Justice during the Development of an Action provides additional guidance for implementation of EO 12898 related to public notice for actions like rulemaking. This guidance suggests inclusion of one or more public meetings or hearings in or near affected communities and tribes. Public meetings or hearings should include sufficient notice and should be scheduled at a time and place convenient to the affected communities and tribes. Successful solicitation of public comments from affected communities and tribes may incorporate tailored outreach materials that are concise, understandable, and readily accessible to the communities to be reached. For remote towns and villages, local radio stations, local newspapers, and posters at village or community centers may represent the most effective approach. We employed these methods to ensure that we reached the FBIR EJ community and allowed for meaningful involvement of affected communities and tribes.

While we understand that many residents on the FBIR do not have internet access, we employed numerous prominent advertisement methods not relying on the internet, including newspaper notices, posting public notice and request for comment bulletin at locations on the FBIR, holding public hearings, providing a 60-day public comment period, providing a PSA broadcast on local radio, as well as relying on the internet by providing links for publically available electronic docket materials.

We conclude that the public notice process exceeded EPA's legal obligations in rulemakings of this type, and that there is no reason to believe that such public notice was inadequate for compliance with the Executive Order.[30] Although we agree that turnout was low at the September 12, 2012 public hearings, we do not believe that additional public hearings or meetings would have significantly increased turnout. We believe that low turnout at the public hearings was due to factors other than the significant public notice methods employed. We employed every reasonable effort to encourage attendance at public hearings and obtain public comments on this FIP.

We recognize that there are EJ concerns in the FBIR community. We have determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority, low-income, and indigenous populations, because it ensures compliance with the NAAQS, which provides environmental and public health protection for all affected populations. Compliance with the NAAQS is relevant to an EJ claim to the extent that the NAAQS are health-based standards, designed to protect public health with an adequate margin of safety, including sensitive populations such as children, the elderly, and asthmatics.

*Comment:* A commenter asked if the annual report of FBIR facility activity would be accessible by the public.

*Response:* These reports will be submitted to the EPA Region 8 office in Denver, Colorado and maintained on file and will be available to the public. The documents may be obtained through the Freedom of Information Act (FOIA) process. If you seek a record, you should address your request to the EPA Region 8 FOIA Office. Requests for records can be sent by mail to FOIA office at Regional Freedom of Information Officer; U.S. EPA, Region 8, Mailcode: 8–OC; 1595 Wynkoop Street; Denver, CO 80202–1129. Request may also be made by electronic mail to *r8foia@epa.gov,* by facsimile at (303) 312–6859, or by telephone at (303) 312–6856. Your request should be as specific as possible with regard to the subject, time frames, and locations. You do not have to give a requested record's name or title, but the more specific you are; the more likely it will be that the record you seek can be located. For example, if you are seeking records dealing with the FIP annual reports, request the FBIR FIP Annual Reports, the owner or operator you seek information on, and the calendar year(s) for the reports you seek.

## V. Summary of Final Rule and Significant Changes from the Proposed and Interim Final Rule

### *A. Administrative Edits*

*Correction:* In the proposed rule we identified incorrect citations to the Code of Federal Regulations (CFR) for publishing the rule. The final rule has been promulgated at Subpart K of 40 CFR part 49 which is specific to Region 8 FIPs.

§ 49.140 is now § 49.4161;
§ 49.141 is now § 49.4162;
§ 49.142 is now § 49.4163;
§ 49.143 is now § 49.4164;
§ 49.144 is now § 49.4165;
§ 49.145 is now § 49.4166;
§ 49.146 is now § 49.4167; and
§ 49.147 is now § 49.4168.

### *B. Introduction*

This rule applies to any person who owns or operates an existing (constructed or modified on or after August 12, 2007), new, or modified oil and natural gas production facility[31] that is located on the FBIR and producing from the Bakken Pool with one or more oil and natural gas wells, any one of which a well completion or recompletion operation is/was initiated on or after August 12, 2007.

For the purposes of this rule, a well completion means the process that allows for the flowback of oil and natural gas from newly drilled wells to expel drilling and reservoir fluids and tests the reservoir flow characteristics, which may vent produced hydrocarbons to the atmosphere via an open pit or tank. A well completion operation means any oil and natural gas well completion with hydraulic fracturing occurring at an oil and natural gas production facility. The completion date is considered the date that construction at an oil and natural gas production facility has commenced. The recompletion date is considered the date that a modification has occurred at an oil and natural gas production facility. The reason we selected the initiation of completions operations as the date for defining a new facility is that owners and operators use drill rigs prior to

[30] *See In re Shell Gulf of Mexico, Inc. & Shell Offshore, Inc., 15 EAD __, OCS Appeal Nos. 11-02, 11-03, 11-04, 11-08,* slip op. at 40 n. 38 (EAB Jan. 12, 2012) (treating evidence of compliance with statutory and regulatory public participation requirements as showing sufficiency of participation for purposes of compliance with EO). A copy of the document has placed in the docket for this rule under Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

[31] For the purposes of this rule, an oil and natural gas production facility consists of one or more oil and natural gas wells and the air pollution emitting units that are utilized for production operations and storage operations for those wells. This definition was clarified from what was proposed in the interim final rule. Additionally, August 12, 2007 is the earliest well completion date identified in the CAFOs.

initial completion operations and this equipment is generally not in one location long enough to be considered a stationary source. In addition, it is not certain during the drilling operations whether a well will be a producing well. Hence, it is not known whether an oil and natural gas production facility will be constructed to support that well. The outcome of a completion operation provides the well owners and operators information necessary to determine whether an oil and natural gas production facility will be constructed.

*Clarification:* We have added language to the introduction at § 49.4161(b) to clarify that, for the purposes of this rule, the initiation of well completion operations and well recompletion operations are the dates that construction and modifications commence, as set forth in the regulatory text of this final rule.

Compliance with the rule is required no later than June 20, 2013 or upon initiation of well completion or recompletion operations, whichever is later. Upon signature by the Administrator, we will post this rule on our internet site (*http://www.epa.gov/region8/air/fbirfip.html*) and notify the owners and operators and the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation.

*Clarification:* We have changed the language in the introduction at § 49.4161(c) to clarify that the compliance date is upon initiation of well completion operations and well recompletion operations, as follows: ''§ 49.4161(c) When must I comply with §§ 49.4161 through 49.4168? Compliance with §§ 49.4161 through 49.4168 is required no later than June 20, 2013 or upon initiation of well completion operations or well recompletion operations, whichever is later.''

*C. Provisions for Delegation of Administration to the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation*

The provisions in § 49.4162 establish the steps by which the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation may request delegation to assist us with the administration of this rule and the process by which the Regional Administrator of the EPA Region 8 may delegate to the Tribes the authority to assist with such administration of this rule. As described in the regulatory provisions, any such delegation will be accomplished through a delegation of authority agreement between the Regional Administrator and the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation. This section provides for administrative delegation of this federal rule and does not affect the eligibility criteria under CAA section 301(d) and 40 CFR 49.6 for TAS should the Tribes decide to seek such treatment for the purpose of administering their own EPA-approved program under tribal law. Administrative delegation is a separate process from TAS under the TAR. Under the TAR, Indian tribes seek EPA-approval of their eligibility to run CAA programs under their own laws. The Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation would not need to seek TAS under the TAR for purposes of requesting to assist us with administration of this rule through a delegation of authority agreement. In the event such an agreement is reached, the rule would continue to operate under federal authority throughout the FBIR, and the Tribes would assist us with administration of the rule to the extent specified in the agreement.

*D. General Provisions*

The provisions in § 49.4163 General Provisions provide: (1) Definitions that apply to this rule; (2) assurance that we will maintain its authority to require testing, monitoring, recordkeeping, and reporting in addition to that already required by an applicable requirement, in a permit to construct or permit to operate in order to ensure compliance; and (3) assurance that nothing in the rule will preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a facility would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

*E. Construction and Operational Control Measures*

The provisions in § 49.4164 Construction and Operational Control Measures provide requirements to reduce VOC emissions during well completion and recompletion operations. The owner or operator must route all casinghead natural gas emissions associated with completion and recompletion operations to a utility flare or a pit flare capable of reducing the mass content of VOCs in the natural gas vented to it by at least 90.0%. We note that the well completion and recompletion control requirements to use pit flares or utility flares that have the capability to reduce the mass content of VOC in the natural gas emissions routed to them by at least 90.0% percent by weight are the minimum level of control that will be allowed under this rule. Owners and operators may also choose to perform reduced emission completions and recompletions [32], which would exceed the 90.0% VOC emission reduction requirement. This section also requires the control of production and storage operations and imposes a timeline for installation of the controls on these operations. The owner or operator is required to reduce the mass content of VOC emissions from natural gas during oil and natural gas production and storage operations by at least 90.0% percent on the first date of production.

Within 90 days of the first date of production, we require the owner or operator to route the natural gas from the production and storage operations through a closed-vent system to a utility flare or equivalent combustion device capable of reducing the mass content of VOC in the natural gas vented to the device by at least 98.0%. The owner or operator also has the option to design their production and storage operations to recover the natural gas as product and inject it into a natural gas gathering pipeline system for sale or other beneficial purpose. For those owners or operators that choose to capture the natural gas as product rather than a pollutant to be controlled, the natural gas may temporarily be routed through a closed-vent system to an enclosed combustor, utility flare or pit flare in instances where injection of the product into the pipeline is temporarily infeasible. In these situations, the pit flare is considered a backup standby unit used for unplanned flare events, such as during temporarily limited pipeline capacity, that are beyond a producer's control and the pit flare is used to safely burn the natural gas product that could otherwise pose a potential risk to workers, the community, or the environment. The owner or operator, however, must limit the use of the pit flare in these instances to 500 hours in any consecutive 12-month period.

The rule requires the owner or operator to route all standing, working, breathing and flashing losses from the produced oil storage tanks and any produced water storage tanks interconnected with the produced oil storage tanks through a closed vent system to either an operating system

[32] U.S. Environmental Protection Agency. Lessons Learned from Natural Gas STAR Partners: Reduced Emissions Completions for Hydraulically Fractured Natural Gas Wells. Office of Air and Radiation: Natural Gas Star Program. Washington, DC. Available at: *http://epa.gov/gasstar/documents/reduced_emissions_completions.pdf.* Accessed July 26, 2012. A copy of this document has been placed in the docket for this rule under Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

designed to recover and inject the natural gas emissions into a natural gas gathering pipeline system for sale or other beneficial use, or to an enclosed combustor or utility flare capable of reducing the mass content of VOC in the natural gas emissions vented to the device by at least 98.0%. However, to prevent duplicative federal requirements for owners and operators of storage tanks on the FBIR subject to both this rule and NSPS OOOO, storage tanks subject to and controlled under the requirements specified in 40 CFR part 60, subpart OOOO are considered to meet the storage tank control requirements of this rule. No further requirements apply for such storage tanks under this rule. In addition, the rule provides that if the uncontrolled PTE of VOCs from the aggregate of all produced oil storage tanks and produced water storage tanks interconnected with produced oil storage tanks at an oil and natural gas production facility is less than, and reasonably expected to remain below, 20 tons in any consecutive 12-month period, then the owner or operator may use a utility flare or enclosed combustor that is capable of reducing the mass content of VOC in the natural gas emissions vented to the device by only 90.0% upon prior written approval by the EPA.[33]

The control devices must be operated under specific conditions as specified in § 49.4165 Control Equipment Requirements and § 49.4166 Monitoring Requirements.

*F. Control Equipment Requirements*

The provisions in § 49.4165 Control Equipment Requirements require the use of covers on all produced oil and water storage tanks and the use of closed-vent systems with all VOC capture and control equipment. Section 49.4165 also specifies construction and operational requirements for the covers and closed-vent systems. In addition, § 49.4165 requires specific construction and operational requirements of pit flares, enclosed combustors, and utility flares.

The provisions in § 49.4165 require that each owner and operator equip the openings on each produced oil storage tank and each produced water storage tank that is interconnected with produced oil storage tanks with a cover that ensures that natural gas emissions are efficiently routed through a closed-vent system to a vapor recovery system an enclosed combustor, or a utility flare. Each cover and all openings on the cover (e.g., access hatches, sampling ports, and gauge wells) must form a continuous barrier over the entire surface area of the produced oil and produced water in the storage tank. Each cover opening must be secured in a closed, sealed position (e.g., covered by a gasketed lid or cap) whenever material is in the tank on which the cover is installed except during those times when it is necessary to use an opening as follows: (1) To add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit); or (2) to inspect or sample the material in the unit; or to inspect, maintain, repair, or replace equipment located inside the unit.

Each owner and operator is required to use closed-vent systems to collect and route natural gas emissions to the respective VOC control devices. All vent lines, connections, fittings, valves, relief valves, or any other appurtenance employed to contain and collect gases, and transport them to the VOC control equipment must be maintained and operated properly during any time the control equipment is operating and must be designed to operate with no detectable natural gas emissions. If a closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the natural gas from entering the VOC control devices, the owner or operator must meet one of the following options for each bypass device: (1) At the inlet to the bypass device properly install, calibrate, maintain, and operate a natural gas flow indicator capable of taking periodic readings and sounding an alarm when the bypass device is open such that the natural gas is being, or could be, diverted away from the control device and into the atmosphere; or (2) secure the bypass device valve in the non-diverting position using a car-seal or a lock-and-key type configuration.

Each owner or operator is required to follow the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions from each enclosed combustor or utility flare. Each enclosed combustor must have the capacity to reduce the mass content of the VOC in the natural gas routed to it by at least 98.0% for the minimum and maximum natural gas volumetric flow rate and British Thermal Unit (BTU) content routed to it. For the purposes of this rule, we require that all utility flares installed per this rule meet the requirements in 40 CFR 60.18(b), and all enclosed combustors installed per this rule must be tested according to the NSPS OOOO performance testing requirements. Until such time that compliance is required with the storage vessel requirements in the NSPS OOOO standard, however, the owner or operators can demonstrate compliance using methods specified in this rule.

We determined that certain work practice and operational requirements are also necessary for the practical enforceability of the VOC emission reduction requirement that the enclosed combustors or utility flares must achieve. Flares and combustors must be operated within specific parameters to effectively destroy VOC emissions. Therefore, each owner or operator must ensure that each enclosed combustor or utility flare is: (1) Operated at all times that produced natural gas and natural gas emissions are routed to it; (2) operated with a liquid knock-out system to collect any condensable vapors (to prevent liquids from going through the control device); (3) equipped with a flash-back flame arrestor; (4) equipped with a continuous burning pilot flame or an electronically controlled electronically controlled automatic igniter system; (5) equipped with a monitoring system for continuous recording of the parameters that indicate proper operation of each enclosed combustor, utility flare, continuous burning pilot flame and electronically controlled automatic igniter, such as a chart recorder, data logger, or similar devices; (6) maintained in a leak free condition; and (7) operated with no visible smoke emissions.

Section 49.4165 requires that each owner or operator limit the use of pit flares to: (1) The control natural gas emissions during well completion operations; (2) the control of VOC emissions in the event the natural gas that is being recovered for sale or other beneficial purpose must be diverted to a backup control device because injection into the pipeline is temporarily infeasible and there is no operational enclosed combustor or utility flare at the oil and natural gas production facility, in which instances the owner or operator must limit use of the pit flare to no more than 500 hours in any consecutive 12-month period; or (3) use when total uncontrolled PTE of VOCs from all produced oil storage tanks and any produced water storage tanks interconnected with produced oil storage tanks at an oil and natural gas production facility have declined to less than, and are reasonably expected to stay below, 20 tons in any consecutive

[33] If the owner or operator receives written approval for a new method from the EPA, the owner or operator must calculate potential to emit based on the new EPA-approved method.

12-month period. Each pit flare must be operated to reduce the mass content of VOC in the natural gas routed to it by at least 90.0% and must be operated with no visible smoke emissions. Each pit flare must be equipped with an electronically controlled automatic igniter with malfunction alarm and remote notification system if the pilot flame fails. Each pit flare must be visually inspected for the presence of a pilot flame any time natural gas is being routed to it and if the pilot flame fails, it must be relit as soon as safely possible and the electronically controlled automatic igniter must be repaired or replaced before the pit flare is used again.

Section 49.4165 allows owners or operators of oil and natural gas production facilities to use control devices other than an enclosed combustor or utility flare, provided they are capable of achieving at least a 98.0% VOC destruction efficiency and upon our prior written approval by the EPA. This provision will allow for owner or operators to take advantage of technological advances in VOC emission control for the oil and natural gas production industry and will provide us with valuable information on any new control technologies.

*Deletion:* We have deleted the testing requirement at § 49.4165(c)(5)(iii). This was a temporary enclosed combustor testing requirement that applied until 40 CFR part 60 subpart OOOO-New Source Performance Standard for Oil and Natural Gas Sector (NSPS OOOO) was promulgated. Since NSPS OOOO was promulgated on August 16, 2012 and became effective on October 15, 2012, this temporary provision is no longer necessary.

*Correction:* We have clarified control equipment requirements at § 49.4165(c)(4). We have added language at § 49.4165(c)(4) to provide an exemption to § 60.18(c)(2) and (f)(2) for those utility flares operated with an electronically controlled automatic igniter as set forth in the regulatory text of this final rule.

*Clarification:* We have clarified that enclosed combustors and utility flares must be operated properly at all times that produced natural gas and/or natural gas emissions are routed to them, rather than just the term natural gas. The rule now reads as set forth in the regulatory text of this final rule at § 49.4165(c)(6)(i).

*Correction:* We have removed the requirement to install equipment for the monitoring of continuous burning pilot flames and electronically controlled automatic igniters on flares and combustors. These requirements were already provided for at § 49.4166(g)(1). The rule now reads as set forth in the regulatory text of this final rule at § 49.4165(c)(6)(iv).

*Clarification:* We have clarified the purpose for equipping utility flares and enclosed combustors with a monitoring system. We have revised the applicable provisions to read as set forth in the regulatory text of this final rule at § 49.4165(c)(6)(v).

*Correction:* We removed the requirement to monitor a pilot flame on pit flares since these flares are to be operated with electronically controlled automatic igniters only. The rule now reads as set forth in the regulatory text of this final rule at § 49.4165((d)(3(iv) and (v).

*G. Monitoring Requirements*

Section 49.4166 Monitoring Requirements requires each owner or operator conduct certain monitoring that we determined is necessary for the practical enforceability of the VOC emission reduction requirements, including but not limited to: (1) Monitoring of the number of barrels of oil produced at the facility each time the oil is unloaded from the produced oil storage tanks; (2) Monitoring of the hours of operation of each pit flare used to control VOC emissions in the event the natural gas that is being recovered for sale or other beneficial purpose must be diverted to a backup control device because injection into the pipeline is temporarily infeasible and there is no operational enclosed combustor or utility flare is at the oil and natural gas production facility; (3) Monitoring of the volume of produced natural gas from the heater-treater sent to each enclosed combustor, utility flare, and pit flare at all times; (4) Monitoring of the volume of standing, working, breathing, and flashing losses from the produced oil and produced water storage tanks sent to each vapor recovery system, enclosed combustor, utility flare, and pit flare at all times; (5) Visually inspecting storage tank thief hatches, covers, seals, PRVs, and closed-vent systems to insure proper condition and functioning; (6) Directly and continuously measuring, various parameters (i.e., product throughput, enclosed combustor flame presence, temperature, etc.) related to the proper operation of emissions units and required control devices to assure compliance with the emissions reduction requirements and operational limitations; and (7) Visually inspect all equipment associated with each enclosed combustor, utility flare, and pit flare at a minimum quarterly to ensure system integrity; (8) Visually monitoring for visible smoke from enclosed combustors, utility flares, and pit flares during operation.

The monitoring, recordkeeping and reporting requirements for the covers, close-vent systems, pit flares, enclosed combustors, and utility flares are intended to provide legal and practicable enforceability of the emission control requirements.

*Correction:* We have added monitoring requirements at § 49.4166(d) to describe acceptable gas volume measurement methods, thus making this provision consistent with the provision at § 49.4166(c). The rule now reads as set forth in the regulatory text of this final rule.

*Revision:* We have included more flexibility in the options for monitoring approaches. We have revised the applicable provisions to read as set forth in the regulatory text of this final rule at § 49.4166(g)(1).

*Revision:* We have clarified the intent of the provision at § 49.4166(g)(2) in the final FIP to read as set forth in the regulatory text of this final rule:

*Revision:* We have revised the smoke monitoring provisions at § 49.4166(g)(3) in the final FIP to read as set forth in the regulatory text of this final rule.

*Revision:* We have added a new monitoring provision at § 49.4166(i) to allow for other monitoring options upon prior written approval by the EPA, as set forth in the regulatory text of this final rule.

*H. Recordkeeping Requirements*

Section 49.4167 Recordkeeping Requirements requires that each owner or operator of an oil and natural gas production facility keep specific records to be made available upon our request, in lieu of voluminous reporting requirements. The records that must be kept include, but are not limited to, all required measurements, monitoring, and deviations or exceedances of rule requirements and corrective actions taken, as well as any manufacturer specifications and guarantees or engineering analyses. These recordkeeping requirements provide legal and practical enforceability to the control and emission reduction requirements of this rule.

*Clarification:* We have clarified the recordkeeping requirements at § 49.4167(a)(4)(ii) to correctly identify that casing head gas vented from producing wells should be monitored, not produced natural gas. The rule now reads as set forth in the regulatory text of this final rule.

*Revision:* We have revised the recordkeeping requirements at § 49.4167(a)(8) to clarify that records

must be maintained of the volume of natural gas emissions released when close-vent systems and control devices have been bypassed or were not operating. The rule now reads as set forth in the regulatory text of this final rule.

*Correction:* We have corrected the recordkeeping requirements at 49.4167(a)(5)(iv) to include the requirement to keep records of any instance in which an electronically controlled automatic igniter has failed. The rule now reads as set forth in the regulatory text of this final rule.

*I. Reporting Requirements*

Section 49.4168 Notification and Reporting Requirements requires that each owner or operator of an oil and natural gas production facility prepare and submit an annual report, beginning one year after this rule becomes effective covering the period for the previous calendar year. The report must include a summary of required records identifying each oil and natural gas production well completion or recompletion operation for each facility conducted during the reporting period, an identification of the first date of production for each oil and natural gas production well at each facility that commenced operation during the reporting period, and a summary of deviations or exceedances of any requirements of this FIP and the corrective measures taken. Additionally, a report must be submitted for any performance test we require.

*Clarification:* Upon further review of the language at § 49.4168(b) regarding annual reporting requirements, we determined it was necessary to clarify the requirement based on our original intent. The provision now reads as set forth in the regulatory text of this final rule:

We decided not to require owners or operators to register their oil and natural gas production facilities, because the Federal Tribal NSR Rule at 40 CFR 49.151 already requires registration of existing minor sources and such a requirement in this rule would be redundant.

These reporting requirements are part of providing legal and practical enforceability to the control and emission reduction requirements of this rule.

*Revision:* As explained in the response to comments above, we have added a provision for notification and reporting requirements at § 49.4168(b)(4)(iv) requiring owners or operators to certify as to the truth, accuracy and completeness of the annual reports. The new provision is consistent with the NSPS OOOO (40 CFR 60.5420(b)(1)(iv)) and reads as set forth in the regulatory text of this final rule.

*J. Effect on Permitting of Facilities*

This rule is not a permitting program. It does not impose or exempt the facilities from any federal CAA permitting requirements, including the PSD preconstruction permitting requirements at 40 CFR 52.21, Federal Tribal NSR Rule permitting requirements for minor sources at 40 CFR 49.151, or federal Title V operating permit requirements at 40 CFR part 71. The primary purpose of this rule is to address potential impacts to the public health and the environment. However, the rule does provide legal and practical enforceability for the use of VOC emission controls that are already being used voluntarily by the industry and for VOC emissions reductions from those controls. Provided that the facilities are in compliance with the new rule, they may take into account the enforceable VOC emission reductions from the required controls they use when calculating their PTE for determining applicability of the federal permitting requirements, to the extent that the effect those controls would have on VOC emissions is legally and practicably enforceable.

Regardless of this rule, due to the high amount of associated natural gas in the crude oil and the absence of infrastructure to collect the natural gas on the FBIR, some FBIR facilities' PTE of VOCs or any other pollutant subject to regulation may exceed the applicability thresholds for PSD, Federal Tribal NSR Rule, or Title V permitting even after accounting for the legally and practicably enforceable emission reductions provided in this rule. In such cases, the owners or operators of these facilities are required to apply for and obtain the appropriate permits in accordance with the regulation.

*K. Registration Requirements*

This rule does not exempt facilities located on the FBIR from the registration requirements of the Federal Tribal NSR Rule, promulgated on July 1, 2011. Nor does this rule impose any additional registration requirements. The primary purpose of this rule is to address potential impacts to the public health and the environment. Provided that the facilities are in compliance with the provisions of this rule, facilities may include the enforceable VOC emission reductions resulting from the controls required in this rule when calculating their PTE, to the extent that the effect those controls would have on VOC emissions is legally and practicably enforceable.

If the PTE VOCs or any other regulated NSR pollutant is less than the major source thresholds in 40 CFR 52.21, but equal to or greater than the thresholds in the Federal Tribal NSR Rule, then registration is required of these facilities (40 CFR 49.160). Those facilities that must obtain a PSD permit pursuant to 40 CFR 52.21 or wish to obtain a preconstruction permit pursuant to 40 CFR 49.151 of the Federal Tribal NSR Rule, in addition to meeting the requirements of this rule, are exempt from this registration requirement.

## VII. Statutory and Executive Order

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

*B. Paperwork Reduction Act*

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by us, and a copy is available in the docket for this action. The information collection requirements are not enforceable until OMB approves them. The ICR document prepared by us has been assigned the EPA ICR tracking number 2478.01.

The information requirements are based on notification, recordkeeping and reporting requirements in this FIP (40 CFR part 49, subpart K). These requirements are mandatory for each owner or operator (1) Located on the Fort Berthold Indian Reservation; (2) constructing or operating an oil or natural gas production facility producing from the Bakken Pool with one or more oil and natural gas wells and (3) for which completion or recompletion operations are/were performed on or after August 12, 2007. *See* 40 CFR 49.4161. These records and reports are necessary for the EPA Administrator (or the tribal agency if delegated), for example, to: (1) Confirm compliance status of stationary sources; (2) identify any stationary sources not subject to the requirements and identify

stationary sources subject to the regulations; and (3) ensure that the stationary source control requirements are being achieved. The information would be used by the EPA or tribal enforcement personnel to: (1) Indentify stationary sources subject to the rules; (2) ensure that appropriate control technology is being properly applied; and (3) ensure that the emission control devices are being properly operated and maintained on a continuous basis. Based on the reported information, the EPA Administrator (or the delegated tribe) can decide which stationary sources, records or processes should be inspected.

Specifically, this FIP requires that each owner or operator conduct certain monitoring that we determined is necessary for the practical enforceability of the VOC emission reduction requirements. *See* 40 CFR 49.4166. The recordkeeping requirements in 40 CFR 49.4167 require that each owner or operator keep specific records to be made available at the EPA's request. The recordkeeping requirements require only the specific information needed to determine compliance. Finally, the rules contain reporting requirements in 40 CFR 49.4168 that require each owner or operator to prepare and submit an annual report. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). We believe these information collection requirements are appropriate because they will enable us to develop and maintain accurate records of air pollution sources and their emissions, will provide the necessary legal and practical enforceability, and will ensure appropriate records are available to verify compliance with this FIP. All information submitted to us pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B.

It is estimated that 780 oil and natural gas production facilities will be subject to this FIP over the next three years. The oil and natural gas production facilities subject to this rule will incur approximately 29,655 hours in annual monitoring, reporting, and recordkeeping burden (averaged over the first three years after the effective date of the rule), incurring an estimated $6.5 million ($2012) in burden. This includes an annual average of 29,655 labor hours per year at a total labor cost of $1.4 million per year, average annualized capital costs of $2.2 million per year, average annual operating and maintenance costs of $2.9 million per year, and an average annual estimate of 623 likely respondents over the next three years. This estimate includes the testing requirements, emission reports, developing a monitoring plan, notifications and recordkeeping. All burden estimates are in 2012 calendar year dollars and represent the most cost-effective monitoring approach for affected facilities. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, we will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

To assist members of the public who would like to provide comments on the ICR, our need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, we established a public docket for this rule, which includes this ICR, under Docket ID: EPA–R08–OAR–2012–0479. Submit any comments related to the ICR to the EPA and OMB. See **ADDRESSES** section at the beginning of this notice for information on submitting comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 22, 2013, please attempt to send comments to OMB by April 22, 2013. Before finalizing the information collection requirements, we will respond to any comments submitted to the EPA or OMB.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule will not have a significant economic impact on a substantial number of small entities due to the reduced regulatory requirement, and thus the regulatory burden, to obtain federal CAA permits that this rule provides.

*D. Unfunded Mandates Reform Act (UMRA)*

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. As discussed in the TSD and preamble for the interim final rule, we determined the maximum annual cost of compliance with this rule on the oil and natural gas industry is estimated to be approximately $50 million. However, we believe this is a conservative estimate and that actual annual costs would be much lower due to factors such as increased facility well density, standard industry practice to use VOC control equipment, and anticipated pipeline infrastructure development, which is explained further in the TSD. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule does not contain a significant federal intergovernmental

mandate as described by section 203 of UMRA. Therefore, this rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule regulates under the CAA certain stationary sources in Indian country that are not subject to approved CAA programs of the State of North Dakota. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, we consulted with the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation in developing this action. A summary of the consultation is provided below in section F of this preamble. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed action from State and local officials.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires us to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

Under Section 5(b) of Executive Order 13175, we may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or we consult with tribal officials early in the process of developing the proposed regulation. Under Section 5(c) of Executive Order 13175, we may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

We concluded that this final rule will have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. These regulations would affect the FBIR community by establishing air quality regulations and thus creating a level of air quality protection not previously provided under the CAA. The regulatory approach used in this rule would create federal requirements similar to those that are already in place areas adjacent to the Reservation. Finally, although tribal governments are encouraged to partner with us on the implementation of these regulations, they are not required to do so. Since this final rule will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law, the requirements of Sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, the EPA consulted with tribal officials and representatives of the Three Affiliated Tribes of the Mandan, Hidatsa and Arikara Nation early in the process of developing this regulation to permit them to have meaningful and timely input into its development.

Tribal consultation with the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation was first initiated on February 17, 2012 when we mailed a letter inviting the Tribes to consult on the first group of synthetic minor NSR permits being issued on the Reservation under the Federal Tribal NSR Rule. Then, on March 29, 2012, EPA senior management and the Chairman of the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation along with other government officials met via conference call to discuss the proposed FIP to be developed for the FBIR. We formally invited the Tribes to consult about this FIP in a letter dated April 10, 2012 to Chairman Tex Hall, of the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation Council.

We again met with members of the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation Council on June 13, 2012 in New Town to consult and receive input from the Tribes as we developed this FIP. In attendance from the Council were the vice Chairman and two council members. The Tribes' legal counsel was also in attendance. The purpose of the consultation was twofold: (1) Update the Tribes on the EPA's efforts to develop this FIP so that the air quality on the FBIR is protected and oil and natural gas development continues; and (2) discuss the Tribes' preferences regarding involvement in the FIP process. We provided information on our plan to prepare a FIP to ensure air quality protection while preventing delays in oil and natural gas production. We solicited the Tribes' input on the FIP development. The Council members present at the consultation meeting indicated that they strongly desired this FIP to be consistent with North Dakota's requirements for oil and natural gas production facilities in order to keep a level playing field for development and continue uninterrupted development of a key economic resource for the Tribes. The Council members expressed interest in the future delegation of this FIP so that the Tribes can implement the rule in place of us. The Council members also expressed interest in providing the Tribes' assistance in setting up a public hearing for the rule.

As noted above, the Three Affiliated Tribes of the Mandan, Hidatsa and Arikara Nation have indicated preliminary interest in seeking administrative delegation of the Federal Tribal NSR rule to assist us with administration of that rule. We will continue to work with the Three Affiliated Tribes of the Mandan, Hidatsa, and Arikara Nation if administrative delegation is something the Tribes decide to pursue.

Information containing the consultation process is contained in the docket for this rule.

For purposes of the final rule, we specifically solicited additional comments on the proposed action from tribal officials. We did not receive any comments on the proposed rule from tribal officials during the public comment period.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because the Agency does not believe the environmental or safety risks addressed by this action present a disproportionate risk to children. In addition, this rule requires control and reduction of emissions of VOCs, which

will have a beneficial effect on children's health by reducing air pollution.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We did a demographic analysis of the areas closest to sources likely to be covered by this rule, and found disproportionately high concentrations of minority and low income populations. As detailed in our response to comments, we took substantial steps to ensure that such populations were given the opportunity for meaningful participation in the development of the rule. In addition, we conducted an EJ analysis that determined that this rule will not have disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority, low-income, and indigenous populations, because it ensures compliance with the NAAQS, which provides environmental and public health protection for all affected populations, including minority, low-income, and indigenous populations.[34]

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective 30 days from the date of publication, *i.e.,* on April 22, 2013.

*L. Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 21, 2013. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

**List of Subjects in 40 CFR Part 49**

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 1, 2013.

**Bob Perciasepe,**

*Acting Administrator.*

40 CFR part 49 is amended as follows:

## PART 49—[AMENDED]

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

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

## PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

### Subpart K—Implementation Plans for Tribes—Region VIII

■ 2. Add §§ 49.4161 through 49.4168 and an undesignated center heading to appear immediately before the newly added § 49.4161 to read as follows:

* * * * *

**Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota**

Sec.

**Subpart**

49.4161 Introduction.
49.4162 Delegation of authority of administration to the tribes.
49.4163 General provisions.
49.4164 Construction and operational control measures.
49.4165 Control equipment requirements.
49.4166 Monitoring requirements.
49.4167 Recordkeeping requirements.
49.4168 Notification and reporting requirements.

* * * * *

**Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota**

**§ 49.4161 Introduction.**

(a) *What is the purpose of §§ 49.4161 through 49.4168?* Sections 49.4161 through 49.4168 establish legally and practicably enforceable requirements to control and reduce VOC emissions from well completion operations, well recompletion operations, production operations, and storage operations at existing, new and modified oil and natural gas production facilities.

(b) *Am I subject to §§ 49.4161 through 49.4168?* Sections 49.4161 through 49.4168 apply to each owner or operator constructing, modifying or operating an oil and natural gas production facility

[34] The TSD includes a more detailed explanation of the EJ analysis for this FIP. It can be found in the docket for this rule, Docket ID: EPA–R08–OAR–2012–0479, which can be accessed at: *http://www.regulations.gov.*

producing from the Bakken Pool with one or more oil and natural gas wells, for any one of which completion or recompletion operations are/were performed on or after August 12, 2007, that is located on the Fort Berthold Indian Reservation, which is defined by the Act of March 3, 1891 (26 Statute 1032) and which includes all lands added to the Reservation by Executive Order of June 17, 1892 (the ''Fort Berthold Indian Reservation''). For the purposes of this subpart, the date that the first well completion operation at a new oil and natural gas production facility was initiated is the date that initial construction has commenced. For the purposes of this subpart, the date that a new well completion operation or the date that an existing well recompletion operation at an existing oil and natural gas production facility is initiated is the date that a modification has commenced.

(c) *When must I comply with §§ 49.4161 through 49.4168?* Compliance with *§§ 49.4161 through 49.4168* is required no later than June 20, 2013 or upon initiation of well completion operations or well recompletion operations, whichever is later.

**§ 49.4162 Delegation of authority of administration to the tribes.**

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which the Regional Administrator may delegate to the Mandan, Hidatsa and Arikara Nation the authority to assist the EPA with administration of this Federal Implementation Plan (FIP). This section provides for administrative delegation and does not affect the eligibility criteria under 40 CFR 49.6 for treatment in the same manner as a state.

(b) *How does the Tribe request delegation?* In order to be delegated authority to assist us with administration of this FIP, the authorized representative of the Mandan, Hidatsa and Arikara Nation must submit a request to the Regional Administrator that:

(1) Identifies the specific provisions for which delegation is requested;

(2) Includes a statement by the Mandan, Hidatsa and Arikara Nation's legal counsel (or equivalent official) that includes the following information:

(i) A statement that the Mandan, Hidatsa and Arikara Nation are an Indian Tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement demonstrating that the Mandan, Hidatsa and Arikara Nation are currently carrying out substantial governmental duties and powers over a defined area and that meets the requirements of § 49.7(a)(2); and

(iii) A description of the laws of the Mandan, Hidatsa and Arikara Nation that provide adequate authority to carry out the aspects of the rule for which delegation is requested.

(3) Demonstrates that the Mandan, Hidatsa and Arikara Nation have, or will have, adequate resources to carry out the aspects of the rule for which delegation is requested.

(c) *How is the delegation of administration accomplished?* (1) A Delegation of Authority Agreement will set forth the terms and conditions of the delegation, will specify the rule and provisions that the Mandan, Hidatsa and Arikara Nation shall be authorized to implement on behalf of the EPA, and shall be entered into by the Regional Administrator and the Mandan, Hidatsa and Arikara Nation. The Agreement will become effective upon the date that both the Regional Administrator and the authorized representative of the Mandan, Hidatsa and Arikara Nation have signed the Agreement. Once the delegation becomes effective, the Mandan, Hidatsa and Arikara Nation will be responsible, to the extent specified in the Agreement, for assisting us with administration of this FIP and shall act as the Regional Administrator as that term is used in these regulations. Any Delegation of Authority Agreement will clarify the circumstances in which the term ''Regional Administrator''' found throughout this FIP is to remain the EPA Regional Administrator and when it is intended to refer to the ''Mandan, Hidatsa and Arikara Nation,'' instead.

(2) A Delegation of Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Mandan, Hidatsa and Arikara Nation.

(d) *How will any delegation of authority agreement be publicized?* The Regional Administrator shall publish a notice in the **Federal Register** informing the public of any delegation of authority agreement with the Mandan, Hidatsa and Arikara Nation to assist us with administration of all or a portion of this FIP and will identify such delegation in the FIP. The Regional Administrator shall also publish an announcement of the delegation of authority agreement in local newspapers.

**§ 49.4163 General provisions.**

(a) *Definitions.* As used in §§ 49.4161 through 49.4168, all terms not defined herein shall have the meaning given them in the Act, in subpart A and subpart OOOO of 40 CFR part 60, in the Prevention of Significant Deterioration regulations at 40 CFR 52.21, or in the Federal Minor New Source Review Program in Indian Country at 40 CFR 49.151. The following terms shall have the specific meanings given them.

(1) *Bakken Pool* means Oil produced from the Bakken, Three Forks, and Sanish Formations.

(2) *Breathing losses* means natural gas emissions from fixed roof tanks resulting from evaporative losses during storage.

(3) *Casinghead natural gas* means the associated natural gas that naturally dissolves out of reservoir fluids during well completion operations and recompletion operations due to the pressure relief that occurs as the reservoir fluids travel up the well casinghead.

(4) *Closed vent system* means a system that is not open to the atmosphere and that is composed of hard-piping, ductwork, connections, and, if necessary, flow-inducing devices that transport natural gas from a piece or pieces of equipment to a control device or back to a process.

(5) *Enclosed combustor* means a thermal oxidation system with an enclosed combustion chamber that maintains a limited constant temperature by controlling fuel and combustion air.

(6) *Existing facility* means an oil and natural gas production facility that begins actual construction prior to the effective date of the ''Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota''.

(7) *Flashing losses* means natural gas emissions resulting from the presence of dissolved natural gas in the produced oil and the produced water, both of which are under high pressure, that occurs as the produced oil and produced water is transferred to storage tanks or other vessels that are at atmospheric pressure.

(8) *Modified facility* means a facility which has undergone the addition, completion, or recompletion of one or more oil and natural gas wells, and/or the addition of any associated equipment necessary for production and storage operations at an existing facility.

(9) *New facility* means an oil and natural gas production facility that begins actual construction after the effective date of the ''Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan,

Hidatsa and Arikara Nation), North Dakota''.

(10) *Oil* means hydrocarbon liquids.

(11) *Oil and natural gas production facility* means all of the air pollution emitting units and activities located on or integrally connected to one or more oil and natural gas wells that are necessary for production operations and storage operations.

(12) *Oil and natural gas well* means a single well that extracts subsurface reservoir fluids containing a mixture of oil, natural gas, and water.

(13) *Owner or operator* means any person who owns, leases, operates, controls, or supervises an oil and natural gas production facility.

(14) *Permit to construct or construction permit* means a permit issued by the Regional Administrator pursuant to 40 CFR 49.151, 52.10 or 52.21, or a permit issued by a tribe pursuant to a program approved by the Administrator under 40 CFR part 51, subpart I, authorizing the construction or modification of a stationary source.

(15) *Permit to operate or operating permit* means a permit issued by the Regional Administrator pursuant to 40 CFR part 71, or by a tribe pursuant to a program approved by the Administrator under 40 CFR part 51 or 40 CFR part 70, authorizing the operation of a stationary source.

(16) *Pit flare* means an ignition device, installed horizontally or vertically and used in oil and natural gas production operations to combust produced natural gas and natural gas emissions.

(17) *Produced natural gas* means natural gas that is separated from extracted reservoir fluids during production operations.

(18) *Produced oil* means oil that is separated from extracted reservoir fluids during production operations.

(19) *Produced oil storage tank* means a unit that is constructed primarily of non-earthen materials (such as steel, fiberglass, or plastic) which provides structural support and is designed to contain an accumulation of produced oil.

(20) *Produced water* means water that is separated from extracted reservoir fluids during production operations.

(21) *Produced water storage tank* means a unit that is constructed primarily of non-earthen materials (such as steel, fiberglass, or plastic) which provides structural support and is designed to contain an accumulation of produced water.

(22) *Production operations* means the extraction and separation of reservoir fluids from an oil and natural gas well, using separators and heater-treater systems. A separator is a pressurized vessel designed to separate reservoir fluids into their constituent components of oil, natural gas and water. A heater-treater is a unit that heats the reservoir fluid to break oil/water emulsions and to reduce the oil viscosity. The water is then typically removed by using gravity to allow the water to separate from the oil.

(23) *Regional Administrator* means the Regional Administrator of EPA Region 8 or an authorized representative of the Regional Administrator.

(24) *Standing losses* means natural gas emissions from fixed roof tanks as a result of evaporative losses during storage.

(25) *Storage operations* means the transfer of produced oil and produced water to storage tanks, the filling of the storage tanks, the storage of the produced oil and produced water in the storage tanks, and the draining of the produced oil and produced water from the storage tanks.

(26) *Supervisory Control and Data Acquisition (SCADA) system* generally refers to industrial control computer systems that monitor and control industrial infrastructure or facility-based processes.

(27) *Utility flare* means thermal oxidation system using an open (without enclosure) flame. An enclosed combustor as defined in §§ 49.4161 through 49.4168 is not considered a flare.

(28) *Visible Smoke emissions* means a pollutant generated by thermal oxidation in a flare or enclosed combustor and occurring immediately downstream of the flame. Visible smoke occurring within, but not downstream of, the flame, is not considered to constitute visible smoke emissions.

(29) *Well completion* means the process that allows for the flowback of oil and natural gas from newly drilled wells to expel drilling and reservoir fluids and tests the reservoir flow characteristics, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

(30) *Well completion operation* means any oil and natural gas well completion using hydraulic fracturing occurring at an oil and natural gas production facility.

(31) *Well recompletion operation* means any oil and natural gas well completion using hydraulic refracturing occurring at an oil and natural gas production facility.

(32) *Working losses* means natural gas emissions from fixed roof tanks resulting from evaporative losses during filling and emptying operations.

(b) *Requirement for testing.* The Regional Administrator may require that an owner or operator of an oil and natural gas production facility demonstrate compliance with the requirements of the ''Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota'' by performing a source test and submitting the test results to the Regional Administrator. Nothing in the ''Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota'' limits the authority of the Regional Administrator to require, in an information request pursuant to section 114 of the Act, an owner or operator of an oil and natural gas production facility subject to the ''Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation)'' to demonstrate compliance by performing testing, even where the facility does not have a permit to construct or a permit to operate.

(c) *Requirement for monitoring, recordkeeping, and reporting.* Nothing in ''Federal Implementation Plan for Oil and Natural Gas Production Facilities, Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation)'' precludes the Regional Administrator from requiring monitoring, recordkeeping and reporting, including monitoring, recordkeeping and reporting in addition to that already required by an applicable requirement in these rules, in a permit to construct or permit to operate in order to ensure compliance.

(d) *Credible evidence.* For the purposes of submitting reports or establishing whether or not an owner or operator of an oil and natural gas production facility has violated or is in violation of any requirement, nothing in the ''Federal Implementation Plan for Oil and Natural Gas Well Production Facilities; Fort Berthold Indian Reservation (Mandan, Hidatsa and Arikara Nation), North Dakota'' shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a facility would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

**§ 49.4164 Construction and operational control measures.**

(a) Each owner or operator must operate and maintain all liquid and gas collection, storage, processing and handling operations, regardless of size, so as to minimize leakage of natural gas emissions to the atmosphere.

(b) During all oil and natural gas well completion operations or recompletion operations at an oil and natural gas production facility and prior to the first date of production of each oil and natural gas well, each owner or operator must, at a minimum, route all casinghead natural gas to a utility flare or a pit flare capable of reducing the mass content of VOC in the natural gas emissions vented to it by at least 90.0 percent or greater and operated as specified in §§ 49.4165 and 49.4166.

(c) Beginning with the first date of production from any one oil and natural gas well at an oil and natural gas production facility, each owner or operator must, at a minimum, route all natural gas emissions from production operations and storage operations to a control device capable of reducing the mass content of VOC in the natural gas emissions vented to it by at least 90.0 percent or greater and operated as specified in §§ 49.4165 and 49.4166.

(d) Within ninety (90) days of the first date of production from any oil and natural gas well at an oil and natural gas production facility, each owner or operator must:

(1) Route the produced natural gas from the production operations through a closed-vent system to:

(i) An operating system designed to recover and inject all the produced natural gas into a natural gas gathering pipeline system for sale or other beneficial purpose; or

(ii) A utility flare or equivalent combustion device capable of reducing the mass content of VOC in the produced natural gas vented to the device by at least 98.0 percent or greater and operated as specified in §§ 49.4165 and 49.4166.

(2) Route all standing, working, breathing, and flashing losses from the produced oil storage tanks and any produced water storage tank interconnected with the produced oil storage tanks through a closed-vent system to:

(i) An operating system designed to recover and inject the natural gas emissions into a natural gas gathering pipeline system for sale or other beneficial purpose; or

(ii) An enclosed combustor or utility flare capable of reducing the mass content of VOC in the natural gas emissions vented to the device by at least 98.0 percent or greater and operated as specified in §§ 49.4165(c) and 49.4166.

(iii) If the uncontrolled potential to emit VOCs from the aggregate of all produced oil storage tanks and produced water storage tanks interconnected with produced oil storage tanks at an oil and natural gas production facility is less than, and reasonably expected to remain below, 20 tons in any consecutive 12-month period, then, upon prior written approval by the EPA the owner or operator may use a pit flare, an enclosed combustor or a utility flare that is capable of reducing the mass content of VOC in the natural gas emissions from the storage tanks vented to the device by only 90.0 percent.

(e) In the event that pipeline injection of all or part of the natural gas collected in an operating system designed to recover and inject natural gas becomes temporarily infeasible and there is no operational enclosed combustor or utility flare at the facility, the owner or operator must route the natural gas that cannot be injected through a closed-vent system to a pit flare operated as specified in §§ 49.4165 and 49.4166.

(f) Produced oil storage tanks and any produced water storage tanks interconnected with produced oil storage tanks subject to the requirements specified in 40 CFR part 60, subpart OOOO are considered to meet the requirements of § 49.4164(d)(2). No further requirements apply for such storage tanks under § 49.4164(d)(2).

**§ 49.4165 Control equipment requirements.**

(a) *Covers.* Each owner or operator must equip all openings on each produced oil storage tank and produced water storage tank interconnected with produced oil storage tanks with a cover to ensure that all natural gas emissions are efficiently being routed through a closed-vent system to a vapor recovery system, an enclosed combustor, a utility flare, or a pit flare.

(1) Each cover and all openings on the cover (e.g., access hatches, sampling ports, pressure relief valves (PRV), and gauge wells) shall form a continuous impermeable barrier over the entire surface area of the produced oil and produced water in the storage tank.

(2) Each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed except during those times when it is necessary to use an opening as follows:

(i) To add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit);

(ii) To inspect or sample the material in the unit; or

(iii) To inspect, maintain, repair, or replace equipment located inside the unit.

(3) Each thief hatch cover shall be weighted and properly seated.

(4) Each PRV shall be set to release at a pressure that will ensure that natural gas emissions are routed through the closed-vent system to the vapor recovery system, the enclosed combustor, or the utility flare under normal operating conditions.

(b) *Closed-vent systems.* Each owner or operator must meet the following requirements for closed-vent systems:

(1) Each closed-vent system must route all produced natural gas and natural gas emissions from production and storage operations to the natural gas sales pipeline or the control devices required by paragraph (a) of this section.

(2) All vent lines, connections, fittings, valves, relief valves, or any other appurtenance employed to contain and collect natural gas, vapor, and fumes and transport them to a natural gas sales pipeline and any VOC control equipment must be maintained and operated properly at all times.

(3) Each closed-vent system must be designed to operate with no detectable natural gas emissions.

(4) If any closed-vent system contains one or more bypass devices, except as provided for in paragraph (b)(4)(iii) of this section, that could be used to divert all or a portion of the natural gas emissions, from entering a natural gas sales pipeline and/or any control devices, the owner or operator must meet the one of following requirements for each bypass device:

(i) At the inlet to the bypass device that could divert the natural gas emissions away from a natural gas sales pipeline or a control device and into the atmosphere, properly install, calibrate, maintain, and operate a natural gas flow indicator that is capable of taking continuous readings and sounding an alarm when the bypass device is open such that natural gas emissions are being, or could be, diverted away from a natural gas sales pipeline or a control device and into the atmosphere;

(ii) Secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration;

(iii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject

to the requirements applicable to bypass devices.

(c) *Enclosed combustors and utility flares.* Each owner or operator must meet the following requirements for enclosed combustors and utility flares:

(1) For each enclosed combustor or utility flare, the owner or operator must follow the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions;

(2) For each enclosed combustor or utility flare, the owner or operator must ensure there is sufficient capacity to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 98.0 percent for the minimum and maximum natural gas volumetric flow rate and BTU content routed to the device;

(3) Each enclosed combustor or utility flare must be operated to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 98.0 percent;

(4) The owner or operator must ensure that each utility flare is designed and operated in accordance with the requirements of 40 CFR 60.18(b) for such flares, except for § 60.18(c)(2) and (f)(2) for those utility flares operated with an electronically controlled automatic igniter.

(5) The owner or operator must ensure that each enclosed combustor is:

(i) A model demonstrated by a manufacturer to the meet the VOC destruction efficiency requirements of §§ 49.4161 through 49.4168 using the procedure specified in 40 CFR part 60, subpart OOOO at § 60.5413(d) by the due date of the first annual report as specified in § 49.4168(b); or

(ii) Demonstrated to meet the VOC destruction efficiency requirements of §§ 49.4161 through 49.4168 using EPA approved performance test methods specified in 40 CFR part 60, subpart OOOO at § 60.5413(b) by the due date of the first annual report as specified in § 49.4168(b).

(6) The owner or operator must ensure that each enclosed combustor and utility flare is:

(i) Operated properly at all times that produced natural gas and/or natural gas emissions are routed to it;

(ii) Operated with a liquid knock-out system to collect any condensable vapors (to prevent liquids from going through the control device);

(iii) Equipped with a flash-back flame arrestor;

(iv) Equipped with one of the following:

(A) A continuous burning pilot flame.

(B) An electronically controlled automatic igniter;

(v) Equipped with a monitoring system for continuous recording of the parameters that indicate proper operation of each enclosed combustor, utility flare, continuous burning pilot flame, and electronically controlled automatic igniter, such as a chart recorder, data logger or similar devices;

(vi) Maintained in a leak-free condition; and

(vii) Operated with no visible smoke emissions.

(d) *Pit Flares.* Each owner or operator must meet the following requirements for pit flares:

(1) The owner or operator must develop written operating instructions, operating procedures and maintenance schedules to ensure good air pollution control practices for minimizing emissions from the pit flare based on the site-specific design.

(2) The owner or operator must only use a pit flare for the following operations:

(i) To control produced natural gas and natural gas emissions during well completion operations or recompletion operations;

(ii) To control produced natural gas and natural gas emissions in the event that natural gas recovered for pipeline injection must be diverted to a backup control device because injection is temporarily infeasible and there is no operational enclosed combustor or utility flare at the oil and natural gas production facility. Use of the pit flare for this situation is limited to a maximum of 500 hours in any twelve (12) consecutive months; or

(iii) Control of standing, working, breathing, and flashing losses from the produced oil storage tanks and any produced water storage tank interconnected with the produced oil storage tanks if the uncontrolled potential VOC emissions from the aggregate of all produced oil storage tanks and produced water storage tanks interconnected with produced oil storage tanks is less than, and reasonably expected to remain below, 20 tons in any consecutive 12-month period.

(3) The owner or operator must only use the pit flare under the following conditions and limitations:

(i) The pit flare is operated to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 90.0 percent;

(ii) The pit flare is operated in accordance with the site-specific written operating instructions, operating procedures, and maintenance schedules to ensure good air pollution control practices for minimizing emissions;

(iii) The pit flare is operated with no visible smoke emissions;

(iv) The pit flare is equipped with an electronically controlled automatic igniter;

(v) The pit flare is visually inspected for the presence of a flame anytime produced natural gas or natural gas emissions are being routed to it. Should the flame fail, the flame must be relit as soon as safely possible and the electronically controlled automatic igniter must be repaired or replaced before the pit flare is utilized again; and

(vi) The owner or operator does not deposit or cause to be deposited into a flare pit any oil field fluids or oil and natural gas wastes other than those designed to go to the pit flare.

(e) *Other Control Devices.* Upon prior written approval by the EPA, the owner or operator may use control devices other than those listed above that are determined by EPA to be capable of reducing the mass content of VOC in the natural gas routed to it by at least 98.0 percent, provided that:

(1) In operating such control devices, the owner or operator must follow the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions; and

(2) The owner or operator must ensure there is sufficient capacity to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to such other control devices by at least 98.0 percent for the minimum and maximum natural gas volumetric flow rate and BTU content routed to each device.

(3) The owner or operator must operate such a control device to reduce the mass content of VOC in the produced natural gas and natural gas emissions routed to it by at least 98.0 percent.

**§ 49.4166 Monitoring requirements.**

(a) Each owner and operator must measure the barrels of oil produced at the oil and natural gas production facility each time the oil is unloaded from the produced oil storage tanks using the methodologies of tank gauging or positive displacement metering system, as appropriate, as established by the U.S. Department of the Interior's Bureau of Land Management at 43 CFR part 3160, in the ''Onshore Oil and Gas Operations; Federal and Indian Oil & Gas Leases; Onshore Oil and Gas Order No. 4; Measurement of Oil''.

(b) Each owner or operator must monitor the hours that each pit flare is

operated to control produced natural gas and natural gas emissions in the event that natural gas recovered for pipeline injection must be diverted to a backup control device because injection is temporarily infeasible and there is no enclosed combustor or utility flare at the oil and natural gas production facility.

(c) Each owner or operator must monitor the volume of produced natural gas sent to each enclosed combustor, utility flare, and pit flare at all times. Methods to measure the volume include, but are not limited to, direct measurement and gas-to-oil ratio (GOR) laboratory analyses.

(d) Each owner or operator must monitor the volume of standing, working, breathing, and flashing losses from the produced oil and produced water storage tanks sent to each vapor recovery system, enclosed combustor, utility flare, and pit flare at all times. Methods to measure the volume include, but are not limited to, direct measurement or GOR laboratory analyses.

(e) Each owner or operator must perform quarterly visual inspections of tank thief hatches, covers, seals, PRVs, and closed vent systems to ensure proper condition and functioning and repair any damaged equipment. The quarterly inspections must be performed while the produced oil and produced water storage tanks are being filled.

(f) Each owner or operator must perform quarterly visual inspections of the peak pressure and vacuum values in each closed vent system and control system for the produced oil and produced water storage tanks to ensure that the pressure and vacuum relief set-points are not being exceeded in a way that has resulted, or may result, in venting and possible damage to equipment. The quarterly inspections must be performed while the produced oil and produced water storage tanks are being filled.

(g) Each owner or operator must monitor the operation of each enclosed combustor, utility flare, and pit flare to confirm proper operation as follows:

(1) Continuously monitor all variable operational parameters specified in the written operating instructions and procedures, including continuous burning pilot flame, electronically controlled automatic igniters, and monitoring system failures, using a malfunction alarm and remote notification system, where such systems are available, or continuously monitor under an equivalent alternative protocol upon prior written approval by the EPA;

(2) Perform a physical inspection of all equipment associated with each enclosed combustor, utility flare, and pit flare each time an operator is on site, at a minimum quarterly, to ensure system integrity;

(3) Monitor for visible smoke during operation of any enclosed combustor, utility flare or pit flare each time an operator is on site, at a minimum quarterly. Upon observation of visible smoke, use EPA Reference Method 22 of 40 CFR part 60, Appendix A, to determine whether visible smoke emissions are present. The observation period shall be 2 hours. Visible smoke emissions are present if smoke is observed for more than 5 minutes in any 2 consecutive hours; and

(4) Respond to any observation of any continuous burning pilot flame failure, electronically controlled automatic igniter failure, or improper monitoring equipment operation and ensure the equipment is returned to proper operation as soon as practicable and safely possible after an observation or an alarm sounds.

(h) Where sufficient to meet the monitoring and recordkeeping requirements in §§ 49.4166 and 49.4167, the owner or operator may use a Supervisory Control and Data Acquisition (SCADA) system to monitor and record the required data in §§ 49.4161 through 49.4168.

(i) Other Monitoring Options. The owner or operator may use equivalent methods of monitoring other than those listed above upon prior written approval by the EPA.

**§ 49.4167 Recordkeeping requirements.**

(a) Each owner or operator must maintain the following records:

(1) The measured barrels of oil produced at the oil and natural gas production facility each time the oil is unloaded from the produced oil storage tanks;

(2) The volume of produced natural gas sent to each enclosed combustor, utility flare, and pit flare at all times;

(3) The volume of natural gas emissions from the produced oil storage tanks and produced water storage tanks sent to each enclosed combustor, utility flare, and pit flare at all times;

(4) A summary of each oil and natural gas well completion operation and recompletion operation at an oil and natural gas production facility. Each summary shall include:

(i) The latitude and longitude location of the oil and natural gas well in decimal format;

(ii) The date, time, and duration in hours of flowback from the oil and natural gas well;

(iii) The date, time, and duration in hours of any venting of casinghead natural gas from the oil and natural gas well; and

(iv) Specific reasons for each instance of venting in lieu of capture or combustion.

(5) For each enclosed combustor, utility flare, and pit flare at an oil and natural gas production facility:

(i) Written, site-specific designs, operating instructions, operating procedures and maintenance schedules;

(ii) Records of all required monitoring of operations;

(iii) Records of any deviations from the operating parameters specified by the written site-specific designs, operating instructions, and operating procedures. The records must include the enclosed combustor, utility flare, or pit flare's total operating time during which a deviation occurred, the date, time and length of time that deviations occurred, and the corrective actions taken and any preventative measures adopted to operate the device within that operating parameter;

(iv) Records of any instances in which the pilot flame is not present, electronically controlled automatic igniter is not functioning, or the monitoring equipment is not functioning in the enclosed combustor, the utility flare, or the pit flare, the date and times of the occurrence, the corrective actions taken, and any preventative measures adopted to prevent recurrence of the occurrence;

(v) Records of any instances in which a recording device installed to record data from the enclosed combustor, utility flare, or pit flare is not operational; and

(vi) Records of any time periods in which visible smoke emissions are observed emanating from the enclosed combustor, utility flare, or pit flare.

(6) For each pit flare at an oil and natural gas production facility, a demonstration of compliance with the use restrictions set forth in § 49.4165(d)(2)(ii) is made by keeping records in a log book, or similar recording system, during each period of time that the pit flare is operating. The records must contain the following information:

(i) Date and time the pit flare was started up and subsequently shut down;

(ii) Total hours operated when pipeline injection was temporarily infeasible for the current calendar month plus the previous consecutive eleven (11) calendar months; and

(iii) Brief descriptions of the justification for each period of operation.

(7) Records of any instances in which any closed-vent system or control device was bypassed or down, the

reason for each incident, its duration, the volume of natural gas emissions released, and the corrective actions taken and any preventative measures adopted to avoid such bypasses or downtimes; and

(8) Documentation of all produced oil storage tank and produced water storage tank inspections required in § 49.4166(e) and (f). All inspection records must include, at a minimum, the following information:

(i) The date of the inspection;

(ii) The findings of the inspection;

(iii) Any adjustments or repairs made as a result of the inspections, and the date of the adjustment or repair; and

(iv) The inspector's name and signature.

(b) Each owner or operator must keep all records required by this section onsite at the facility or at the location that has day-to-day operational control over the facility and must make the records available to the EPA upon request.

(c) Each owner or operator must retain all records required by this section for a period of at least five (5) years from the date the record was created.

**§ 49.4168 Notification and reporting requirements.**

(a) Each owner or operator must submit any documents required under this section to: U.S. Environmental Protection Agency, Region 8 Office of Enforcement, Compliance & Environmental Justice, Air Toxics and Technical Enforcement Program, 8ENF–AT, 1595 Wynkoop Street, Denver, Colorado 80202. Documents may be submitted electronically to *r8airreportenforcement@epa.gov.*

(b) Each owner and operator must submit an annual report containing the information specified in paragraphs (b)(1) through (4) of this section. Each annual report is due August 15th every year and must cover all information for the previous calendar year. The initial report must cover the cumulative information for that year. If you own or operate more than one oil and natural gas production facility, you may submit one report for multiple oil and natural gas production facilities provided the report contains all of the information required as specified in paragraphs (b)(1) through (4) of this section. Annual reports may coincide with title V reports as long as all the required elements of the annual report are included. The EPA may approve a common schedule on which reports required by §§ 49.4161 through 49.4168 may be submitted as long as the schedule does not extend the reporting period.

(1) The company name and the address of the oil and natural gas production facility or facilities.

(2) An identification of each oil and natural gas production facility being included in the annual report.

(3) The beginning and ending dates of the reporting period.

(4) For each oil and natural gas production facility, the information in paragraphs (b)(4)(i) through (iv) of this section.

(i) A summary of all required records identifying each oil and natural gas well completion or recompletion operation for each oil and natural gas production facility conducted during the reporting period;

(ii) An identification of the first date of production for each oil and natural gas well at each oil and natural gas production facility that commenced production during the reporting period; and

(iii) A summary of cases where construction or operation was not performed in compliance with the requirements specified in § 49.4164, § 49.4165, or § 49.4166 for each oil and natural gas well at each oil and natural gas production facility, and the corrective measures taken.

(iv) A certification by a responsible official of truth, accuracy and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

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