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# Contents

**Federal Register**

Vol. 78, No. 153

Thursday, August 8, 2013

**Agricultural Marketing Service**
RULES
Decreased Assessment Rates:
Irish Potatoes Grown in Washington, 48285–48286
Sweet Cherries Grown in Designated Counties in Washington, 48283–48285

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Commodity Credit Corporation
*See* Farm Service Agency

**Bureau of Consumer Financial Protection**
PROPOSED RULES
Appraisals for Higher-Priced Mortgage Loans; Supplemental Proposal, 48548–48589
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 48422

**Centers for Disease Control and Prevention**
NOTICES
Meetings:
Board of Scientific Counselors, National Center for Health Statistics, 48438

**Coast Guard**
RULES
Drawbridge Operations:
Grassy Sound Channel, Middle Township, NJ, 48314–48315
Lewis and Clark River, Astoria, OR, 48315
Milford Haven Inlet, Hudgins, VA, 48314
Safety Zones:
North Hero Air Show; North Hero, VT, 48315–48318
Special Local Regulations:
Regattas and Marine Parades in the Captain of the Port Lake Michigan Zone, 48311–48314
PROPOSED RULES
Great Lakes Pilotage Rates:
2014 Annual Review and Adjustment, 48374–48397

**Commerce Department**
*See* Foreign-Trade Zones Board
*See* Industry and Security Bureau
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 48412

**Commodity Credit Corporation**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Noninsured Crop Disaster Assistance Program, 48411–48412

**Comptroller of the Currency**
PROPOSED RULES
Appraisals for Higher-Priced Mortgage Loans; Supplemental Proposal, 48548–48589

**Defense Acquisition Regulations System**
RULES
Defense Federal Acquisition Regulation Supplements:
Least Developed Countries that are Designated Countries, 48333–48334
Release of Fundamental Research Information, 48331–48333
PROPOSED RULES
Defense Federal Acquisition Regulation Supplements:
Clauses with Alternates—Contract Financing, 48404–48407
Clauses with Alternates—Quality Assurance, 48407–48410
Clauses with Alternates—Transportation, 48397–48404

**Defense Department**
*See* Defense Acquisition Regulations System
RULES
Tricare:
Reimbursement of Sole Community Hospitals and Adjustment to Reimbursement of Critical Access Hospitals, 48303–48311
PROPOSED RULES
Civilian Health and Medical Program of the Uniformed Services:
Tricare Uniform Health Maintenance Organization (HMO) Benefit – Prime Enrollment Fee Exemption for Survivors of Active Duty Deceased Sponsors and Medically Retired Uniformed Services Members and their Dependents, 48366–48367
Tricare Program:
Clarification of Benefit Coverage of Durable Equipment and Ordering or Prescribing Durable Equipment; Clarification of Benefit Coverage of Assistive Technology Devices under the Extended Care Health Option Program, 48367–48373
NOTICES
Arms Sales, 48422–48430

**Education Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Integrated Postsecondary Education Data System, 48430–48431

**Employment and Training Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
American Recovery and Reinvestment Act, High Growth and Emerging Industries Grants, 48462–48463
Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports, etc., 48463–48464
Quick Turnaround Surveys, 48464–48466
Determinations:
Comcast Cable, Morgan Hill, CA, 48466
Trade Adjustment Assistance; Investigations:
Hewlett Packard Co., Houston, TX, 48466–48467
Hewlett Packard, Conway, AR, 48466
Worker Adjustment Assistance:
CompuCom Systems, Inc., Tewksbury, MA and Houston, TX, 48467

Delphi Automotive Systems, LLC, et al., Kokomo, IN, 48467–48468
Delphi Corp., et al., Flint, MI, 48468–48469
Hewlett Packard Co., et al., Andover, MA, 48468
M/A–Com Technology Solutions, et al., Torrance, CA and Long Beach, CA, 48468
Wausau Paper, et al., Brainerd, MN, 48467
Worker Adjustment Assistance; Determinations, 48469–48471
Worker Adjustment Assistance; Investigations, 48471–48472
Worker Adjustment Assistance; Investigations:
Hewlett Packard Co., et al., Fort Collins, CO, 48472

**Environmental Protection Agency**
**RULES**
Air Quality State Implementation Plans; Approvals and Promulgations:
Arizona; Regional Haze Requirements; Partial Disapproval, 48326–48330
Pennsylvania; Update of Motor Vehicle Emissions Budgets for Lancaster 1997 8-Hour Ozone Maintenance Area, 48323–48326
Texas; Victoria County 1997 8-hour Ozone Section 110 (a)(1) Maintenance Plan, 48318–48322
**PROPOSED RULES**
Air Quality State Implementation Plans; Approvals and Promulgations:
Pennsylvania; Update of the Motor Vehicle Emissions Budgets for the Lancaster 1997 8-Hour Ozone Maintenance Area, 48373–48374
Texas; Victoria County 1997 8-hour Ozone Section 110 (a)(1) Maintenance Plan, 48373
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 48431–48434
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Oil and Hazardous Substances Pollution Contingency Plans, 48434
Proposed Administrative Cost Recovery Settlements under CERCLA:
Carter Carburetor Superfund Site, St. Louis, MO, 48434–48435

**Farm Service Agency**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Noninsured Crop Disaster Assistance Program, 48411–48412

**Federal Aviation Administration**
**RULES**
Airworthiness Directives:
Airbus Airplanes, 48286–48289
Amendment of Class D Airspace and Establishment of Class D Airspace:
Waco, TX and Waco, TSTC–Waco Airport, TX, 48290
Amendment of Class D Airspace:
Columbus, Rickenbacker International Airport, OH, 48291
Grand Forks AFB, ND, 48292–48293
Sparta, WI, 48291–48292
Amendment of Class D and Class E Airspace:
San Marcos, TX, 48293–48294
Amendment of Class E Airspace:
Bedford, PA, 48297–48298
Factoryville, PA, 48296–48297
Gruver, TX, 48295–48296
Mason, TX, 48294–48295
Class E Airspace:
Commerce, TX, 48298–48299
Establishment of Class D Airspace:
Bryant AAF, Anchorage, AK, 48299–48300
Establishment of Class E Airspace:
Mahnomen, MN, 48300–48301
Tuba City, AZ, 48303
Wagner, SD, 48302
Walker, MN, 48301–48302
**PROPOSED RULES**
Airworthiness Directives:
Rolls-Royce Corporation Turbofan Engines, 48339–48341
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Anti-Drug Program for Personnel Engaged in Specified Aviation Activities, 48541
Aviation Medical Examiner Program, 48539–48540
Human Space Flight Requirements for Crew and Space Flight Participants, 48542–48543
Information for the Prevention of Aircraft Collisions on Runways at Towered Airports, 48540–48541
Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes, 48540
Passenger Facility Charge Application, 48541–48542
Representatives of the Administrator, 48542
Records of Decision;
Finding of No Significant Impact; Sioux Falls Regional Airport, Sioux Falls, SD, 48543

**Federal Maritime Commission**
**NOTICES**
Applications:
Ocean Transportation Intermediary License, 48435–48436

**Federal Reserve System**
**PROPOSED RULES**
Appraisals for Higher-Priced Mortgage Loans; Supplemental Proposal, 48548–48589

**Fish and Wildlife Service**
**NOTICES**
Meetings:
Wildlife and Hunting Heritage Conservation Council, 48460–48461

**Food and Drug Administration**
**NOTICES**
Meetings:
Pediatric Ethics Subcommittee of the Pediatric Advisory Committee, 48438–48439

**Foreign-Trade Zones Board**
**NOTICES**
Applications for Subzone Status:
Milwaukee Electric Tool Corp., Olive Branch, Greenwood and Jackson, MS, 48412–48413
Production Activities:
Orbital Sciences Corp., Foreign-Trade Zone 75, Gilbert, AZ, 48413

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* Health Resources and Services Administration

*See* Indian Health Service
*See* National Institutes of Health
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 48436–48438

**Health Resources and Services Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 48439–48440
Meetings:
Advisory Committee on Organ Transplantation, 48440–48441
Advisory Committee on Training in Primary Care Medicine and Dentistry, 48440

**Homeland Security Department**
*See* Coast Guard
*See* U.S. Customs and Border Protection

**Indian Health Service**
*See* Indian Health Service
**NOTICES**
Proposed Single Source Grants:
Native American Lifelines, Inc., 48441–48454

**Industry and Security Bureau**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Voluntary Self-Disclosure of Antiboycott Violations, 48413–48414
Voluntary Self-Disclosure of Violations of the Export Administration Regulations, 48413

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau
*See* Office of Natural Resources Revenue

**International Trade Administration**
**NOTICES**
Antidumping Duty Changed Circumstances Reviews; Results, Extensions, Amendments, etc.:
Diamond Sawblades and Parts Thereof from the People's Republic of China, 48414–48415
Antidumping Duty New Shipper Reviews; Results, Extensions, Amendments, etc.:
Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 48415–48416
Countervailing Duty Orders; Results, Extensions, Amendments, etc.:
Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 48416–48417

**Justice Department**
**NOTICES**
Proposed Consent Decrees under the Clean Air Act, 48462

**Labor Department**
*See* Employment and Training Administration
*See* Mine Safety and Health Administration
*See* Occupational Safety and Health Administration

**Land Management Bureau**
**NOTICES**
Competitive Coal Lease Sale:
Wyoming, 48461–48462

**Millennium Challenge Corporation**
**NOTICES**
Compact with Georgia, 48472–48501

**Mine Safety and Health Administration**
**PROPOSED RULES**
Refuge Alternatives for Underground Coal Mines, 48592–48597

**National Institutes of Health**
**NOTICES**
Meetings:
National Cancer Institute, 48455–48456
National Institute of Diabetes and Digestive and Kidney Diseases, 48455–48456

**National Oceanic and Atmospheric Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Educational Partnership Program, etc., 48417–48418
Nautical Discrepancy Reporting System, 48418–48419
Meetings:
Mid-Atlantic Fishery Management Council, 48419–48421
New England Fishery Management Council, 48419–48421
North American Datum of 1983, 48421–48422

**Nuclear Regulatory Commission**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 48501–48503
Standard Review Plans; Revisions:
Proposed Revision to Missiles Generated by Extreme Winds, 48503–48504
Proposed Revisions to Maintenance Rule Standard Review Plan, 48504–48506

**Occupational Safety and Health Administration**
**PROPOSED RULES**
Consultation Agreements:
Proposed Changes to Consultation Procedures, 48342

**Office of Natural Resources Revenue**
**PROPOSED RULES**
Reporting and Paying Royalties on Federal Leases, 48343–48366

**Pension Benefit Guaranty Corporation**
**NOTICES**
Amendments to Special Withdrawal Liability Rules; Approvals:
I.A.M. National Pension Fund National Pension Plan, 48506–48510

**Personnel Management Office**
**PROPOSED RULES**
Federal Employees Health Benefits Program:
Members of Congress and Congressional Staff, 48337–48339

**Securities and Exchange Commission**
**NOTICES**
Self-Regulatory Organizations; Proposed Rule Changes:
C2 Options Exchange, Inc., 48510–48513
Chicago Board Options Exchange, Inc., 48532–48535
NASDAQ OMX BX, Inc., 48518–48520
NASDAQ OMX PHLX, LLC, 48516–48518
New York Stock Exchange LLC, 48520–48522

New York Stock Exchange, LLC, 48522–48528
NYSE Arca, Inc., 48528–48532
NYSE MKT LLC, 48535–48536
NYSE MKT, LLC, 48513–48516
Trading Suspension Orders:
Hutech21 Co., Ltd., 48536–48537

**Small Business Administration**
**NOTICES**
Disaster Declarations:
New York, 48537
Major Disaster Declarations:
West Virginia, 48537
Small Business Innovation Research and Small Business Technology Transfer Programs Commercialization Benchmark, 48537–48538

**State Department**
**NOTICES**
Culturally Significant Objects Imported for Exhibition Determinations:
Iran Modern, 48539
Designations as a Specially Designated Global Terrorist:
Bahawal Khan, AKA Salahuddin Ayubi, AKA Bahwal Khan, 48539

**Transportation Department**
*See* Federal Aviation Administration
**RULES**
Advisory Committees, 48334–48336

**Treasury Department**
*See* Comptroller of the Currency

**U.S. Customs and Border Protection**
**NOTICES**
Customs Broker Licenses; Cancellations, 48456–48457
Customs Broker Licenses; Correction, 48457–48458
Customs Broker Licenses; Reinstatements, 48458–48460
Customs Broker Licenses; Revocations, 48460

**Veterans Affairs Department**
**NOTICES**
Funding Availability:
Veterans Health Administration Homeless Providers Grant and Per Diem Program, 48543–48546

---

**Separate Parts In This Issue**

**Part II**
Bureau of Consumer Financial Protection, 48548–48589
Federal Reserve System, 48548–48589
Treasury Department, Comptroller of the Currency, 48548–48589

**Part III**
Labor Department, Mine Safety and Health Administration, 48592–48597

---

**Reader Aids**

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.


**5 CFR**

**Proposed Rules:**
890 ..... 48337

**7 CFR**
923 ..... 48283
946 ..... 48285

**12 CFR**

**Proposed Rules:**
34 ..... 48548
226 ..... 48548
1026 ..... 48548

**14 CFR**
39 ..... 48286
71 (15 documents) ..... 48290, 48291, 48292, 48293, 48294, 48295, 48296, 48297, 48298, 48299, 48300, 48301, 48302, 48303

**Proposed Rules:**
39 ..... 48339

**29 CFR**

**Proposed Rules:**
1908 ..... 48342

**30 CFR**

**Proposed Rules:**
7 ..... 48593
75 (2 documents) ..... 48592, 48593
1202 ..... 48343
1205 ..... 48343
1210 ..... 48343

**32 CFR**
199 ..... 48303

**Proposed Rules:**
199 (2 documents) ..... 48366, 48367

**33 CFR**
100 ..... 48311
117 (3 documents) ..... 48314, 48315
165 ..... 48315

**40 CFR**
52 (3 documents) ..... 48318, 48323, 48326

**Proposed Rules:**
52 (2 documents) ..... 48373

**46 CFR**

**Proposed Rules:**
401 ..... 48374

**48 CFR**
252 (2 documents) ..... 48331, 48333

**Proposed Rules:**
212 ..... 48397
216 ..... 48397
232 ..... 48403
246 ..... 48407
247 ..... 48397
252 (3 documents) ..... 48397, 48403, 48407

**49 CFR**
95 ..... 48334

# Rules and Regulations

Federal Register
Vol. 78, No. 153
Thursday, August 8, 2013

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 923

**[Doc. No. AMS–FV–13–0055; FV13–923–1 IR]**

## Sweet Cherries Grown in Designated Counties in Washington; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Washington Cherry Marketing Committee (Committee) for the 2013–2014 and subsequent fiscal periods from $0.18 to $0.15 per ton of sweet cherries handled. The Committee locally administers the marketing order, which regulates the handling of sweet cherries grown in designated counties in Washington. Assessments upon Washington sweet cherry handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective August 9, 2013. Comments received by October 7, 2013 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Submissions will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 923, as amended (7 CFR Part 923), regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington sweet cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate, as issued herein, will be applicable to all assessable sweet cherries beginning April 1, 2013, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2013–2014 and subsequent fiscal periods from $0.18 to $0.15 per ton of sweet cherries handled.

The Washington sweet cherry marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Washington sweet cherries. They are familiar with the Committee's needs, and the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on May 21, 2013, and unanimously recommended expenditures of $65,900 and an assessment rate of $0.15 per ton of sweet cherries for the 2013–2014 fiscal period. In comparison, last year's budgeted expenditures were $64,400, and the recommended $0.15 per ton assessment rate is $0.03 lower than the rate established for the 2012–2013 fiscal period. The Committee recommended the lower assessment rate for the purpose of decreasing its monetary reserve, which was approximately $107,687 on March 31, 2013. Section 923.42(a)(2) of the order specifies that funds held in reserve must not exceed approximately one fiscal period's

operational expenses. This action is expected to reduce the Committee's monetary reserve to a level acceptable under the order.

The major expenditures recommended by the Committee for the 2013–2014 fiscal period include $30,000 for administration and data management fees; $27,000 for Committee expenses such as travel, accounting, and compliance; $5,000 for contingency; and $3,900 for office expenses—including bonds, insurance, telephone, office equipment and supplies. Budgeted expenses for these items in 2012–2013 were $20,000, $35,000, $5,000, and $4,400, respectively.

The Committee took its large monetary reserve into consideration when it developed its recommendation for the 2013–2014 assessment rate. The Committee intends for its 2013–2014 assessment revenue to be less than 2013–2014 budgeted expenses, and anticipates making up the deficit by drawing from reserve funds. By doing so, the Committee expects to reduce its monetary reserve to a level within the maximum amount allowed under the order.

The Committee estimates that Washington sweet cherry handlers will ship 160,000 tons of fruit during the 2013–2014 fiscal period. At the recommended $0.15 per ton assessment rate, the Committee expects to generate $24,000 in assessment income for the fiscal period. Income derived from handler assessments, along with approximately $41,900 from the Committee's monetary reserve, would be adequate to cover the recommended $65,900 budget for the 2013–2014 fiscal period. The Committee reported that funds held in the reserve were approximately $107,687 as of March 31, 2013. The Committee estimates that the reserve will be drawn down to $65,787 by March 31, 2014, which would be within the maximum permitted by the order of approximately one fiscal period's operational expenses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from either the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether a modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2013–2014 budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by USDA.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 53 handlers of Washington sweet cherries subject to regulation under the order and approximately 1,500 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

The National Agricultural Statistics Service has prepared a preliminary report for the 2012 shipping season showing that prices for the 210,000 tons of sweet cherries that entered the fresh market averaged $2,140 per ton. Based on the number of producers in the production area (1,500), the average producer revenue from the sale of sweet cherries in 2012 can therefore be estimated at approximately $299,600 per year. In addition, the Committee reports that most of the industry's 53 handlers reported gross receipts of less than $7,000,000 from the sale of fresh sweet cherries last season. Thus, the majority of producers and handlers of Washington sweet cherries may be classified as small entities.

This rule decreases the assessment rate established for the Committee, and collected from handlers, for the 2013–2014 and subsequent fiscal periods from $0.18 to $0.15 per ton of sweet cherries. The Committee also unanimously recommended 2013–2014 fiscal period expenditures of $65,900. The quantity of assessable sweet cherries for the 2013–2014 fiscal period is estimated by the Committee to be 160,000 tons. Thus, the $0.15 per ton rate should provide $24,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The Committee recommended the assessment rate decrease for the purpose of reducing its monetary reserve, which was approximately $107,687 on March 31, 2013. With the recommended assessment rate and budget, the Committee expects to draw $41,900 from its reserve to fund its 2013–2014 fiscal period budgeted expenditures. The Committee anticipates that this action will reduce the reserve to a level that is less than approximately one fiscal period's operating expenses, the maximum permitted by the order, prior to the beginning of the 2014–2015 fiscal period.

The major expenditures recommended by the Committee for the 2013–2014 fiscal period include $30,000 for administration and data management fees; $27,000 for Committee expenses such as travel, accounting, and compliance; $5,000 for contingency; and $3,900 for office expenses—including bonds, insurance, telephone, office equipment and supplies. Budgeted expenses for these items in 2012–2013 were $20,000, $35,000, $5,000, and $4,400, respectively.

The Committee discussed alternatives to this rule. Leaving the assessment rate at the current $0.18 per ton was initially considered, but not recommended, because of the Committee's desire to decrease the level of the monetary reserve so that it is not more than approximately one fiscal period's operational expenses.

A review of historical data and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2013–2014 fiscal period could average $2,140 per ton of sweet cherries. Therefore, the estimated assessment revenue for the 2013–2014 fiscal period, as a percentage of total producer revenue, is approximately 0.007 percent.

This action will decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's

meeting was widely publicized throughout the Washington sweet cherry industry. All interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 21, 2013, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Washington sweet cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, 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.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2013–2014 fiscal period began on April 1, 2013, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable sweet cherries handled during such fiscal period; (2) this action decreases the assessment rate for assessable sweet cherries beginning with the 2013–2014 fiscal period; (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

### List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 923 is amended as follows:

## PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 923 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 923.236 is revised to read as follows:

### § 923.236 Assessment rate.

On and after April 1, 2013, an assessment rate of $0.15 per ton is established for the Washington Cherry Marketing Committee.

Dated: August 1, 2013.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2013–19012 Filed 8–7–13; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 946

**[Doc. No. AMS–FV–13–0010; FV13–946–1 FIR]**

## Irish Potatoes Grown in Washington; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the State of Washington Potato Committee (Committee) for the 2013–2014 fiscal year and all subsequent fiscal periods from $0.003 to $0.0025 per hundredweight of potatoes handled. The Committee locally administers the marketing order for Irish potatoes grown in Washington. Decreasing the assessment rate was necessary to allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

**DATES:** Effective August 9, 2013.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Under the order, Washington potato handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable Washington potatoes for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal

period begins on July 1, and ends on June 30.

In an interim rule published in the **Federal Register** on April 29, 2013, and effective on April 30, 2013 (78 FR 24981, Doc. No. AMS–FV–13–0010, FV13–946–1 IR), § 946.248 was amended by decreasing the assessment rate established for Washington potatoes for the 2013–2014 fiscal year and all subsequent fiscal periods from $0.003 to $0.0025 per hundredweight of potatoes handled. The decrease in the per hundredweight assessment rate allows the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 43 handlers of Washington potatoes subject to regulation under the order and approximately 267 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. (13 CFR 121.201)

During the 2011–2012 marketing year, the Committee reports that 11,018,670 hundredweight of Washington potatoes were shipped into the fresh market. Based on average f.o.b. prices estimated by the USDA's Economic Research Service and Committee data on individual handler shipments, the Committee estimates that 42, or approximately 98 percent, of the handlers had annual receipts of less than $7,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2011 was $7.90 per hundredweight. The average gross annual revenue for the 267 Washington potato producers is therefore calculated to be approximately $326,021. In view of the foregoing, the majority of Washington potato producers and handlers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2013–2014 fiscal year and all subsequent fiscal periods from $0.003 to $0.0025 per hundredweight of potatoes. The Committee also unanimously recommended 2013–2014 expenditures of $37,400. This action will allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

The quantity of assessable potatoes for the 2013–2014 fiscal period is estimated at 10,000,000 hundredweight. Thus, the $0.0025 rate should provide $25,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Washington potato industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 30, 2013, meeting was a public meeting. All entities, both large and small, were able to express their views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops Generic Package. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim rule were required to be received on or before June 28, 2013. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-13-0010-0001.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 24981, April 29, 2013) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 946**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

## PART 946—IRISH POTATOES GROWN IN WASHINGTON

Accordingly, the interim rule amending 7 CFR part 946, which was published at 78 FR 24981 on April 29, 2013, is adopted as a final rule, without change.

Dated: August 1, 2013.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2013–19011 Filed 8–7–13; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2013–0671; Directorate Identifier 2013–NM–124–AD; Amendment 39–17547; AD 2013–16–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

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

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Airbus Model A318, A319, A320, and

A321 series airplanes. This AD requires an inspection to determine airplane configuration and part numbers of the landing gear control interface unit and main landing gear (MLG) door actuators; and, for affected airplanes, repetitive inspections of the opening sequence of the MLG door actuator, and replacement of the MLG door actuator if necessary. This AD also provides optional terminating action for the repetitive inspections. This AD was prompted by a report of a MLG failing to extend during landing, and a determination that a certain configuration of landing gear control interface unit and actuators may result in masking of centralized fault display system messages that are necessary to mitigate risks associated with failure of MLG extension or down-locking. We are issuing this AD to detect and correct such a configuration, which could prevent the full extension or down-locking of the MLG, possibly resulting in MLG collapse during landing and consequent damage to the airplane and injury to occupants.

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

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

We must receive comments on this AD by September 23, 2013.

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

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

## Examining the AD Docket

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

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

**SUPPLEMENTARY INFORMATION:**

## Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2013–0132–E, dated June 25, 2013 (referred to after this as the ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Some operators reported slow operation of the main landing gear (MLG) door opening/closing sequence, leading to the generation of Centralized Fault Display System (CFDS) messages/ECAM [electronic centralized aircraft monitor] warnings during the landing gear retraction or extension sequence. Investigations showed that the damping ring and associated retaining ring of the MLG door actuator deteriorate. The resultant debris increases the friction inside the actuator which can be sufficiently high to restrict opening of the MLG door by gravity, during operation of the landing gear alternate (free-fall) extension system.

This condition, if not detected and corrected, could prevent the full extension and/or down-locking of the MLG, possibly resulting in MLG collapse during landing and consequent damage to the aeroplane and injury to occupants.

To address this potential unsafe condition, EASA issued [EASA] AD 2011–0069 (currently at R1) [*http://ad.easa.europa.eu/blob/easa_ad_2011_0069_R1.pdf/AD_2011-0069R1_1*] [which corresponds to FAA AD 2011–13–11, Amendment 39–16734 (76 FR 37241, June 27, 2011)] to require an amendment of the applicable Airplane Flight Manual (AFM), repetitive checks of specific CFDS messages, and repetitive inspections of the opening sequence of the MLG door actuator and, depending on findings, corrective action.

Since that AD [EASA AD 2011–0069R1] was issued, following a recent occurrence with a gear extension problem, additional analyses by Airbus have revealed that the CFDS expected specific messages may be not generated and as a result, repetitive checks of messages are not effective for aeroplanes fitted with landing gear control interface unit (LGCIU) interlink communication ARINC 429 (applied in production through Airbus Modification (mod.) 39303, or in service through Airbus Service Bulletin (SB) A320–32–1409), in combination with certain LGCIUs and MLG door actuators installed.

For the reasons described above, this [EASA] Emergency AD requires identification of the affected aeroplanes to establish the configuration and, for those aeroplanes, repetitive inspections of the opening sequence of the MLG door actuator and, depending on findings, replacement of the MLG door actuator.

This [EASA] AD also provides optional terminating action by disconnection of the interlink for certain LGCIUs, or in-service modification of the aeroplane by installation of MLG actuator Part Number (P/N) 114122014 through Airbus SB A320–32–1407 (Airbus production mod. 153655).

Doing an inspection of the door opening sequence of the left-hand and right-hand doors of the MLG of an airplane, as required by paragraph (h) of this AD, is an acceptable alternative method to comply with the requirements of paragraphs (j) and (l) of AD 2011–13–11, Amendment 39–16734 (76 FR 37241, June 27, 2011), for that airplane.

You may obtain further information by examining the MCAI in the AD docket.

## Relevant Service Information

Airbus has issued Alert Operators Transmission (AOT) A32N001–13, dated June 24, 2013; and Airbus Service Bulletin A320–32–1407, dated May 14, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

## FAA's Determination and Requirements of This AD

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

## FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule. Since the issuance of FAA AD 2011–13–11, Amendment 39–16734 (76 FR 37241, June 27, 2011), we have received a report of a MLG failing to extend during landing. We have also been notified that a certain configuration of LGCIU and actuators may result in masking of CFDS messages that are necessary to mitigate risks associated with failure of MLG

extension or down-locking. This condition could possibly result in MLG collapse during landing and consequent damage to the airplane and injury to occupants. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0671; Directorate Identifier 2013–NM–124–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

**Costs of Compliance**

We estimate that this AD affects 851 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Configuration and part number determination. | 1 work-hour × $85 per hour = $85. | $0 | $85 | $72,335. |
| MLG door repetitive inspection | 2 work-hours × $85 per hour = $170 per inspection cycle. | $0 | $170 per inspection cycle | $144,670 per inspection cycle. |

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

**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 AD:

**2013–16–09 Airbus:** Amendment 39–17547. Docket No. FAA–2013–0671; Directorate Identifier 2013–NM–124–AD.

**(a) Effective Date**

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

**(b) Affected ADs**

This AD affects AD 2011–13–11, Amendment 39–16734 (76 FR 37241, June 27, 2011), by providing an alternative method to comply with the requirements of paragraphs (j) and (l) of AD 2011–13–11.

**(c) Applicability**

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

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 32, Landing gear.

**(e) Reason**

This AD was prompted by a report of a main landing gear (MLG) failing to extend during landing, and a determination that a certain configuration of landing gear control interface unit (LGCIU) and actuators may result in masking of centralized fault display system messages that are necessary to mitigate risks associated with failure of MLG extension or down-locking. We are issuing this AD to detect and correct such a configuration, which could prevent the full extension or down-locking of the MLG, possibly resulting in MLG collapse during landing and consequent damage to the airplane and injury to occupants.

**(f) Compliance**

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

**(g) Configuration and Part Number (P/N) Determination**

At the later of the compliance times specified in paragraphs (g)(1) and (g)(2) of this AD: Do an inspection to determine the configuration (modification status) of the airplane and identify the part number of the left-hand (LH) and right-hand (RH) LGCIU and MLG door actuators. A review of the airplane delivery or maintenance records is acceptable for compliance with the requirements of this paragraph provided the airplane configuration and installed components can be conclusively determined from that review.

(1) Prior to the accumulation of 800 total flight cycles since first flight of the airplane.

(2) Within 14 days after the effective date of this AD.

**(h) MLG Door Opening Sequence Repetitive Inspections**

If, during the determination and identification required by paragraph (g) of this AD, the configuration of the airplane is determined to be Airbus post-modification 39303 or post-Airbus Service Bulletin A320–32–1409 (Interlink Communication ARINC 429 installed), and both an LGCIU and a MLG door actuator are installed with a part number listed in table 1 to paragraph (h) of this AD: Except as provided by paragraph (k) of this AD, at the later of the compliance times specified in paragraphs (g)(1) and (g)(2) of this AD, and thereafter at intervals not to exceed 8 days or 5 flight cycles, whichever occurs later, do an inspection of the door opening sequence of the LH and RH MLG doors, in accordance with the instructions of Airbus Alert Operators Transmission (AOT) A32N001–13, dated June 24, 2013.

TABLE 1 TO PARAGRAPH (H) OF THIS AD

| Component name | Part No. |
|---|---|
| LGCIU (LH and RH) ..... | 80–178–02–88012 |
| LGCIU (LH and RH) ..... | 80–178–03–88013 |
| MLG door actuator ..... | 114122006 |
| MLG door actuator ..... | 114122007 |
| MLG door actuator ..... | 114122009 |
| MLG door actuator ..... | 114122010 |
| MLG door actuator ..... | 114122011 |
| MLG door actuator ..... | 114122012 |

**(i) MLG Door Opening Sequence Corrective Action**

If a slow door operation or restricted extension is found during any inspection required by paragraph (h) of this AD: Before further flight, replace the affected MLG door actuator with a new or serviceable actuator, in accordance with the instructions of Airbus AOT A32N001–13, dated June 24, 2013.

**(j) Repetitive Inspection—Terminating Action**

Replacement of a MLG door actuator, as required by paragraph (i) of this AD, does not constitute terminating action for the repetitive inspections required by paragraph (h) of this AD, unless MLG door actuators having P/N 114122014 are installed on both LH and RH sides, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1407, dated May 14, 2013.

**(k) Repetitive Inspection Exception**

Airplanes on which the LGCIU interlink is disconnected (Airbus modification 155522 applied in production, or modified in-service in accordance with the instructions of Airbus AOT A32N001–13, dated June 24, 2013), or on which MLG door actuators having P/N 114122014 are installed on both LH and RH sides (Airbus modification 153655 applied in production, or modified in-service in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1407, dated May 14, 2013), are not required to do the actions required by paragraph (h) of this AD, provided that the airplane is not modified to a configuration as defined in paragraph (h) of this AD.

**(l) Alternative Action for AD 2011–13–11, Amendment 39–16734 (76 FR 37241, June 27, 2011)**

Doing an inspection of the door opening sequence of the LH and RH doors of the MLG of an airplane, as required by paragraph (h) of this AD, is an acceptable alternative method to comply with the requirements of paragraphs (j) and (l) of AD 2011–13–11, Amendment 39–16734 (76 FR 37241, June 27, 2011), for that airplane.

**(m) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(n) Special Flight Permits**

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided the MLG remains extended and locked, and that no MLG recycle is done.

**(o) Related Information**

Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency Emergency Airworthiness Directive 2013–0132–E, dated June 25, 2013, for related information, which can be found in the AD docket on the internet at *http://www.regulations.gov*.

**(p) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Airbus Alert Operators Transmission A32N001–13, dated June 24, 2013.

(ii) Airbus Service Bulletin A320–32–1407, dated May 14, 2013.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*.

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on July 26, 2013.

**Stephen P. Boyd,**

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

[FR Doc. 2013–19023 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2013–0136; Airspace Docket No. 13–ASW–4]**

## Amendment of Class D Airspace; Waco, TX, and Establishment of Class D Airspace; Waco, TSTC-Waco Airport, TX

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class D airspace at Waco, TX, by separating the Class D airspace at Waco Regional Airport from the Class D airspace at TSTC-Waco Airport. The FAA is taking this action to alleviate multiple air traffic controllers handling the same airspace and for the safety and management of Instrument Flight Rule (IFR) operations at the airport. The geographic coordinates for Waco Regional Airport are also adjusted.

**DATES:** *Effective date:* 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

### History

On June 3, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class D airspace for Waco, TX (78 FR 33015) Docket No. FAA–2013–0136. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class D airspace at Waco, TX, by separating the Class D airspace area for Waco Regional Airport from the Class D airspace area for TSTC-Waco Airport, to enhance the safety and management of IFR operations at both airports. TSTC-Waco Airport is removed from its current designation and established under its own designator; Waco, TSTC-Waco Airport, TX, to accommodate this separation of controlled airspace surrounding Waco Regional Airport. This enhances safety by not having multiple air traffic controllers responsible for the same airspace. Geographic coordinates for Waco Regional Airport are updated to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace in the Waco, TX, area.

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

### § 71.1 [Amended]

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

*Paragraph 5000 Class D airspace.*

* * * * *

**ASW TX D Waco, TX [Amended]**

Waco, Waco Regional Airport, TX
(Lat. 31°36′44″ N., long. 97°13′49″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.5-mile radius of Waco Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Airport/Facility Directory.

**ASW TX D Waco, TSTC-Waco Airport, TX [New]**

Waco, TSTC-Waco Airport, TX
(Lat. 31°38′16″ N., long. 97°04′27″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.4-mile radius of TSTC-Waco Airport, excluding that airspace within the Waco Regional Airport Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Airport/Facility Directory

Issued in Fort Worth, Texas, on July 25, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18713 Filed 8–7–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2013–0270; Airspace Docket No. 13–AGL–4]**

## Amendment of Class D Airspace; Columbus, Rickenbacker International Airport, OH

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class D airspace at Rickenbacker International Airport, Columbus, OH. Changes to the airspace description are necessary due to the closure of South Columbus Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport. The airport name and geographic coordinates are also updated.

**DATES:** *Effective Date:* 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

### History

On May 24, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class D airspace for Rickenbacker International Airport (78 FR 31428), Docket No. FAA–2013–0270. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class D airspace at Rickenbacker International Airport, Columbus, OH, to reflect the closure of South Columbus Airport. The exclusion of controlled airspace within a 1.3-mile radius is no longer needed and is removed from the airspace description, restoring Class D airspace to a 4.5-mile radius of Rickenbacker International Airport for the safety and management of IFR operations at the airport. The geographic coordinates of Rickenbacker International Airport, formerly called Rickenbacker Airport, are updated to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Rickenbacker International Airport, Columbus, OH.

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

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

*Paragraph 5000 Class D airspace.*

* * * * *

**AGL OH D Columbus, Rickenbacker International Airport, OH [Amended]**

Columbus, Rickenbacker International Airport, OH
(Lat. 39°48′50″ N., long. 82°55′40″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.5-mile radius of Rickenbacker International Airport, excluding that airspace within the Port Columbus International Airport, OH, Class C airspace area.

Issued in Fort Worth, Texas, on July 25, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18696 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2013–0165; Airspace Docket No. 13–AGL–6]**

## Amendment of Class D Airspace; Sparta, WI

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class D airspace at Sparta, WI. Changes to the airspace description are necessary due

to the need to exclude active military restricted airspace at Sparta/Fort McCoy Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** Effective date: 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

### History

On May 1, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class D airspace for Sparta/Fort McCoy Airport (78 FR 25402) Docket No. FAA–2013–0165. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class D airspace at Sparta/Fort McCoy Airport, Sparta, WI, to reflect the exclusion of that airspace within Restricted Areas R–6901 A/B. This action enhances the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Sparta/Fort McCoy Airport, Sparta, WI.

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

### § 71.1 [Amended]

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

*Paragraph 5000 Class D airspace.*

* * * * *

**AGL WI D Sparta, WI [Amended]**

Sparta, Sparta/Fort McCoy Airport, WI
(Lat. 43°57′30″ N., long. 90°44′16″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4-mile radius of Sparta/Fort McCoy Airport, excluding that airspace within Restricted Area R–6901 A/B. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, Texas, on July 19, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18709 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0261; Airspace Docket No. 13–AGL–14]**

## Amendment of Class D Airspace; Grand Forks AFB, ND

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class D airspace at Grand Forks Air Force Base (AFB), ND. Changes to the airspace description are necessary due to changes in air traffic control tower operating hours. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** *Effective date:* 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

### History

On June 3, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class D airspace for Grand Forks AFB, ND (78 FR 33016) Docket No. FAA–2013–0261. Interested parties were

invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class D airspace at Grand Forks AFB, ND, amending the operating hours to reflect removal of the specific effective dates and times established by a Notice to Airmen (NOTAM) for Grand Forks AFB, Grand Forks, ND. Operating hours are now continuous, 24 hours at Grand Forks AFB. Controlled airspace is needed for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Grand Forks AFB, Grand Forks, ND.

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

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

*Paragraph 5000 Class D airspace.*

* * * * *

**AGL ND D Grand Forks AFB, ND [Amended]**

Grand Forks AFB, ND

(Lat. 47°57′41″ N., long. 97°24′03″ W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.9-mile radius of Grand Forks AFB, and within 2.3 miles each side of the 174° bearing from the airport extending from the 4.9-mile radius to 5.6 nm south of the airport, excluding that airspace within the Grand Forks, ND, Class D airspace area.

Issued in Fort Worth, Texas, on July 25, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18714 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2013–0273; Airspace Docket No. 13–ASW–9]**

## Amendment of Class D and Class E Airspace; San Marcos, TX

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class D and Class E airspace at San Marcos, TX. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at San Marcos Municipal Airport and the decommissioning of the Garys Locator Outer Marker (LOM). This action enhances the safety and management of Instrument Flight Rule (IFR) operations at the airport. Geographic coordinates are also updated.

**DATES:** *Effective date:* 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

**History**

On June 4, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class D and Class E airspace for the San Marcos, TX, area, creating additional controlled airspace at San Marcos Municipal Airport (78 FR 33263) Docket No. FAA–2013–0273. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D and E airspace designations are published in paragraphs 5000, and 6005, respectively, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

## The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class D airspace and Class E airspace extending upward from 700 feet above the surface ensuring controlled airspace exists to contain aircraft executing new standard instrument approach procedures and the decommissioning of the Garys LOM at San Marcos Municipal Airport, San Marcos, TX. Accordingly, small segments of Class D airspace extend 4.4 miles both west and north, and 5 miles northwest from the 4.2-mile radius of the airport, and small segments of Class E airspace extend 13.1 miles west, 11.1 miles northwest, 10.4 miles both east and south, and 9.6 miles southeast of the 6.7-mile radius of the airport for the safety and management of IFR operations to/from the en route environment. Geographic coordinates for San Marcos Municipal Airport and Lockhart Municipal Airport are also updated to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at San Marcos Municipal Airport, San Marcos, TX.

## Environmental Review

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

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

### § 71.1 [Amended]

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

*Paragraph 5000 Class D airspace.*

* * * * *

**ASW TX D San Marcos, TX [Amended]**

San Marcos Municipal Airport, TX
(Lat. 29°53′34″ N., long. 97°51′47″ W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.2-mile radius of San Marcos Municipal Airport, and within 1 mile each side of the 313° bearing from the airport extending from the 4.2-mile radius to 5 miles northwest of the airport, and within 1 mile each side of the 268° bearing from the airport extending from the 4.2-mile radius to 4.4 miles west of the airport, and within 1 mile each side of the 358° bearing from the airport extending from the 4.2-mile radius to 4.4 miles north of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continually published in the Airport/Facility Directory.

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASW TX E5 San Marcos, TX [Amended]**

San Marcos Municipal Airport, TX
(Lat. 29°53′34″ N., long. 97°51′47″ W.)
Lockhart Municipal Airport, TX
(Lat. 29°51′01″ N., long. 97°40′21″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of San Marcos Municipal Airport, and within 2 miles each side of the 268° bearing from the airport extending from the 6.7-mile radius to 13.1 miles west of the airport, and within 2 miles each side of the 313° bearing from the airport extending from the 6.7-mile radius to 11.1 miles northwest of the airport, and within 2 miles each side of the 088° bearing from the airport extending from the 6.7-mile radius to 10.4 miles east of the airport, and within 2 miles each side of the 133° bearing from the airport extending from the 6.7-mile radius to 9.6 miles southeast of the airport, and within 2 miles each side of the 178° bearing from the airport extending from the 6.7-mile radius to 10.4 miles south of the airport, and within a 6.3-mile radius of Lockhart Municipal Airport.

Issued in Fort Worth, Texas, on July 25, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18715 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2012–1141; Airspace Docket No. 12–ASW–12]**

## Amendment of Class E Airspace; Mason, TX

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Mason, TX. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Mason County Airport. This action enhances the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** *Effective date:* 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort

Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

**History**

On May 24, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Mason, TX, area, creating additional controlled airspace at Mason County Airport (78 FR 31429) Docket No. FAA–2012–1141. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to ensure that controlled airspace exists to contain aircraft executing new standard instrument approach procedures at Mason County Airport, Mason, TX. A segment is added from the 6.4-mile radius of the airport to 11.8 miles north of the airport for the safety and management of IFR operations. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Mason County Airport, Mason, TX.

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

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

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.*

* * * * *

**ASW TX E5 Mason, TX [Amended]**

Mason County Airport, TX

(Lat. 30°43′56″ N., long. 99°11′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Mason County Airport, and within 2 miles each side of the 001° bearing from the airport extending from the 6.4-mile radius to 11.8 miles north of the airport.

Issued in Fort Worth, Texas, on July 25, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18698 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2011–1111; Airspace Docket No. 11–ASW–13]**

## Amendment of Class E Airspace; Gruver, TX

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Gruver, TX. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Gruver Municipal Airport. This action enhances the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** *Effective date:* 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

**History**

On March 26, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Gruver, TX, area, creating additional controlled airspace at Gruver Municipal Airport (78 FR 18261) Docket No. FAA–2011–1111. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations

listed in this document will be published subsequently in the Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to ensure that required controlled airspace exists from the 6.5-mile radius of the airport to 9.6 miles southwest of the airport to contain aircraft executing new standard instrument approach procedures at Gruver Municipal Airport, Gruver, TX. This action enhances the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Gruver Municipal Airport, Gruver, TX.

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

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

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.*

* * * * *

**ASW TX E5 Gruver, TX [Amended]**

Gruver Municipal Airport, TX
(Lat. 36°14′01″ N., long. 101°25′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Gruver Municipal Airport, and within 2 miles each side of the 210° bearing from the airport extending from the 6.5-mile radius to 9.6 miles southwest of the airport.

Issued in Fort Worth, Texas, on July 25, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18693 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0345; Airspace Docket No. 13–AEA–6]**

## Amendment of Class E Airspace; Factoryville, PA

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E Airspace at Factoryville, PA, as the Lake Henry VORTAC has been decommissioned and new standard instrument approach procedures developed for Instrument Flight Rules (IFR) operations at Seamans Field Airport. This enhances the safety and management of aircraft operations at the airport.

**DATES:** Effective 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

**SUPPLEMENTARY INFORMATION:**

**History**

On May 29, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace at Seamans Field Airport, Factoryville, PA, (78 FR, 32212). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

**The Rule**

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within an 11 mile radius of Seamans Field Airport, Factoryville, PA. Airspace reconfiguration is necessary due to the decommissioning of the Lake Henry VORTAC and cancellation of the VOR approach, and for continued safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) Is not a ''significant regulatory action'' under

Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AEA PA E5 Factoryville, PA [Amended]**

Seamans Field Airport, PA
(Lat. 41°35′22″ N., long. 75°45′22″ W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Seamans Field Airport.

Issued in College Park, Georgia, on July 31, 2013.

**Paul Lore,**

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

[FR Doc. 2013–19088 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0359; Airspace Docket No. 13–AEA–7]**

## Amendment of Class E Airspace; Bedford, PA

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E Airspace at Bedford, PA, as the St. Thomas VORTAC has been decommissioned and new standard instrument approach procedures developed for Instrument Flight Rules (IFR) operations at Bedford County Airport. This enhances the safety and management of aircraft operations at the airport. This action also updates the geographic coordinates of the airport.

**DATES:** Effective 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

**SUPPLEMENTARY INFORMATION:**

**History**

On May 29, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace at Bedford County Airport, Bedford, PA. (78 FR 32213). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

**The Rule**

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within a 12.5-mile radius of Bedford County Airport, Bedford, PA. Airspace reconfiguration is necessary due to the decommissioning of the St. Thomas VORTAC and cancellation of the VOR approach, and for continued safety and management of IFR operations at the airport. The geographic coordinates of the airport also are adjusted to be in concert with FAAs aeronautical database.

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

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

promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Bedford County Airport, Bedford, PA.

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AEA PA E5 Bedford, PA [Amended]**

Bedford County Airport, PA

(Lat. 40°05′10″ N., long. 78°30′49″ W.)

That airspace extending upward from 700 feet above the surface within a 12.5-mile radius of Bedford County Airport.

Issued in College Park, Georgia, on July 31, 2013.

**Paul Lore,**

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

[FR Doc. 2013–19076 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0269; Airspace Docket No. 13–ASW–3]**

## Amendment of Class E Airspace; Commerce, TX

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Commerce, TX. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Commerce Municipal Airport. This action enhances the safety and management of Instrument Flight Rule (IFR) operations at the airport. Geographic coordinates are also updated.

**DATES:** *Effective date:* 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

**History**

On June 3, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Commerce, TX, area, creating additional controlled airspace at Commerce Municipal Airport (78 FR 33019) Docket No. FAA–2013–0269. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface ensuring controlled airspace exists to contain aircraft executing new standard instrument approach procedures at Commerce Municipal Airport, Commerce, TX. Small segments are added from the 6.3-mile radius of the airport to 9.5 miles north and 9.3 miles south of the airport for the safety and management of IFR operations. Geographic coordinates of the airport are also updated to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Commerce Municipal Airport, Commerce, TX.

**Environmental Review**

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA

Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

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

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.*

* * * * *

**ASW TX E5 Commerce, TX [Amended]**

Commerce Municipal Airport, TX
(Lat. 33°17′34″ N., long. 95°53′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Commerce Municipal Airport, and within 2 miles each side of the 183° bearing from the airport extending from the 6.3-mile radius to 9.3 miles south of the airport, and within 2 miles each side of the 003° bearing from the airport extending from the 6.3-mile radius to 9.5 miles north of the airport.

Issued in Fort Worth, Texas, on July 25, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18699 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2012–0433; Airspace Docket No. 12–AAL–5]**

## Establishment of Class D Airspace; Bryant AAF, Anchorage, AK

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class D airspace at Bryant Army Airfield (AAF), Anchorage AK. This action provides controlled airspace to improve the safety and management of aircraft operations at the airport due to an increase in the complexity, volume, and variety of aircraft in the immediate vicinity of Bryant AAF.

**DATES:** Effective date, 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4517.

**SUPPLEMENTARY INFORMATION:**

**History**

On August 22, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class D airspace at Bryant AAF, Anchorage AK (77 FR 50646). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Thirteen comments were received.

The commenters were concerned that the creation of Class D airspace east of the Glenn Highway might compress traffic using the Eastside VFR flyway, adversely affect pilots' situational awareness, and questioned the availability of weather information at Fort Richardson. The FAA found merit in some of these comments and issued a supplemental notice of proposed rulemaking to establish Class D airspace at Bryant AAF, Anchorage, AK, but would eliminate that portion east of Glenn Highway (FR 78 34608, June 10, 2013). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Fourteen comments were received, all in support of the supplemental proposal. Subsequent to publication of the SNPRM, the FAA found that a digit was left off the first set of coordinates, and is corrected in the rule.

Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in this Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class D airspace extending upward to and including 2,900 feet MSL at Bryant AAF, Anchorage, AK. This action provides controlled airspace due to an increase in the complexity, volume and variety of aircraft in the immediate vicinity of the airport and improves the safety of and management of aircraft operations. A typographical error is corrected in the regulatory text for the first set of coordinates, changing it from ''lat. 61°17″3′'' to ''lat. 61° 17″13′''.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes

controlled airspace at Bryant AAF, Anchorage, AK.

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

### § 71.1 [Amended]

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

*Paragraph 5000 Class D Airspace*

* * * * *

**AAL AK D Bryant Army Airfield, Anchorage AK [NEW]**

Bryant AAF, AK
(Lat. 61°15′57″ N., long. 149°39′12″ W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within an area bounded by a line beginning at lat. 61°17′13″ N., long. 149°37′35″ W.; to lat. 61°17′13″ N., long. 149°43′08″ W.; to lat. 61°13′49″ N., long. 149°43′08″ W.; to lat. 61°13′54″ N., long. 149°42′44″ W.to lat. 61°14′24″ N., long. 149°41′23″ W.; to lat. 61°15′54″ N., long. 149°38′20″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on July 26, 2013.

**Clark Desing,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–18866 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2012–1283; Airspace Docket No. 12–AGL–15]**

## Establishment of Class E Airspace; Mahnomen, MN

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Mahnomen, MN. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Mahnomen County Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** Effective date: 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

**History**

On April 30, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace for the Mahnomen, MN, area, creating controlled airspace at Mahnomen County Airport (78 FR 25233) Docket No. FAA–2012–1283. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface to ensure that required controlled airspace exists to contain new standard instrument approach procedures within a 6-mile radius of Mahnomen County Airport, Mahnomen, MN. Controlled airspace enhances the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Mahnomen County Airport, Mahnomen, MN.

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

### § 71.1 [Amended]

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

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.*

* * * * *

**AGL MN E5 Mahnomen, MN [New]**

Mahnomen County Airport, MN
(Lat. 47°15′38″ N., long. 95°55′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Mahnomen County Airport.

Issued in Fort Worth, Texas, on July 19, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18683 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0266; Airspace Docket No. 13–AGL–11]**

## Establishment of Class E Airspace; Walker, MN

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Walker, MN. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Walker Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** Effective date: 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

### History

On April 30, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace for the Walker, MN, area, creating controlled airspace at Walker Municipal Airport (78 FR 25234) Docket No. FAA–2013–0266. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface to ensure that required controlled airspace exists to contain new standard instrument approach procedures within an 8-mile radius of Walker Municipal Airport, Walker, MN. Controlled airspace enhances the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Walker Municipal Airport, Walker, MN.

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

### § 71.1 [Amended]

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

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.*

* * * * *

**AGL MN E5 Walker, MN [New]**

Walker Municipal Airport, MN
(Lat. 47°09′34″ N., long. 94°38′43″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Walker Municipal Airport.

Issued in Fort Worth, Texas, on July 19, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18688 Filed 8–7–13; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0004; Airspace Docket No. 13–AGL–1]**

## Establishment of Class E Airspace; Wagner, SD

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Wagner, SD. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Wagner Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** *Effective date:* 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

### History

On May 24, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace for the Wagner, SD, area, creating controlled airspace at Wagner Municipal Airport (78 FR 31430) Docket No. FAA–2013–0004. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface to ensure that required controlled airspace exists to contain new standard instrument approach procedures within an 8-mile radius of Wagner Municipal Airport, Wagner, SD. Controlled airspace enhances the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Wagner Municipal Airport, Wagner, SD.

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

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

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.*

* * * * *

**AGL SD E5 Wagner, SD [New]**

Wagner Municipal Airport, SD
(Lat. 43°03′51″ N., long. 98°17′47″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Wagner Municipal Airport.

Issued in Fort Worth, Texas, on July 25, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–18703 Filed 8–7–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 71

**[Docket FAA No. FAA–2013–0147; Airspace Docket No. 13–AWP–1]**

## Establishment of Class E Airspace; Tuba City, AZ

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

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects a final rule published in the **Federal Register** May 29, 2013 that establishes Class E en route airspace at the Tuba City VHF Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC), Tuba City, AZ. In that rule, an error was made in the legal description for Tuba City, identifying the region as ANM instead of AWP.

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

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

### History

The FAA published a final rule in the **Federal Register** establishing Class E en route airspace at the Tuba City VORTAC, Tuba City, AZ (78 FR 32086, May 29, 2013). In the regulatory text, the region identifier ANM was incorrect, and is now corrected to AWP.

### Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description as published in the **Federal Register** on May 29, 2013 (78 FR 32086), Airspace Docket No. 13–AWP–1, FR Doc. 2013–12623, is corrected as follows:

**§ 71.1 [Amended]**

■ On page 32087, column 1, line 4, remove ANM AZ E6 Tuba City, AZ [NEW], and insert AWP AZ E6 Tuba City, AZ [Corrected].

Issued in Seattle, Washington, on July 29, 2013.

**Christopher Ramirez,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–18869 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 199

**[DOD–2010–HA–0072]**

**RIN 0720–AB41**

## TRICARE; Reimbursement of Sole Community Hospitals and Adjustment to Reimbursement of Critical Access Hospitals

**AGENCY:** Office of the Secretary, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** This Final Rule implements for Sole Community Hospitals (SCHs) the statutory provision at title 10, United States Code (U.S.C.), section 1079(j)(2) that TRICARE payment methods for institutional care be determined, to the extent practicable, in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. This Final Rule implements a reimbursement methodology similar to that applicable to Medicare beneficiaries for inpatient services provided by SCHs. It will be phased in over a several-year period. This Final Rule also provides for special reimbursement for labor/delivery and nursery services in SCHs and creates a possible General Temporary Military Contingency Payment Adjustment (GTMCPA) for inpatient services in SCHs and for Critical Access Hospitals (CAHs).

**DATES:** This rule is effective October 7, 2013.

*Applicability Date:* The regulations setting forth the revised reimbursement system shall be applicable for all admissions to Sole Community Hospitals and Critical Access Hospitals commencing on or after the first day of the month which is at least 120 days from the date of publication of this rule in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ann Fazzini, TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Branch, telephone (303) 676–3803.

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

*A. Purpose of the Final Rule*

The purpose of this Final Rule is to implement for SCHs the statutory requirement that TRICARE inpatient care ''payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare.'' Medicare pays SCHs the greater of the amount under the general inpatient prospective payment system method based on diagnosis-related groups (DRGs) or an amount based on the hospital's reported costs. TRICARE pays for most hospital care under a DRG-based prospective payment system similar to Medicare's, but exempted SCHs from this system, instead paying them billed charges. Paying billed charges is fiscally imprudent and inconsistent with TRICARE's governing statute. Paying SCHs under a method similar to Medicare's is prudent, practicable, and harmonious with the statute. The Final Rule will transition over a several year period from the current billed charge method to the new method. The transition will be gradual to reduce the impact on the SCHs. Network SCHs will have payment reductions limited to 10 percent per year. Non-network SCHs will have reductions limited to 15 percent per year.

The legal authority for this Final Rule is 10 U.S.C. 1079(j)(2).

*B. Summary of the Major Provisions of the Final Rule*

1. Ultimate Payment Method for SCHs

Following the transition period, TRICARE will reimburse SCHs for inpatient care the higher of the DRG-based amount applicable to most hospitals or an amount approximating the SCH's costs. The cost-based amount will be determined by applying the SCH's most recent Medicare cost-to-charge ratio (CCR) to the SCH's charges. Individual claims will be paid under this cost-based method, followed by a year-end review to determine whether in the aggregate the DRG-based method would have paid more. If so, TRICARE will pay the SCH the aggregate difference.

2. Transition Period

To protect SCHs from sudden significant reductions, the Final Rule will gradually transition from the base year of paying 100 percent of allowable charges (which is either the billed charge or, in the case of network hospitals, a voluntary discounted

charge) to paying the percentage equal to the Medicare CCR (generally in the range of 30 to 50 percent). The transition rules prevent a reduction of more than 10 percentage points per year for network hospitals or 15 percentage points per year for non-network hospitals. So, for example, in the case of a non-network hospital with a CCR of 40 percent, payment in the first year would be 85 percent of the base year amount; 70 percent in the second year, 55 percent in the third year, and 40 percent in the fourth and subsequent years. In the case of a network hospital with a CCR of 40 percent that had agreed to a 5 percent discount (i.e., the allowable amount was 95 percent of billed charges) in the base year, payment in the first year would be 85 percent of the base year amount, 75 percent in the second year, 65 percent in the third year, 55 percent in the fourth year, 45 percent in the fifth year, and 40 percent in the sixth and subsequent years. During each year, the resulting aggregate payment amount would be compared to the aggregate amount that would have been provided under the DRG-based system, and if that would have been more, the difference will be paid.

3. Special Payment Rule for Labor/Delivery and Nursery Care

In response to public comments, the Final Rule includes a special payment rule for labor/delivery and nursery care in SCHs. Based on an assessment that the Medicare CCR does not accurately reflect the cost to charge ratio for these services, following the transition period, rather than applying the Medicare CCR to charges to labor/delivery and nursery DRGs, TRICARE will apply 130 percent of the Medicare CCR.

4. GTMCPA for SCHs and CAHs

One of the purposes of the TRICARE program is to support military members and their families during periods of war or contingency operations, when military facility capability may be diverted or insufficient to meet military readiness priorities. To preserve the availability of SCHs during such periods, the Final Rule includes authority for a year-end discretionary, temporary adjustment that the TMA Director may approve in extraordinary economic circumstances for a network hospital that serves a disproportionate share of Active Duty Service members (ADSMs) and Active Duty dependents (ADDs). This same adjustment possibility is also made available to Critical Access Hospitals since they share some attributes of SCHs.

TRICARE is in the process of developing policy and procedural instructions for exercising the discretionary authority under the qualifying criteria for the GTMCPAs for inpatient services provided in SCHs and CAHs. The policy and procedural instructions will be available within 3 to 6 months following the applicability date of the new inpatient reimbursement methodology for SCHs. Hospitals will be able to request a GTMCPA approximately 14 months from the applicability date of the new reimbursement method as any GTMCPA will be based on twelve months of claims payment data under the new method. Once finalized, the policy and procedural instructions will be available in the TRICARE Reimbursement Manual at *http://manuals.tricare.osd.mil.* As with any discretionary authority exercised under the regulation, a determination approving or denying a GTMCPA for a hospital is not subject to the appeal and hearing procedures set forth in 32 CFR 199.10. Section 199.14(a)(8) of this final rule has been revised to clarify this point.

*C. Costs and Benefits*

The economic impact of the Final Rule is to reduce DoD payments to SCHs, producing estimated DoD budgetary savings (cost avoidance) as follows:

FY 2013: $36.5 million
FY 2014: $80.2 million
FY 2015: $130.3 million
FY 2016: $186.1 million
FY 2017: $243.1 million
Total FY 2013–2017: $676.1 million

**II. Discussion of Final Rule**

*A. Introduction and Background*

In the **Federal Register** of July 5, 2011 (76 FR 39043), DoD published for public comment a Proposed Rule regarding an inpatient payment system for SCHs. Under 10 U.S.C. 1079(j)(2), the amount to be paid to hospitals, skilled nursing facilities, and other institutional providers under TRICARE, ''shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare.'' Medicare reimburses SCHs for inpatient care the greatest of these aggregate amounts:

(1) What the SCH would have been paid under the Medicare DRG method for all of that hospital's Medicare discharges; or

(2) The amount that would have been paid if the SCH were paid the average ''cost'' per discharge at that hospital in Fiscal Year (FY) 1982, 1987, 1996, or 2006 updated to the current year for all its Medicare discharges.

TRICARE currently pays SCHs for inpatient care in one of two ways:

(1) Network hospitals: Payment is an amount equal to billed charges less a negotiated discount. The discounted reimbursement is usually substantially greater than what would be paid using the DRG method, which TRICARE generally uses to reimburse hospitals for inpatient care; or

(2) Non-network hospitals: Payment is equal to billed charges.

TRICARE's current method results in reimbursing SCHs substantially more than Medicare does for equivalent inpatient care. A change is needed to conform to the statute.

Under 32 Code of Federal Regulations (CFR) 199.14(a)(1)(ii)(D)(*6*), SCHs are currently exempt from the TRICARE DRG-based payment system. Based on the above statutory mandate, TRICARE is adopting in this Final Rule an approach that approximates the Centers for Medicare and Medicaid Services' (CMS) method for SCHs.

*B. SCH Reimbursement Methodology*

Establishing a TRICARE SCH inpatient reimbursement method exactly matching that of Medicare is not practicable. While TRICARE can calculate the aggregate DRG reimbursement for all TRICARE discharges by an SCH during a year, using the Medicare cost per discharge is not appropriate for TRICARE. Differences in the TRICARE and Medicare beneficiary case mix render the Medicare average cost per discharge not directly applicable for TRICARE purposes.

In addition, basing SCH reimbursement on annual updates to a TRICARE base-year average cost per discharge could result in inappropriate payments to some SCHs. At many SCHs, the number of TRICARE discharges per year is very low. Approximately half of the SCHs had fewer than 20 TRICARE discharges annually. The TRICARE average cost per discharge in one year may not be a good predictor of the average cost per discharge in a future year due to significant change in the case mix that can occur between two small sets of patients.

Alternatively, TRICARE could make payments equal to the SCH's Medicare CCR multiplied by the hospital's billed charges for inpatient services. For purposes of this rule, the Medicare CCR is the sum of Medicare's operating and capital CCRs. This would avoid making payments unrelated to case mix and would be consistent with the Medicare principle of relating payments for SCHs to cost of services. This is the approach adopted in the Final Rule.

*C. TRICARE's SCH Phase-In Period*

In introducing its current SCH reimbursement method, Medicare used a 3-year phase-in period to provide the hospitals time for making business and clinical process adjustments. TRICARE will have a phase-in period with a maximum 15 percent per-year reduction from the starting point for non-network hospitals and a 10 percent-per-year reduction for network hospitals. This involves calculating a hospital's ratio of allowed charges to billed charges for TRICARE discharges and reducing that by 15 percentage points each year for non-network hospitals and 10 percentage points each year for network hospitals until it reaches the hospital's Medicare CCR. For example, if a non-network hospital has a TRICARE-allowed to billed ratio of 100 percent, it would be paid 85 percent of billed charges in year 1, 70 percent in year 2, 55 percent in year 3, and 40 percent in year 4. For a network hospital that had a TRICARE-allowed to billed ratio of 98 percent, it would be paid 88 percent in year 1, 78 percent in year 2, 68 percent in year 3, and 58 percent in year 4. It should be noted that in no year could the TRICARE payment fall below costs, as measured by the Medicare CCR (most hospitals have costs equal to 30 to 50 percent of billed charges). This transition method would approximately follow the CHAMPUS Maximum Allowable Charge physician payment system reform precedent and limit reductions to no more than 15 percent per year during the phase-in period. It also provides an incentive for hospitals to remain in the network by allowing a 5 percentage point difference in payment reductions per year. Finally, it will buffer the revenue reductions experienced upon initial implementation of TRICARE's SCH payment reform while allowing hospitals sufficient time to adjust and budget for these reductions.

TRICARE will pay an SCH for inpatient services it provides during a year the greater of two aggregate amounts: (1) What the SCH would have been paid under the DRG method for all of that hospital's TRICARE discharges; or (2) an amount equal to the SCH's specific CCR multiplied by the hospital's billed charges for inpatient TRICARE services. This will be accomplished through a year-end adjustment to the reimbursements provided during the year.

*D. New SCHs and SCHs Without Inpatient Claims*

TRICARE will pay a new SCH using the average Medicare CCR for all SCHs calculated in the most recent year until its Medicare CCR is available in the CMS Inpatient Provider Specific File (PSF). For SCHs that had no inpatient claims from TRICARE prior to implementation of the SCH payment reform but do have a claim, TRICARE will pay them based directly on their Medicare CCR.

*E. SCH GTMCPA*

In addition to the SCH phase-in period outlined above, a GTMCPA for inpatient services will be available for TRICARE network hospitals deemed essential for military readiness and support during contingency operations. The TMA Director, or designee, may approve an SCH GTMCPA for hospitals that serve a disproportionate share of ADSMs and ADDs. Specific procedures for requesting an SCH GTMCPA will be outlined in the TRICARE Reimbursement Manual.

*F. Essential Access Community Hospitals (EACH)*

The SCH reform encompasses all SCHs as defined by Medicare that have inpatient stays for TRICARE patients. It also include hospitals classified by CMS as EACHs because for payment purposes, CMS treats as an SCH any hospital that CMS designates as an EACH. In other words, EACHs are subject to the SCH reform in this final rule. There are two EACHs in existence: Via Christi Hospital in Pittsburg, Kansas; and Avera Queen of Peace Hospital in Mitchell SD. Both have submitted claims to TRICARE.

*G. CAH GTMCPA*

On August 31, 2009, we published in the **Federal Register** a Final Rule (74 FR 44752), which implemented a reimbursement methodology similar to that furnished to Medicare beneficiaries for services provided by CAHs (i.e., reimbursing them 101 percent of reasonable costs). It was brought to our attention that there may be some CAHs that are deemed essential for military readiness and support during contingency operations. Consequently, the Proposed Rule published in the **Federal Register** of July 5, 2011 (76 FR 39043), also proposed a CAH GTMCPA for TRICARE network hospitals deemed essential for military readiness and contingency operations. The TMA Director, or designee, may approve a CAH GTMCPA for hospitals that serve a disproportionate share of ADSMs and ADDs. Specific procedures for requesting a CAH GTMCPA will be outlined in the TRICARE Reimbursement Manual.

**III. Public Comments**

The TRICARE SCH Proposed Rule (76 FR 39043) published on July 5, 2011, provided a 60-day public comment period. Following is a summary of the public comments and our responses.

*Comment:* Several commenters stated that using the Medicare CCR is not appropriate because of differences in the type of services utilized by the TRICARE beneficiary population, as compared to the Medicare population, especially services related to labor/delivery and newborn care. These commenters stated that use of the Medicare CCR is not directly applicable for TRICARE purposes and they recommended DoD use an adjusted Medicare CCR equal to the Medicare CCR multiplied by a factor of 1.464 to more accurately account for TRICARE costs.

*Response:* Under the proposed transition period outlined in the Proposed Rule and adopted in this Final Rule, it will take an average of 4 to 6 years for most network SCHs to reach their Medicare CCR reimbursement level. In response to these comments, we have considered whether we should modify our proposed approach of using the Medicare CCR for all services. We analyzed data from SCH cost centers utilized by TRICARE beneficiaries, including labor/delivery and nursery to calculate a CCR for TRICARE patients, referred to as the TRICARE-specific CCR. We found that the TRICARE-specific CCR was similar to the Medicare CCR at most SCHs. However, we also found that, in addition to TRICARE patients obviously using more maternity services than Medicare beneficiaries, the labor/delivery and nursery cost centers have higher CCRs than other cost centers. We found, on average, that the TRICARE-specific CCR for nursery and labor/delivery services was 30 percent higher than the Medicare CCR. As a result, this Final Rule includes an adjustment for inpatient nursery and labor/delivery services. This adjustment will start at the end of the transition period when each SCH reaches its Medicare CCR (approximately 4 to 6 years from implementation of this Final Rule). The adjustment will be 130 percent of the Medicare CCR, rather than the Medicare CCR, for care that groups to labor/delivery and nursery DRGs.

*Comment:* These same commenters recommended DoD modify its approach so that TRICARE payments will be equal to the highest of the SCH's CCRs from four base years (1982, 1987, 1996, and 2006) multiplied by the hospital's billed charge for services. They further state

the CCR should be adjusted to reflect TRICARE costs, as described in the above comment.

*Response:* Medicare does not use CCRs from these earlier years to pay SCHs. Instead, Medicare uses the cost per discharge from those years. Thus, using the highest CCR from these earlier years is not consistent with Medicare's approach. The approach proposed in this rule uses the most recent CCR data for a specific hospital which is the best reflection of a hospital's current costs relative to its billed charges, not the costs from 10–30 years ago.

*Comment:* One commenter requested that TRICARE clarify that SCHs will need to file requests for capital cost reimbursement.

*Response:* TRICARE's payment for SCHs will be based on a CCR which is equal to the sum of the Medicare operating CCR and the Medicare capital CCR. Thus, TRICARE SCH reimbursement will include capital costs and SCHs will not need to request additional reimbursement for capital.

*Comment:* One commenter proposed that TRICARE pay SCHs using the average Medicare cost per discharge (the highest cost per discharge from several specified base year cost reports) inflated forward using the same factor used to update TRICARE DRG payments. Due to differences between the TRICARE and Medicare case mixes, the commenter suggested that the Medicare cost per discharge value be adjusted by the ratio of the TRICARE standardized payment amount (the Adjusted Standardized Amount in the TRICARE Inpatient Prospective Payment System) to the Medicare standardized payment amount.

*Response:* The TRICARE and Medicare Inpatient Prospective Payment Systems use different weights and the allowed amounts per discharge are quite different due to differences in the weights and case mix. Thus, this proposed method would not be appropriate.

*Comment:* Two commenters recommended DoD limit its per-year reductions in payments to 5 percent for all SCHs rather than the 10 and 15 percent proposed. Another commenter requested the per-year reductions in payments be limited to 5 percent for network and 10 percent for non-network SCHs.

*Response:* Currently, SCHs receive TRICARE reimbursement for the most common services at more than twice the level of other acute hospitals. Under the transition period outlined in the Proposed Rule and adopted in the Final Rule, it will take an average of 4 to 6 years for most network SCHs to reach their Medicare CCR reimbursement levels. A reduction in payment of 10 percent for network SCHs and 15 percent for non-network SCHs buffers the decrease in revenues that hospitals will be experiencing during implementation of the TRICARE SCH reimbursement methodology. The transition period will allow SCHs sufficient time to adjust and budget for these reductions. The proposed payment reductions provide an incentive for hospitals to remain in the network by allowing a 5 percent difference in payment reductions per year. Additionally, reducing the payment by 5 percent per year during the transition would increase the time it will take to comply with the statute that governs TRICARE. A 10 to 15 percent reduction in payment during the transition is reasonable.

*Comment:* Several commenters recommended DoD incorporate into TRICARE reimbursement methodology the additional payment protections that Medicare affords SCHs, and asked that other general Medicare payment adjustments be incorporated, including the low-volume adjustment, geographic wage index reclassification, and disproportionate share hospital (DSH) payments.

*Response:* When TRICARE calculates DRG payments, Medicare's geographic wage index classification will be used. With respect to DSH payments, when DoD implemented the TRICARE DRG system in 1987, the supplementary information in the Final Rule stated that we would not implement the DSH adjustment. DoD decided not to implement the DSH adjustment because the TRICARE DRG system would pay hospitals adequately for TRICARE patients. This is also true for the SCH payment methodology adopted in this Final Rule. By creating an adjustment for labor/delivery and nursery services as well as a possible GTMCPA for hospitals that serve a disproportionate share of ADSMs and ADDs, hospitals are adequately compensated for care received by TRICARE beneficiaries. We believe that these specific adjustments designed to address the needs of the TRICARE beneficiaries negates the need for any additional adjustments.

*Comment:* Several commenters recommended TRICARE develop an Medicare Dependent Hospital (MDH) payment methodology comparable to the SCH methodology because Medicare payments to MDHs track the methodology used to reimburse SCHs. Two of these commenters also recommended TRICARE recognize the MDH classification and adopt special payment provisions for MDHs.

*Response:* Medicare identifies rural hospitals with less than 100 beds which have 60 percent or more of their admissions or inpatient days reimbursed by Medicare as MDHs. Under Medicare rules, a hospital cannot be both an SCH and an MDH. Under current TRICARE rules, MDHs are paid under the normal DRG payment method. The Proposed Rule for TRICARE reimbursement of SCHs did not propose a special payment method for MDHs. It is notable that having a high percentage of Medicare admissions or days does not mean the hospital has a high percentage of TRICARE admissions or days. Further, this SCH rule does not change the status-quo for TRICARE payments to MDH hospitals. Outside the scope of this rule making, TRICARE will analyze whether it is practicable and appropriate to make any changes in reimbursements to hospitals classified by Medicare as MDHs based on Medicare's payment methodology for MDHs.

*Comment:* One commenter requested that the rules for reimbursement remain unchanged.

*Response:* The statutory provision at 10 U.S.C. 1079(j)(2) mandates that TRICARE payment methods for institutional care be determined, to the extent practicable, in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. Based on this statutory requirement, TRICARE is adopting a method similar to Medicare's payment system for reimbursement of SCH inpatient services.

*Comment:* Several commenters are concerned the proposed payment methodology will result in significant cuts and compromise access to care.

*Response:* TRICARE will make payments equal to the SCH's specific Medicare CCR multiplied by the hospital's billed charges for inpatient services. This is consistent with the Medicare principle of relating payments for SCHs to cost of services. Following the transition, SCHs with patients in delivery and newborn DRGs will receive payments for these patients based on the level of billed charges multiplied by a factor equal to 130 percent of the Medicare CCR. Those SCHs with a high proportion of ADSMs/ADDs admissions may be eligible to receive a GTMCPA. Additionally, the phase-in period will buffer the revenue reductions and will allow hospitals sufficient time to adjust and budget for this revised reimbursement methodology. Hospitals can also become network providers, for which the percentage per-year reduction of 10 percent is a more gradual step-

down than the percentage per-year reduction of 15 percent for non-network hospitals. We believe these feature are quite adequate to assure reasonable reimbursement and protect access to care.

*Comment:* One commenter states that TRICARE's higher inpatient payments off-set losses on outpatient services provided to TRICARE.

*Response:* The statutory provision at 10 U.S.C. 1079(j)(2) mandates that TRICARE payment methods for institutional care be determined, to the extent practicable, in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. Based on this statutory requirement, TRICARE is adopting Medicare's payment system for reimbursement of SCH inpatient services. In addition, TRICARE payments for hospital outpatient services are fully adequate.

*Comment:* The above commenter further states the proposed cuts will likely result in a reduction in service line offerings.

*Response:* We value the services offered by all hospitals and providers who treat TRICARE beneficiaries, including ADSMs, ADDs, Retirees, and our Wounded Warriors. The transition schedule in this Final Rule will reduce the effects of the transition going from a billed-charge reimbursement system to payments aligned with Medicare reimbursement levels. These provisions include a multi-year transition period and the possibility of a GTMCPA. Thus, we believe the final rule not only complies with our statutory mandate, but does so in a fair and reasonable manner to SCHs.

## IV. Regulatory Impact Analysis

### *A. Overall Impact*

DoD has examined the impacts of this Final Rule as required by Executive Orders (E.O.s) 12866 (September 1993, Regulatory Planning and Review) and 13563 (January 18, 2011, Improving Regulation and Regulatory Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and the Congressional Review Act (5 U.S.C. 804(2)).

1. Executive Order 12866 and Executive Order 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

We estimate that the effects of the SCH provisions that would be implemented by this rule would result in SCH revenue reductions exceeding $100 million in at least one year. We estimate the reduction in hospital revenues under the SCH reform for its first full year of implementation compared to expenditures in that same period without the proposed SCH changes, to be well below the $100 million level because of the transition features of the Final Rule. However, after several years in the transition period, the amount of revenue reductions will reach the $100 million per year threshold.

We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold and, hence, also a major rule under the Congressional Review Act. Accordingly, we have prepared a regulatory impact analysis that, to the best of our ability, presents the costs and benefits of the rulemaking.

2. Congressional Review Act. 5 U.S.C. 801

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100 million or more or have certain other impacts. This Final Rule is a major rule under the Congressional Review Act.

3. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals are considered to be small entities, either by being nonprofit organizations or by meeting the Small Business Administration (SBA) definition of a small business (having revenues of $34.5 million or less in any one year). For purposes of the RFA, we have determined that all SCHs would be considered small entities according to the SBA size standards. Individuals and States are not included in the definition of a small entity. Therefore, this Final Rule would have a significant impact on a substantial number of small entities. The Regulatory Impact Analysis, as well as the contents contained in the preamble, also serves as the Final Regulatory Flexibility Analysis.

4. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $140 million. This Final Rule will not mandate any requirements for State, local, or tribal governments or the private sector.

5. Paperwork Reduction Act

This rule will not impose significant additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3502–3511). Existing information collection requirements of the TRICARE and Medicare programs will be utilized. We do not anticipate any increased costs to hospitals because of paperwork, billing, or software requirements since we are keeping TRICARE's billing/coding requirements (i.e., hospitals will be coding and filing claims in the same manner as they currently are with TRICARE).

6. Executive Order 13132, ''Federalism''

This rule has been examined for its impact under E.O. 13132, and it does not contain policies that have federalism implications that would 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. Therefore, consultation with State and local officials is not required.

### *B. Hospitals Included In and Excluded From the SCH Reforms*

1. The SCH reform encompasses all SCHs as defined by Medicare that have inpatient stays for TRICARE patients. It also includes hospitals classified by CMS as Essential Access Community Hospitals (EACH) because for payment purposes, CMS treats as an SCH any hospital that CMS designates as an EACH. In other words, EACHs are subject to the SCH reform in this final rule. There are two EACHs in existence: Via Christi Hospital in Pittsburg, Kansas; and Avera Queen of Peace

Hospital in Mitchell SD. Both have submitted claims to TRICARE. Over a six month period, Via Christi hospital submitted about $309,000 in TRICARE inpatient claims and Avera Queen of Peach submitted about $270,000 in TRICARE inpatient claims.

2. Hospitals that are paid by Medicare and TRICARE under a cost containment waiver are not included in the SCH Reform.

*C. Analysis of the Impact of Policy Changes on Payment Under SCH Reform Alternatives Considered*

Alternatives that we considered, the proposed changes that we will make, and the reasons that we have chosen each option are discussed below.

1. Alternatives Considered for Addressing Reduction in SCH Payments

Analysis of the effects of paying SCHs using the computation of either the greater of what the SCH would have been paid under the DRG method for all of that hospital's TRICARE discharges or an amount equal to the SCH's specific CCR multiplied by the hospital's billed charges for the TRICARE services approach would reduce the TRICARE payments to these SCHs by an average of over 50 percent. This approach would pay each SCH the greater of two aggregate amounts: (1) The sum of the TRICARE-allowed amounts if all the TRICARE inpatient admissions over a 12-month period were paid using the TRICARE DRG method; or (2) the TRICARE-allowed amounts if all the TRICARE inpatient admissions over a 12-month period were paid using the CCR approach (in which the TRICARE-allowed amount for each admission is equal to the billed charge for that admission multiplied by the hospital's historical CCR). Table 3 provides our estimate of the impact of this approach without any transitions.

Because the impact of moving from a charge-based reimbursement to a cost-based reimbursement similar to Medicare's would produce large reductions in the TRICARE-allowed amounts for all types of SCHs, we considered a phase-in of this approach over a 4-year period. Under this option, the CCR portion of the approach would be modified so that the hospital's billed charge on each claim would not be multiplied by the hospital's CCR until the fourth year (when the transition was complete). In the first 3 years, the billed charges for each claim would be multiplied by a ratio so that there was an equal reduction in the ratio used each year over the 4-year transition. For example, if the hospital were receiving 100 percent of its billed charges prior to implementation of the SCH reform and it had a CCR of 0.32, then its billed charges would be multiplied by factors of 0.83, 0.66, and 0.49 in the first 3 years respectively so that each year the payment ratio declined by an equal amount (in this case by a factor of 0.17). In each year, the aggregate level of allowed amounts produced using the CCR approach at each SCH would be compared with the aggregate level of DRG-allowed amounts at the SCH, and the SCH would be paid the greater of the two aggregate amounts. This 4-year transition would allow hospitals to have a phased transition to the cost-based rates. Although this option would provide a multi-year period for SCHs to transition to the cost-based rates, we did not choose this option because it would still result in large reductions for some SCHs over a relatively short period.

A second option we considered was to have a transition based on a reduction of 15 percentage points per year in the allowed amounts for each SCH. Under this option, the CCR portion in this approach would be modified. During the transition period, the billed charges on each claim at an SCH would be multiplied by a factor so that the ratio decreased by 15 percentage points each year from the level in the previous year. For example, if the SCH were receiving 100 percent of its billed charges prior to SCH reform and it had a CCR of 0.32, then its billed charges would be multiplied by factors of 0.85, 0.70, 0.55, and 0.40 in the first 4 years respectively, so that each year the ratio declined by 15 percentage points. In the fifth year, the ratio would be set at 0.32, the hospital's CCR. (The actual number of years of transition will depend on the hospital's CCR and could be more or less than the 4 years in this example as the ratio will never be less than the CCR.) In each year, the aggregate level of allowed amounts produced using the CCR approach at each SCH would be compared with the aggregate level of DRG-allowed amounts at the SCH and the SCH would be paid the greater of the two aggregate amounts. This type of transition ensures that there is a manageable reduction in the level of payments each year for each hospital. We selected this option for SCHs not in the TRICARE network.

2. Alternatives Considered for SCHs in the TRICARE Network

We were concerned there might be access problems at some hospitals with a high concentration of TRICARE patients if their payments were decreased significantly. In particular, we were concerned that some hospitals might leave the TRICARE network if payments were reduced too quickly. This was a particular concern because 24 of the 25 SCHs with the highest levels of TRICARE-allowed amounts in the first 6 months of Calendar Year 2010 were in the TRICARE network. Thus, the SCHs that would face the largest reductions in the level of TRICARE-allowed amounts from TRICARE's SCH reform would be network hospitals.

An option we considered, and the one we adopt in this rule, is to provide a 10 percent-per-year reduction in the allowed amounts for SCHs in the TRICARE network. This option would modify the CCR portion of the approach using the most recent adjudicated Medicare cost report. During the transition period, the billed charges on each claim at an SCH in the TRICARE network would be multiplied by a factor so that the ratio decreased by 10 percentage points each year from a FY 2012 base year (in contrast to 15 percentage points for non-network hospitals). For example, if a TRICARE network SCH had allowed amounts equal to 92 percent of its billed charges prior to SCH reform, and it had a CCR of 0.35, then its billed charges would be multiplied by factors of 0.82, 0.72, 0.62, 0.52, and 0.42 in the first 5 years, respectively, to calculate the allowed amounts. Under this approach, each year the ratio for network SCHs would decline by ten percentage points. In the sixth year, the ratio would be set at 0.35, the hospital's CCR (assuming that the hospital's CCR had remained at 0.35). In each year, the aggregate level of allowed amounts produced using the CCR approach at each SCH would be compared with the aggregate level of DRG-allowed amounts at the SCH, and the SCH would be paid the greater of the two aggregate amounts. This type of transition ensures that there is a manageable reduction in the level of payments each year for each hospital. We selected this option for SCHs in the TRICARE network. The impact assessment of implementation of SCH during the first year appears in Table 1. The estimates of reduction are based on TRICARE claims data.

*D. Effects on SCHs*

Table 1 shows the impact of revised SCH inpatient reimbursement during FY 2013. Table 2 shows projected TRICARE reduction in reimbursement for the top 20 SCHs. Table 3 shows the full amount of the reduction without phase-in and transitional payments.

TABLE 1—ESTIMATED IMPACT OF SCH REFORMS ON TRICARE-ALLOWED AMOUNTS AT SOLE COMMUNITY HOSPITALS DURING THE FY 2013 FIRST YEAR OF PHASE-IN (WITH TRANSITION PAYMENTS)

[Excludes any General Temporary Military Contingency Payment Adjustments]

| Estimated allowed under current policy ($M) | Allowed amounts under SCH reform ($M) | Reduction in allowed amounts ($M) | SCH reform allowed as percent of current policy allowed |
|---|---|---|---|
| $365 | $328 | $37 | 90 |

TABLE 2—IMPACT OF FIRST YEAR FOR TOP 20 SOLE COMMUNITY HOSPITALS

[Excludes any General Temporary Military Contingency Payment Adjustments]

| Hospital | City | State | Reduction in FY 2013 ($M) |
|---|---|---|---|
| Onslow Memorial Hospital | Jacksonville | FL | 2.0 |
| Rapid City Regional Hospital | Rapid City | SD | 1.6 |
| Cheyenne Regional Medical Center | Cheyenne | WY | 1.6 |
| Sierra Vista Regional Health Center | Sierra Vista | AZ | 1.5 |
| Beaufort County Memorial Hospital | Beaufort | SC | 1.8 |
| Carolina East Health System | New Bern | NC | 1.6 |
| Benefis Health System | Great Falls | MT | 1.4 |
| Yuma Regional Medical Center | Yuma | AZ | 1.6 |
| Trinity Medical Center | Minot | ND | 1.1 |
| Gerald Champion Hospital | Alamogordo | NM | 0.7 |
| Phelps County Regional Medical Center | Rolla | MO | 0.7 |
| Altru Hospital | Grand Forks | ND | 0.7 |
| Wayne Memorial Hospital | Goldsboro | NC | 0.7 |
| Samaritan Medical Center | Watertown | NY | 1.5 |
| Western Missouri Medical Center | Warrensburg | MO | 0.6 |
| Fairbanks Memorial Hospital | Fairbanks | AK | 0.6 |
| Lower Keys Medical Center | Key West | FL | 0.6 |
| Matsu Regional Hospital | Palmer | AK | 0.5 |
| Camden Medical Center | St. Marys | GA | 0.5 |
| Flagstaff Medical Center | Flagstaff | AZ | 0.7 |

TABLE 3—ESTIMATED HYPOTHETICAL FY 2013 IMPACT OF COST-BASED REIMBURSEMENT ON TRICARE-ALLOWED AMOUNTS AT SOLE COMMUNITY HOSPITALS WITHOUT TRANSITION PAYMENTS

[Excludes any General Temporary Military Contingency Payment Adjustments]

| Current policy ($M) | Cost-based reimbursement ($M) | Reduction in TRICARE-allowed amounts ($M) | Allowed amount under cost-based reimbursement as percent of current policy allowed |
|---|---|---|---|
| $365 | $157 | $208 | 43 |

**List of Subjects in 32 CFR Part 199**

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

## PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. Chapter 55.

■ 2. Paragraph 199.2(b) is amended by adding definitions for ''Essential Access Community Hospital (EACH)'' and ''Sole community hospital (SCH)'' in alphabetical order to read as follows:

**§ 199.2 Definitions.**

* * * * *

(b) * * *

*Essential Access Community Hospital (EACH).* A hospital that is designated by the Centers for Medicare and Medicaid Services (CMS) as an EACH and meets the applicable requirements established by § 199.14(a)(7)(vi).

* * * * *

*Sole community hospital* (SCH). A hospital that is designated by CMS as an SCH and meets the applicable requirements established by § 199.6(b)(4)(xvii).

* * * * *

■ 3. Section 199.6 is amended by adding new paragraph (b)(4)(xvii) to read as follows:

**§ 199.6 TRICARE—authorized providers.**

* * * * *

(b) * * *

(4) * * *

(xvii) *Sole community hospitals (SCHs).* SCHs must meet all the criteria for classification as an SCH under 42 CFR 412.92, in order to be considered an SCH under the TRICARE program.

* * * * *

■ 4. Section 199.14 is amended by:

a. Revising paragraph (a)(1)(ii)(D)(*6*), paragraph (a)(2)(viii)(D), paragraph (a)(3), the first sentence of paragraph (a)(4), and the introductory text of paragraph (a)(6); and

b. Adding new paragraphs (a)(7) and (8).

The revisions and additions read as follows:

**§ 199.14 Provider reimbursement methods.**

(a) * * *

(1) * * *

(ii) * * *

(D) * * *

(*6*) *Sole community hospitals (SCHs).* Prior to implementation of the SCH reimbursement method described in paragraph (a)(7) of this section, any hospital that has qualified for special treatment under the Medicare prospective payment system as an SCH (see subpart G of 42 CFR part 412) and has not given up that classification is exempt from the CHAMPUS DRG-based payment system.

* * * * *

(2) * * *

(viii) * * *

(D) *Sole community hospitals (SCHs).* Prior to implementation of the SCH reimbursement method described in paragraph (a)(7) of this section, any hospital that has qualified for special treatment under the Medicare prospective payment system as an SCH and has not given up that classification is exempt.

* * * * *

(3) *Reimbursement for inpatient services provided by a CAH.* (i) For admissions on or after December 1, 2009, inpatient services provided by a CAH, other than services provided in psychiatric and rehabilitation distinct part units, shall be reimbursed at allowable cost (i.e., 101 percent of reasonable cost) under procedures, guidelines and instructions issued by the TMA Director, or designee. This does not include any costs of physician services or other professional services provided to CAH inpatients. Inpatient services provided in psychiatric distinct part units would be subject to the CHAMPUS mental health payment system. Inpatient services provided in rehabilitation distinct part units would be subject to billed charges.

(ii) The percentage amount stated in paragraph (a)(3)(i) of this section is subject to possible upward adjustment based on a inpatient GTMCPA for TRICARE network hospitals deemed essential for military readiness and support during contingency operations under paragraph (a)(8) of this section.

(4) *Billed charges and set rates.* The allowable costs for authorized care in all hospitals not subject to the CHAMPUS DRG-based payment system, the CHAMPUS mental health per-diem system, the reasonable cost method for CAHs, or the reimbursement rules for SCHs shall be determined on the basis of billed charges or set rates. * * *

* * * * *

(6) *Hospital outpatient services.* This paragraph (a)(6) identifies and clarifies payment methods for certain outpatient services, including emergency services, provided by hospitals.

* * * * *

(7) *Reimbursement for inpatient services provided by an SCH.* (i) In accordance with 10 U.S.C. 1079(j)(2), TRICARE payment methods for institutional care shall be determined, to the extent practicable, in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. TRICARE's SCH reimbursements approximate Medicare's for SCHs. Inpatient services provided by an SCH, other than services provided in psychiatric and rehabilitation distinct part units, shall be reimbursed through a two-step process.

(ii) The first step referred to in paragraph (a)(7)(i) of this section will be to calculate the TRICARE allowable cost by multiplying the applicable TRICARE percentage by the billed charge amount on each institutional inpatient claim. The applicable TRICARE percentage is the greater of: the SCH's most recently available cost-to-charge ratio (CCR) from the Centers for Medicare and Medicaid Services' (CMS') inpatient Provider Specific File (after the ratio has been converted to a percentage), or the TRICARE allowed-to-billed ratio, defined as the ratio of the TRICARE allowed amounts (including discounts) to the amount of billed charges for TRICARE inpatient admissions at the SCH in FY 2012 (after it has been converted to a percentage). The TRICARE allowed-to-billed ratio in FY 2012 shall be reduced as follows (after the ratio has been converted to a percentage):

(A) In the first year of implementation, 10 percentage points for network SCHs and 15 percentage points for non-network SCHs.

(B) In the second year of implementation, 20 percentage points for network SCHs and 30 percentage points for non-network SCHs.

(C) In the third year of implementation, 30 percentage points for network SCHs and 45 percentage points for non-network SCHs.

(D) In the fourth year of implementation, 40 percentage points for network SCHs and 60 percentage points for non-network SCHs.

(E) In the fifth year of implementation, 50 percentage points for network SCHs and 75 percentage points for non-network SCHs.

(F) In the sixth year of implementation, 60 percentage points for network SCHs and 90 percentage points for non-network SCHs.

(G) In the seventh year of implementation, 70 percentage points for network SCHs and 100 percentage points for non-network SCHs.

(H) In the eighth year of implementation, 80 percentage points for network SCHs and 100 percentage points for non-network SCHs.

(I) In the ninth year of implementation, 90 percentage points for network SCHs and 100 percentage points for non-network SCHs.

(J) In the tenth year of implementation, 100 percentage points for network SCHs and 100 percentage points for non-network SCHs.

(iii) The second step referred to in paragraph (a)(7)(i) of this section is a year-end adjustment. The year-end adjustment will compare the aggregate allowable costs over a 12-month period under paragraph (a)(7)(ii) of this section to the aggregate amount that would have been allowed for the same care using the TRICARE DRG-method (under paragraph (a)(1) of this section). In the event that the DRG method amount is the greater, the year-end adjustment will be the amount by which it exceeds the aggregate allowable costs. In addition, the year-end adjustment also may incorporate a possible upward adjustment for inpatient services based on a GTMCPA for TRICARE network hospitals under paragraph (a)(8) of this section.

(iv) At the end of an SCH's transition period, when the SCH reaches its Medicare CCR, a special allowable cost shall be applicable for discharges that group to inpatient nursery and labor/delivery DRGs. For these discharges, instead of using the percentage of the SCH's Medicare cost-to-charge ratio (as described in paragraph (a)(7)(ii) of this section), the percentage will be 130 percent of the Medicare CCR.

(v) The SCH reimbursement provisions of paragraphs (a)(7)(i) through (iv) of this section do not apply to any costs of physician services or other professional services provided to SCH inpatients (which are subject to individual provider payment provisions of this section), inpatient services provided in psychiatric distinct part units (which are subject to the CHAMPUS mental health per-diem payment system), or inpatient services provided in rehabilitation distinct part units (which are reimbursed on the basis of billed charges or set rates).

(vi) The SCH payment system under this paragraph (a)(7) applies to hospitals classified by CMS as Essential Access Community Hospitals (EACHs).

(vii) The SCH payment system under this paragraph (a)(7) does not apply to hospitals in States that are paid by Medicare and TRICARE under a cost containment waiver.

(8) *General temporary military contingency payment adjustment for SCHs and CAHs.* (i) Payments under paragraph (a) of this section for inpatient services provided by SCHs and CAHs may be supplemented by a GTMCPA. This is a year-end discretionary, temporary adjustment that the TMA Director may approve based on all the following criteria:

(A) The hospital serves a disproportionate share of ADSMs and ADDs;

(B) The hospital is a TRICARE network hospital;

(C) The hospital's actual costs for inpatient services exceed TRICARE payments or other extraordinary economic circumstance exists; and,

(D) Without the GTMCPA, DoD's ability to meet military contingency mission requirements will be significantly compromised.

(ii) Policy and procedural instructions implementing the GTMCPA will be issued as deemed appropriate by the Director, TMA, or a designee. As with other discretionary authority under this Part, a decision to allow or deny a GTMCPA to a hospital is not subject to the appeal and hearing procedures of § 199.10.

* * * * *

Dated: July 29, 2013.

**Patricia L. Toppings,**

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

[FR Doc. 2013–19154 Filed 8–7–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2013–0327]**

**RIN 1625–AA08**

## Special Local Regulations; Regattas and Marine Parades in the Captain of the Port Lake Michigan Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending special local regulations for annual regattas and marine parades in the Captain of the Port Lake Michigan Zone. This rule is intended to provide for the safety of life and property on navigable waters immediately prior to, during, and immediately after regattas or marine parades. This rule will establish restrictions upon, and control the movement of, vessels in a portion of the Captain of the Port Lake Michigan Zone.

**DATES:** This final rule is effective September 9, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0327. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, contact MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7148 or by email at *Joseph.P.McCollum@USCG.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

### A. Regulatory History and Information

On April 6, 2007, the Coast Guard published an NPRM for the events that are listed within this regulation and made them available for public comment (72 FR 17062). No comments were received. The Coast Guard followed this NPRM with an Final Rule on September 27, 2007 (72 FR 54832).

On June 14, 2013, in an effort to provide the public with the most accurate and up-to-date information regarding these same events, the Coast Guard published an NPRM entitled Regattas and Marine Parades in the COTP Lake Michigan Zone in the **Federal Register** (78 FR 35783). We did not receive any comments in response to the proposed rule. No public meeting was requested and none was held.

### B. Basis and Purpose

This rule is intended to ensure safety of life and property on the navigable waters immediately prior to, during, and immediately after regattas or marine parades. This rule will establish restrictions upon, and control the movement of, vessels in a specified area of the Captain of the Port Lake Michigan zone.

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

The authority for this regulation is 33 U.S.C. 1233.

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

The Coast Guard received no comments on this rule. No changes have been made.

This rule will remove 1 event and amend 5 annual marine events listed in 33 CFR Part 100. This rule will amend 33 CFR Part 100 by making updates within the following sections:

33 CFR 100.903, Harborfest Dragon Boat Race; South Haven, MI. The Harborfest Dragon Boat Race is an annual event involving an estimated 250 participants maneuvering self-propelled vessels within a portion of the Black River in South Haven, MI. The organizer for this event submitted a 2013 application showing a date that is different from what is currently codified within the CFR. For that reason the Coast Guard will amend 33 CFR 100.903 to reflect an updated effective date for this event of Saturday and Sunday of the 4th weekend of June, from 6 a.m. until 7 p.m.

33 CFR 100.904; Celebrate Americafest; Green Bay, WI. This event will be removed by this rule because it has been codified within 33 CFR 165.929 Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone. The Coast Guard determined from past experience that a safety zone best addresses the safety hazards associated with this event.

33 CFR 100.905; Door County Triathlon; Door County, WI. The swim portion of the Door County Triathlon is expected to involve thousands of participants in the waters of Horseshoe Bay—a portion of Green Bay. As this event is currently listed, the effective date expired on July 23 and 24, 2011. The Coast Guard has spoken with the event organizer and confirmed that this Triathlon is expected to reoccur

annually. For that reason, the Coast Guard will amend 33 CFR 100.905 to reflect an updated effective date for this event. Likewise, this rule will amend the location and size of the regulated area for this event. This rule will shrink the size of the regulated area by 1000 yards and move the regulated area into the waters of Horseshoe Bay, some 600 yards southeast of its currently-listed location.

33 CFR 100.906; Grand Haven Coast Guard Festival Waterski Show; Grand Haven, MI. This rule will amend the effective date of this event so that, should the date change, the Coast Guard will give notice to the public of the effective date by Notice of Enforcement.

33 CFR 100.907; Milwaukee River Challenge; Milwaukee, WI. The Milwaukee River Challenge is a rowing competition involving 40′ and 60′ rowing shells. The event is expected to involve hundreds of participants and spectators. The event organizer for the Milwaukee River Challenge informed the Coast Guard that the Milwaukee River Challenge Race will take place at an earlier time than is currently listed in 33 CFR 100.907. The event organizer further informed the Coast Guard that the rowing shells involved in the Milwaukee River Challenge will race along a portion of the Menomonee River as well as the Milwaukee River. As it is currently listed in 33 CFR 100.907, only the Milwaukee River is named within the ''Regulated Area'' section. This rule will add the Menomonee River to the ''Regulated Area'' section, as well as update the effective date to the third Saturday of September; from 8 a.m. to 4 p.m.

33 CFR 100.909; Chinatown Chamber of Commerce Dragon Boat Race; Chicago, IL. The Chinatown Chamber of Commerce Dragon Boat Race is an annual event involving an estimated 1000 participants maneuvering self-propelled vessels within a portion of the Chicago River in Chicago, IL. The organizer for this event submitted an application showing a date that is different from what is currently codified within the CFR, and is expected to differ in the future. For that reason the Coast Guard will amend 33 CFR 100.909 to reflect an updated effective date for this event of the second Friday and Saturday of July from 11:30 a.m. to 5 p.m.

The Captain of the Port, Lake Michigan will notify the public of the enforcement of the special local regulations in this rule by all appropriate means. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

The events within this rule are expected to occur on certain dates each year. Because these dates are subject to change, the Coast Guard will provide notice of any change in date via a Notice of Enforcement. Additionally, the Coast Guard will also provide notice via a Broadcast Notice to Mariners.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The special local regulations established by this rule will be periodic, of short duration, and are designed to minimize impact on navigable waters. Thus, restrictions on vessel movement are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the regulated areas when permitted by the Captain of the Port.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in affected waters within the Lake Michigan Zone on the days in which these special local regulations are enforced.

This rule will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of these regulated areas, we would issue local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

**List of Subjects in 33 CFR Part 100**

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

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

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Revise § 100.903 to read as follows:

### § 100.903 Harborfest Dragon Boat Race; South Haven, MI.

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

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

(c) *Effective Date.* These regulations are effective annually on the Saturday and Sunday of the 4th weekend of June, from 6 a.m. until 7 p.m. The time and date for this event are subject to change. In the event of a schedule change, the Coast Guard will issue a Notice of Enforcement with the exact date and time that this regulated area will be enforced.

### § 100.904 [Removed]

■ 3. Remove *§ 100.904 Celebrate Americafest, Green Bay, WI.*

■ 4. Revise § 100.905 to read as follows:

### § 100.905 Door County Triathlon; Door County, WI.

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

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

(c) *Effective Date.* These regulations are effective annually on the Saturday and Sunday of the third weekend of July; from 7 a.m. to 10 a.m. The time and date for this event are subject to change. In the event of a schedule change, the Coast Guard will issue a Notice of Enforcement with the exact date and time that this regulated area will be enforced.

■ 5. Revise § 100.906 to read as follows:

### § 100.906 Grand Haven Coast Guard Festival Waterski Show, Grand Haven, MI.

(a) *Regulated Area.* All waters of the Grand River at Waterfront Stadium from approximately 350 yards upriver to 150 yards downriver of Grand River Lighted Buoy 3A (Light list number 19000) within the following coordinates: 43°04′ N, 086°14′12″ W; then east to 43°03′56″ N, 086°14′4″ W; then south to 43°03′45″ N, 086°14′10″ W; then west to 43°03′48″ N, 086°14′17″ W; then back to the point of origin (NAD 83).

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

(c) *Effective Date.* These regulations are effective annually the Tuesday before the first Saturday in August; 7 p.m. to 9 p.m. The time and date for this event are subject to change. In the event of a schedule change, the Coast Guard will issue a Notice of Enforcement with the exact date and time that this regulated area will be enforced.

■ 6. Revise § 100.907 to read as follows:

### § 100.907 Milwaukee River Challenge; Milwaukee, WI.

(a) *Regulated Area.* All waters of the Milwaukee River from the junction with the Menomonee River at position 43°01′54.9″ N, 087°54′37.6″ W to the

East Pleasant St. Bridge at position 43°03′5.7″ N, 087°54′28.1″ W (NAD 83). All waters of the Menomonee River from the North 25th St. Bridge at position 43°01′57.4″ N, 087°56′40.9″ W to the junction with the Milwaukee River (NAD 83).

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

(c) *Effective date.* These regulations are effective annually on the third Saturday of September; from 8 a.m. to 4 p.m. The time and date for this event are subject to change. In the event of a schedule change, the Coast Guard will issue a Notice of Enforcement with the exact date and time that this regulated area will be enforced.

■ 7. Revise § 100.909 to read as follows:

**§ 100.909 Chinatown Chamber of Commerce Dragon Boat Race; Chicago, IL.**

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

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

(c) *Effective Date.* These regulations are effective annually on the second Friday and Saturday of July from 11:30 a.m. to 5 p.m. The time and date for this event are subject to change. In the event of a schedule change, the Coast Guard will issue a Notice of Enforcement with the exact date and time that this regulated area will be enforced.

Dated: July 26, 2013.

**M.W. Sibley,**

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

[FR Doc. 2013–19214 Filed 8–7–13; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2013–0665]**

## Drawbridge Operation Regulation; Milford Haven Inlet, Hudgins, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the VA State Route 223 Bridge (Gwynn's Island) across the Milford Haven Inlet, mile 0.1, at Hudgins, Virginia. The deviation is necessary to rehabilitate the bridge, including repair of the truss, the bridge signals, and the tender house. This deviation allows the bridge to remain in the closed-to-navigation position for up to four separate 24-hour periods, if needed.

**DATES:** This deviation is effective from 7 a.m. October 3, 2013 to 9 p.m. March 31, 2014.

**ADDRESSES:** The docket for this deviation, [USCG–2013–0665] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mrs. Jessica Shea, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6422, email *jessica.c.shea2@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** The bridge owner, the Virginia Department of Transportation (VDOT), is conducting maintenance on the Route 223 swing bridge over Milford Haven Inlet near Hudgins, Virginia. VDOT requested a deviation from the requirement to open on signal as required by 33 CFR 117.5 in order to facilitate the rehabilitation work. The deviation period commences at 7 a.m. on October 3, 2013 and goes through 9 p.m. March 31, 2014. During the deviation period, the construction work may require four 24-hour periods where the bridge will be unable to open to navigation. Due to restrictions based on vehicular transportation needs, the 24-hour periods will not be consecutive.

Under the regular operating schedule where the bridge opens on signal, the bridge opens up to ten times every day for commercial fishing vessels and Coast Guard vessels at Station Milford Haven. The vertical clearance of the swing bridge in the closed-to-navigation position is 12 feet at mean high water. Vessels able to pass through the bridge in the closed position may do so at any time and are advised to proceed with caution. The bridge will not be able to open for emergencies during any of the four 24-hour closure periods. The southern approach to Gywnn's Island by Sandy Point, VA can be used as an alternate route for vessels able to transit in water depths of two feet. The Coast Guard will use Local and Broadcast Notices to Mariners at least seven days in advance of the changes in operating schedule so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 29, 2013.

**Waverly W. Gregory, Jr.,**

*Bridge Program Manager, Fifth Coast Guard.*

[FR Doc. 2013–19208 Filed 8–7–13; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2013–0708]**

## Drawbridge Operation Regulation; Grassy Sound Channel, Middle Township, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Grassy Sound Channel Bridge (Ocean Drive) across Grassy Sound, mile 1.0, at Middle Township, NJ. The deviation is necessary to accommodate the ''Tri the Wildwoods Triathlon and 5k'' event. This temporary deviation allows the bridge draw span to remain in the closed to navigation position for 4 hours during the event.

**DATES:** This deviation is effective from 6 a.m. until 10 a.m. on August 17, 2013.

**ADDRESSES:** The docket for this deviation, [USCG–2013–0708] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.''

Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Jim Rousseau, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398–6557, email *James.L.Rousseau2@uscg.mil.* If you have questions on reviewing the docket, call Barbara Hairston, Program Manager, Docket Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** Cape May County Department of Public Works, owner of the drawbridge, has requested on behalf of DelMosports, Inc. a temporary deviation from the current operating schedule to accommodate the ''Tri the Wildwoods Triathlon and 5K'' event.

The existing drawbridge operation regulations are listed at 33 CFR 117.721. On the day of the event, the normal regular operating schedule for May 15 through September 30, the Grassy Sound Channel Bridge (Ocean Drive), at mile 1.0, at Middle Township, NJ is open on signal from 6 a.m. to 8 p.m. with a two hours advance notice at all other times. The Grassy Sound Channel Bridge (Ocean Drive) across the Grassy Sound has a vertical clearance in the closed position of 15 feet above mean high water.

Under this temporary deviation, the drawbridge will be allowed to remain in the closed to navigation position from 6 a.m. to 10 a.m. on Saturday, August 17, 2013 to accommodate ''Tri the Wildwoods Triathlon and 5K'' event. The bridge will operate under its normal operating schedule at all other times. Log books indicate there has only been one opening request for this yearly event in 8 years and waterway users are accustom to the temporary closure.

Vessels able to pass under the bridge in the closed position may do so at anytime and are advised to proceed with caution. The bridge will be able to open for emergencies. The New Jersey Intracoastal Waterway is an alternate route for vessels transiting this area and vessels may pass before and after the closure. The Coast Guard will also inform additional waterway users through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 30, 2013.

**Waverly W. Gregory, Jr.,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2013–19212 Filed 8–7–13; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2013–0682]**

## Drawbridge Operation Regulation; Lewis and Clark River, Astoria, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Lewis and Clark Bridge which crosses the Lewis and Clark River, mile 1.0, at Astoria, OR. The deviation is necessary to accommodate major roadway maintenance on the bridge. This deviation allows the bridge to remain in the closed position and need not open to maritime traffic.

**DATES:** This deviation is effective from 7 a.m. on August 20, 2013 to 5 p.m. on August 21, 2013.

**ADDRESSES:** The docket for this deviation, [USCG–2013–0682] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Lieutenant Commander Steven M. Fischer, Thirteenth Coast Guard District Bridge Program Officer, telephone 206–220–7277, email *Steven.M.Fischer2@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The Oregon Department of Transportation has requested that the Lewis and Clark Drawbridge, mile 1.0, remain in the closed position and not open to vessel traffic to facilitate the replacement of the wearing surface of the lift span. The bridge provides a vertical clearance of 25 feet above mean high water when in the closed position. Vessels able to pass through the bridge in the closed position may do so at anytime. Under normal operations this bridge opens on signal with advance notification as required by 33 CFR 117.899(c). This deviation allows the Lewis and Clark Drawbridge across the Lewis and Clark River in Astoria, OR to remain in the closed position and need not open for vessel traffic from 7 a.m. August 20, 2013 through 5 p.m. on August 21, 2013. The bridge shall operate in accordance to 33 CFR 117.899(c) at all other times. Waterway usage on the Lewis and Clark River is primarily recreational boaters and fishing vessels transiting to and from Astoria Marine Construction Company. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 29, 2013.

**Daryl R. Peloquin,**

*Acting Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2013–19210 Filed 8–7–13; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2013–0497]**

**RIN 1625–AA00**

## Safety Zone; North Hero Air Show; North Hero, VT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters east of North Hero Island in Lake Champlain for the North Hero Air Show, an event to be held over the water. This temporary final rule is necessary to provide for the safety of life on the navigable waters east of North Hero Island during an air show of low-flying, high-speed, and high-performance acrobatic aircraft that could pose an imminent hazard to vessels operating in the area. This zone will close all waters in an area approximately 2 nautical miles by ½ nautical mile east of North Hero Island in North Hero, VT for the duration of the air show. Persons or vessels may not enter into this zone unless authorized by the Captain of the Port, Sector Northern New England.

**DATES:** This rule is effective from 9 a.m. on August 11, 2013, until 9 p.m. on August 12, 2013. This rule will be enforced from 9 a.m. until 9 p.m. daily on August 11, 2013, and August 12, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0497]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Megan L. Drewniak, Waterways Management Division at Coast Guard Sector Northern New England, telephone 207–741–5421, email *Megan.L.Drewniak@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## Table of Acronyms

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

## A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive the necessary information for this even in sufficient time to publish an NPRM. The nature of this event has changed and the sponsor would like to include a low flying aerobatic air show over the water and drop grapefruits at a water target as part of a fundraising event. Per Federal Aviation Administration requirements, no vessels are permitted to transit during aerobatic maneuvers. This regulation is necessary to ensure the immediate safety of users of the waterway.

## B. Basis and Purpose

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

The safety zone is being issued to ensure the safety of persons and vessels east of North Hero Island for the duration of the air show.

## C. Discussion of the Rule

During this air show there will be low flying planes conducting aerobatic maneuvers east of North Hero Island in Lake Champlain within the confines of the safety zone and dropping grapefruits onto water targets as part of a fundraising event. This safety zone will be in effect from 9 a.m. to 9 p.m. on August 11 and August 12, 2013.

## D. Regulatory Analyses

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

### *1. Regulatory Planning and Review*

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

The economic effect of this rule will not be significant for the following reasons: The safety zone will be of limited duration. Vessels may be authorized to transit the zone with permission of the Captain of the Port, Sector Northern New England. The aerobatic box is a rectangle 2 nautical miles by ½ nautical mile, parallel to the shoreline, with its western edge 500 feet offshore. Vessels transiting to or from the shoreline may transit around the safety zone with limited delay. Additionally, maritime advisories will be broadcasted during the duration of the enforcement period.

### *2. Impact on Small Entities*

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

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

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

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the safety zone. However, this rule will not have a significant economic impact on a substantial number of small entities due to the geographic location in which this rule takes place and advance notifications will be made to the local community by marine information broadcasts. Additionally, mariners may transit around the safety zone to gain access to or from the shoreline without a significant delay.

### *3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

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

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

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

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

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

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

■ 2. Add § 165.T01–0497 to read as follows:

**§ 165.T01–0497 Safety Zone; North Hero Air Show, North Hero, VT.**

(a) *Location.* The safety zone will include all navigable waters surface to bottom beginning with the following coordinate: 44°48′24″ N, 73°17′02″ W; thence southeast approximately 500 feet to position 44°48′22″ N, 73°16′46″ W; thence southwest to position 44°47′53″ N, 73°16′54″ W; thence northwest to position 44°47′54″ N, 73°17′09″ W.

(b) *Enforcement and Effective dates.* This rule is effective from 9 a.m. on August 11, 2013, until 9 p.m. on August 12, 2013. This rule will be enforced from 9 a.m. until 9 p.m. daily on August 11, 2013, and August 12, 2013.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entry into, transiting, mooring, anchoring or remaining within this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) This temporary safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port or his designated on-scene patrol personnel. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his designated representatives.

(3) Persons and vessels may request permission to enter the Safety Zone by

contacting the COTP or the COTP's on-scene representative on VHF–16 or via phone at 207–767–0303.

(4) The ''designated representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, or onboard a local or state agency vessel that is authorized to act in support of the Coast Guard. Additionally, the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(5) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

Dated: June 24, 2013.

**B.S. Gilda,**

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

[FR Doc. 2013–19213 Filed 8–7–13; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2007–0356; FRL—9842–6]**

## Approval and Promulgation of Air Quality Implementation Plans; Texas; Victoria County, 1997 8-Hour Ozone Section 110 (a)(1) Maintenance Plan

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving revisions to the Texas State Implementation Plan (SIP). The submitted revisions include a maintenance plan for Victoria County, Texas, developed to ensure continued attainment of the 1997 8-hour National Ambient Air Quality Standard (NAAQS or standard). The Maintenance Plan meets the requirements of Section 110(a)(1) of the Federal Clean Air Act (CAA or Act), EPA's rules, and is consistent with EPA's guidance. On March 12, 2008, EPA issued a revised ozone standard. Today's action is being taken to address requirements under the 1997 ozone standard. EPA is approving the revision pursuant to section 110 of the CAA.

**DATES:** This rule is effective on October 7, 2013 without further notice, unless EPA receives relevant adverse comment by September 9, 2013. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0356, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *EPA Region 6 Contact Us Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *Email:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:00 a.m. and 4:00 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R06–OAR–2007–0356. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Kenneth W. Boyce, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7259; fax number 214–665–7263; email address *boyce.kenneth@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever ''we'' ''us'' or ''our'' is used, we mean the EPA.

### Outline

I. Background
II. Analysis of the State's Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

## I. Background

On March 3, 1978, under the 1977 Clean Air Act (CAA) amendments, Victoria County, Texas, was designated a nonattainment area because it did not meet the National Ambient Air Quality Standards (NAAQS) for 1-hour ozone (43 FR 8962). As required by the CAA, the state of Texas submitted a State Implementation Plan (SIP) to the EPA in 1979. This SIP outlined control measures to bring the area into attainment for the 1-hour ozone NAAQS. This SIP was approved by EPA in two actions, one in March 25, 1980 (45 FR 19231) and another in August 13, 1984 (49 FR 32180). An additional SIP revision for Victoria County was submitted to EPA on November 12, 1992. This submission revised the air monitoring, reporting and record keeping requirements for VOC sources and was approved by EPA on March 7, 1995 (60 FR 12438).

On July 27, 1994, Texas submitted a request to redesignate Victoria County to attainment for the 1-hour ozone NAAQS. At the same time, Texas submitted the required ozone monitoring data and a maintenance plan to ensure the area would remain in attainment for ozone for a period of 10 years. The maintenance plan submitted by Texas followed EPA guidance for limited maintenance areas, which provides relief for ozone areas that have design values less than 85% of the applicable standard. In this case, the applicable standard was the 1-hour ozone standard of 0.12 parts per million (ppm). At the time of the redesignation request, the design value for Victoria County was 0.100 ppm, well below the 85% threshold of 0.106 ppm. EPA approved Texas's request to redesignate to attainment Victoria County for the 1-hour ozone NAAQS and the maintenance plan on March 7, 1995, with an effective date of May 8, 1995 (60 FR 12453).

Section 175A(b) of the CAA as amended in 1990 requires the state to submit a subsequent maintenance plan to EPA eight years after designation to attainment. The eight-year deadline for submittal was May 8, 2003. The state adopted a maintenance plan on February 5, 2003, and submitted the plan to EPA on February 18, 2003. EPA approved the maintenance plan revision on January 3, 2005 (70 FR 22). This submission satisfied the CAA requirement for the Victoria County 1-hour ozone area.

On April 30, 2004, EPA designated and classified areas for the 1997 8-hour ozone NAAQS, and published the final phase 1 rule for implementation of the 1997 8-hour ozone NAAQS (69 FR 23951). Victoria County was designated as attainment/unclassifiable for the 1997 8-hour ozone standard, effective June 15, 2004 (69 FR 23858), and was required to submit a 10-year maintenance plan under section 110(a)(1) of the 1990 CAA Amendments and the phase 1 rule. On May 20, 2005, EPA issued guidance providing information regarding how a state might fulfill the maintenance plan obligation established by the Act and the Phase 1 rule (Memorandum from Lydia N. Wegman to Air Division Directors, *Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act,* May 20, 2005).

On March 7, 2007, TCEQ submitted a SIP revision to address the 110(a)(1) requirements. On July 28, 2010, Texas submitted a revision to the contingency portion of the Maintenance Plan. These submitted SIP revisions are intended to satisfy the section 110(a)(1) CAA requirements for Victoria County 1997 8-hour ozone area. This SIP revision satisfies the section 110(a)(1) CAA requirements for a plan that provides for implementation, maintenance, and enforcement of the 1997 8-hour ozone NAAQS in the Victoria County, Texas, area.

On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit issued an opinion that vacated EPA's Phase 1 Implementation Rule for the 1997 8-Hour Ozone Standard. (*South Coast Air Quality Management District.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006)). Petitions for rehearing were filed with the Court, and on June 8, 2007, the Court modified the scope of the vacatur of the Phase 1 rule. See 489 F.3d 1245 (D.C. Cir. 2007), *cert. denied,* 128 S.Ct. 1065 (2008). The Court vacated those portions of the Rule that provide for regulation of the 1997 8-hour ozone NAAQS nonattainment areas under Subpart 1 in lieu of Subpart 2 and that allow backsliding with respect to new source review, penalties, milestones, contingency plans, and motor vehicle emission budgets. Consequently, the Court's modified ruling does not alter any requirements under the Phase 1 implementation rule for the 1997 8-hour ozone NAAQS for maintenance plans.

## II. Analysis of the State's Submittals

In this action, EPA is approving the State's maintenance plan for the 1997 ozone NAAQS for the area of Victoria County, Texas because EPA finds that the Texas submittals meet the requirements of section 110(a)(1) of the CAA, EPA's rule, and are consistent with EPA's guidance. As required, the submitted plan provides for continued attainment and maintenance of the 1997 ozone NAAQS in the area for 10 years from the effective date of the area's designation as unclassifiable/attainment for the 1997 ozone NAAQS, and includes components illustrating how the area will continue in attainment of the 1997 ozone NAAQS and contingency measures. Our analysis of the State's submission is discussed below.

Section 110(a)(1) of the CAA does not explicitly state what is required for a maintenance plan, so the guidance suggested using CAA section 175A, which states the requirements for a maintenance plan, as a guide for states to use in developing their maintenance plans. The required components of a Maintenance Plan under CAA Section 175A include:

(a) An attainment inventory;
(b) A maintenance demonstration;
(c) Ambient air quality monitoring;
(d) A contingency plan, and;
(e) Verification of continued attainment.

TCEQ has structured this 8-hour ozone maintenance plan around these components.

(a) Attainment Inventory—The TCEQ has selected 2002 as ''the attainment inventory'' for purposes of demonstrating maintenance of the 8-hour ozone NAAQS in Victoria County. An attainment emissions inventory (EI) includes emissions of VOCs and $NO_X$ during the time period associated with monitoring data showing attainment. VOC and $NO_X$ emissions are key components in the formation of ozone. As recommended by the EPA, the TCEQ selected 2002 as the attainment emission inventory base year because it is one of the three years on which the 8-hour ozone designation was based. The 2002 VOC and $NO_X$ emissions for the Victoria County area were developed consistent with EPA guidance and are summarized in Tables 2 and 3 in the following subsection.

(b) Maintenance Demonstration—The March 7, 2007, submittal includes a 10-year maintenance plan for Victoria County. The maintenance demonstration is satisfied if the state demonstrates that future projected EIs are consistently less than the 2002 attainment or baseline EI. The final projection year, 2014, was selected as 10 years from the attainment year of 2004, and the intermediate year of 2010 was selected as a mid-point in the 10-year period to demonstrate continued reductions. These projected inventories were developed using EPA-approved methodologies. Please see the TSD for

more information on EPA's review and evaluation of the State's methodologies, modeling, inputs, etc., for developing the 2010 and 2014 projected emissions inventories.

As recommended by EPA guidance, this demonstration:

(i) Shows compliance and maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and $NO_X$ remain at or below attainment or baseline EI of 2002. The year 2002 was chosen as the baseline and attainment year because it is one of the most recent three years (i.e., 2002, 2003, and 2004) for which Victoria County has clean air quality data for the 8-hour ozone standard.

(ii) Uses 2002 as the attainment year and includes future inventory projected years for 2010 and 2014.

(iii) Identifies an ''out year'', at least 10 years after the effective date of classification as attainment.

(iv) Provides the following actual and projected emissions inventories for Victoria County.

TABLE 2—TOTAL VOC EMISSIONS FOR 2002–2014

[tpd]

| Source category | 2002 VOC Emissions | 2004 VOC Emissions | 2010 VOC Emissions | 2014 VOC Emissions |
|---|---|---|---|---|
| Nonroad Mobile | 1.21 | 1.00 | 0.64 | 0.57 |
| Area | 6.28 | 6.31 | 6.85 | 7.23 |
| Point | 2.60 | 3.10 | 3.30 | 3.60 |
| Onroad Mobile | 3.29 | 2.71 | 1.78 | 1.40 |
| Total | 13.38 | 13.12 | 12.57 | 12.8 |

TABLE 3—TOTAL $NO_X$ EMISSIONS FOR 2002–2014

[tpd]

| Source category | 2002 $NO_X$ Emissions | 2004 $NO_X$ Emissions | 2010 $NO_X$ Emissions | 2014 $NO_X$ Emissions |
|---|---|---|---|---|
| Nonroad Mobile | 2.23 | 2.02 | 1.77 | 1.51 |
| Area | 2.56 | 2.65 | 2.90 | 3.07 |
| Point | 13.00 | 15.00 | 16.00 | 17.00 |
| Onroad Mobile | 11.26 | 9.72 | 4.86 | 2.90 |
| Total | 29.05 | 29.39 | 25.53 | 24.48 |

EPA finds that the future emissions levels in 2010 and 2014 are not expected to exceed the emissions levels in 2002. EPA notes that total $NO_X$ emissions in 2004 were slightly higher than the base-year but, air quality monitoring data continued to show attainment.

(c) Monitoring Network—The method chosen to verify continued attainment is the ambient air quality monitoring network. The ambient air monitoring sites will remain active at their present locations during the entire length of the maintenance plan period (2014) or if relocated or removed, will be done with EPA's concurrence. This data will be quality controlled and submitted to EPA AIRS on a monthly basis. The Victoria County monitoring network consists of two ambient air monitors. The first monitor is located in the City of Victoria (CAMS 87) and is the monitor driving the area's design value. The monitors are managed in accordance with 40 CFR Part 58, to verify the attainment status of the county. The second monitor located southeast of the City of Victoria (CAMS 602) became operational on July 19, 2000. CAMS 602 is only run half a year each year and does not meet EPA requirements for data completeness for showing attainment. This additional monitoring network goes beyond the required minimum for Victoria County. Both monitors will be used to detect if and when levels have been exceeded for contingency measure triggering purposes. The State of Texas has committed in its maintenance plan to continue operation of an appropriate ozone monitoring network and to work with EPA in compliance with 40 CFR part 58 with regard to the continued adequacy of the network, if additional monitoring is needed, and when monitoring can be discontinued. The commitment is also to continue quality assurance according to the EPA regulations.

(d) Contingency Plan—The 8-Hour Ozone phase 1 Rule requires the Section 110(a)(1) maintenance plan include such contingency provisions as necessary to promptly address any violation of the NAAQS that occurs. The contingency plan will ensure that the contingency measures are adopted expeditiously once they are triggered. The maintenance plan should identify the events that would trigger the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The Victoria contingency plan ensures that the contingency measures are adopted expeditiously if they are triggered. A series of early triggers have been established in order to effectuate appropriate and timely responses to indications of a possible future violation of the NAAQS. Thus, actions will be taken as follows to avoid a violation and potential redesignation to nonattainment.

If Victoria County monitors a three-year eight-hour ozone average at or above 82 parts per billion (ppb), the City of Victoria will institute a voluntary program with industry to reschedule, revise, or curtail activities during Ozone Advisory Days, which are EPA's AIRNow Air Quality Index ''Orange Days,'' and are at or above 76 ppb. This program will be developed and available within 30 days after notification by the TCEQ that the contingency measure will be required. This program will be implemented as expeditiously as practicable, but no later

than 24 months after the Texas Commission on Environmental Quality's (TCEQ) notification that the contingency measure is needed.

If Victoria County monitors an eight-hour ozone three-year average at or above 83 ppb, the TCEQ will work with the City of Victoria and the local Air Victoria Team to implement various voluntary control measures that may include:

—substantially increasing the number of businesses notified on Ozone Advisory Days;

—increasing the number of ozone public announcements; and

—other voluntary control measures as identified in a letter from the City of Victoria, dated September 8, 2009.

In the event that this contingency measure is triggered, Victoria County may also be expected to voluntarily implement further local control measures, and previous efforts to reduce ozone may need to be retained. This program will be developed and available within 30 days after notification by the TCEQ that the contingency measure will be required. This program will be implemented as expeditiously as practicable, but no later than 24 months after verified monitoring data indicate that the Victoria County three-year average of each annual fourth-highest daily maximum eight-hour ozone average is at or above 83 ppb.

If air quality monitoring data indicate three or more exceedances of the 1997 eight-hour ozone NAAQS (measured at 0.08 parts per million) within one calendar year, the TCEQ will analyze air quality data, meteorological conditions, transport, and related factors in Victoria County to determine the cause of the exceedances. The TCEQ will notify the EPA of its findings.

If air quality monitoring data indicate that Victoria County's design value *violates* the 1997 eight-hour ozone NAAQS with a monitored value of 85 ppb or above, the TCEQ is committing to implement specific contingency measures to promptly correct the violation. Those to be considered include but are not limited to the control measures identified below. In this maintenance plan, if contingency measures are triggered, TCEQ is committing to implement the appropriate contingency measures as expeditiously as practicable, but no later than 24 months after verified air quality monitoring data indicate that the Victoria County three-year average of each annual fourth-highest daily maximum eight-hour ozone average violates the 1997 eight-hour ozone NAAQS.

Revision to 30 Texas Administrative Code (TAC) Chapter 117 Subchapter E, Division 4, to control rich-burn, gas-fired, reciprocating internal combustion engines located in Victoria County to meet nitrogen oxides ($NO_X$) emission specifications and other requirements to reduce $NO_X$ emissions and ozone air pollution.

Inclusion of Victoria County in 30 TAC Chapter 115 volatile organic compounds (VOC) rules for the control of crude and condensate storage tanks at upstream oil and gas exploration and production sites or midstream pipeline breakout stations with uncontrolled flash emissions greater than 25 tons per year.

Inclusion of Victoria County in 30 TAC Chapter 115 VOC rules for more stringent controls for tank fittings on floating roof tanks, such as slotted guide poles and other openings in internal and external floating roofs.

Inclusion of Victoria County in 30 TAC Chapter 115 VOC rules limiting emissions from landings of floating roofs in floating roof tanks.

Inclusion of Victoria County in 30 TAC Chapter 115 VOC rules for control of VOC emissions from degassing operations for storage tanks with a nominal capacity of 75,000 gallons or more storing materials with a true vapor pressure greater than 2.6 pounds per square inch absolute (psia), or with a nominal capacity of 250,000 gallons or more storing materials with a true vapor pressure of 0.5 psia or greater. Degassing vapors from storage vessels, transport vessels, and marine vessels would be required to vent to a control device until the VOC concentration of the vapors is reduced to less than 34,000 parts per million by volume as methane.

Inclusion of Victoria County in 30 TAC Chapter 114 rule for Texas Low Emission Diesel (TxLED) compliant marine diesel.

The maintenance plan also identifies other potential measures deemed appropriate at the time as a result of advances in control technologies. These contingency measures and schedules for implementation satisfy EPA's long-standing guidance on the requirements of section 110(a)(1) of continued attainment. Based on the above, we find that the contingency measures provided in the State's Victoria County 8-hour Ozone maintenance plan are sufficient and meet the requirements of section 110(a)(1) of the CAA.

(e) *Verification of Continued Attainment*—To guarantee that attainment will be continued in the future, the State commits in the maintenance plan to track the progress of the maintenance plan by providing the EPA with an interim emissions inventory report for point, area, mobile and biogenic emissions of VOCs and CO in the Victoria area. In addition, Texas commits to verify the 8-hour ozone status through appropriate ambient air quality monitoring, and to quality assure air quality monitoring data according to federal requirements. Texas further demonstrates that it has the legal authority to implement and enforce all air quality measures needed to attain and maintain the 1997 8-hour ozone NAAQS.

## III. Final Action

The TCEQ submitted the 1997 8-hour ozone NAAQS maintenance plan for Victoria County to EPA on March 7, 2007 with revisions on July 28, 2010. EPA is approving these maintenance plan SIP revisions for Victoria County as meeting the requirements of CAA Section 110(a)(1) and EPA's regulations and being consistent with EPA guidance. We have evaluated the State's submittal and have determined that it meets the applicable requirements of the Clean Air Act and EPA regulations, and is consistent with EPA policy. Therefore, we are approving the request of TCEQ to revise the SIP for the Victoria County 8-hour ozone area.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on October 7, 2013 without further notice unless we receive adverse comment by September 9, 2013. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

Dated: July 19, 2013.

**Ron Curry,**

*Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart SS—Texas

■ 2. In § 52.2270, the second table in paragraph (e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP,'' is amended by adding an entry at the end of the table to read as follows:

**§ 52.2270. Identification of plan.**

* * * * *

(e) * * *

* * * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

| Name of SIP provision | Applicable geographic or nonattainment area | State submittal/ effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| Victoria County 1997 8-Hour Ozone Maintenance Plan. | Victoria, TX ..... | 7/28/2010 | 8/8/2013 [Insert FR page number where document begins]. | |

* * * * *

[FR Doc. 2013–18885 Filed 8–7–13; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R03–OAR–2013–0058; FRL–9841–8]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Update of the Motor Vehicle Emissions Budgets for the Lancaster 1997 8-Hour Ozone Maintenance Area

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's (Pennsylvania) State Implementation Plan (SIP). The revisions consist of an update to the SIP-approved Motor Vehicle Emissions Budgets (MVEBs) for nitrogen oxides ($NO_X$) and volatile organic compounds (VOCs), and an updated point source inventory for $NO_X$ and VOCs for the 1997 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) SIP for Lancaster County (hereafter referred to as the ''Lancaster Maintenance Area''). EPA's approval of the updated MVEBs makes them available for transportation conformity purposes. EPA is approving these revisions to the MVEBs and point source inventory in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on October 7, 2013 without further notice, unless EPA receives adverse written comment by *September 9, 2013.* If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0058 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0058, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2013–0058. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On November 19, 2012, Pennsylvania submitted formal revisions to its SIP. One SIP revision consists of updated MVEBs for $NO_X$ and VOCs for the 1997 8-Hour Ozone NAAQS. The other SIP revision updates the point source inventory for $NO_X$ and VOCs.

On July 18, 1997 (62 FR 38856), EPA established the 1997 8-Hour Ozone NAAQS. On April 30, 2004 (69 FR 23857), Lancaster County was designated as nonattainment for the 1997 8-Hour Ozone NAAQS. On September 20, 2006, the Pennsylvania Department of Environmental Protection (DEP) submitted a SIP revision which consisted of a maintenance plan, a 2002 base year inventory and MVEBs for transportation conformity purposes. On November 8, 2006, Pennsylvania DEP supplemented their September 20, 2006 submittal. On July 6, 2007 (72 FR 36889), EPA approved the SIP revision as well as the redesignation request made by Pennsylvania DEP and Lancaster County was redesignated as a maintenance area.

The currently SIP-approved MVEBs for the Lancaster Area were developed using the Highway Mobile Source Emission Factor Model (MOBILE6.2). On March 2, 2010 (75 FR 9411), EPA published a notice of availability for the Motor Vehicle Emissions Simulator (MOVES2010) model for use in developing MVEBs for SIPs and for conducting transportation conformity analyses. EPA commenced a two year grace period after which time the MOVES2010 model would have to be used for transportation conformity purposes. The two year grace period was scheduled to end on March 2, 2012. On February 27, 2012 (77 FR 11394), EPA published a final rule extending the grace period for one more year to March 2, 2013 to ensure adequate time for affected parties to have the capacity to use the MOVES model to develop or update the applicable MVEBs in SIPs and to conduct conformity analyses. On September 8, 2010, EPA released MOVES2010a, which is a minor update to MOVES2010 and which is used by Pennsylvania in this SIP revision.

### II. Summary of SIP Revision

This MVEBs SIP revision updates the MVEBs for $NO_X$ and VOCs for the years 2009 (interim year) and 2018 (maintenance year) that were produced using the MOVES2010a model. The point source inventory SIP revision updates the point source inventory for $NO_X$ and VOCs. A comparison between the previous point source inventory and the updated point source inventory is

provided in Table 1. The previously approved MVEBs were produced using the Mobile Source Emission Factor Model (MOBILE6.2). A summary of the updated MOVES-based MVEBs and previously approved MOBILE6.2-based MVEBs for the years 2009 and 2018 is provided in Table 2. Even though there is an emissions increase in the MOVES-based MVEBs, the increase is not due to an increase in emissions from mobile sources. The increase is due to the fact that the MOVES model provides more accurate emissions estimates than MOBILE6.2, rather than growth that had not been anticipated in the maintenance plan. Also, part of the update of the MVEBs is the addition of a two tons per day (tpd) safety margin for both $NO_X$ and VOCs. The MVEBs that will be utilized for transportation conformity purposes and include the safety margins are presented in Table 3. These safety margins were added because emissions in the interim (2009) and maintenance (2018) years are significantly less than the attainment year emissions, which is the year that the Lancaster Maintenance Area attained the standard. A detailed summary of EPA's review and rationale for proposing to approve this SIP revision may be found in the Technical Support Documents (TSDs) prepared in support of this proposed approval and are available on line at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2013–0058.

TABLE 1—SUMMARY OF POINT SOURCE INVENTORY FOR THE LANCASTER MAINTENANCE AREA

| Year | Current | | Updated | |
|---|---|---|---|---|
| | 2009 | 2018 | 2009 | 2018 |
| VOCs (tpd) | 8.7 | 11 | 5.5 | 7.7 |
| $NO_X$ (tpd) | 4.1 | 4.6 | 3.2 | 3.6 |

TABLE 2—SUMMARY OF MOTOR VEHICLE EMISSIONS FOR THE LANCASTER MAINTENANCE AREA

| Model | MOBILE6.2 | | MOVES2010a | |
|---|---|---|---|---|
| Year | 2009 | 2018 | 2009 | 2018 |
| VOCs (tpd) | 14.33 | 7.77 | 14.29 | 8.14 |
| $NO_X$ (tpd) | 22.32 | 8.99 | 33.18 | 18.57 |

TABLE 3—UPDATED MVEBS FOR THE LANCASTER MAINTENANCE AREA

| Year | 2009 | 2018 |
|---|---|---|
| VOCs (tpd) | 35.18 | 14.29 |
| $NO_X$ (tpd) | 20.57 | 10.14 |

## III. Final Action

EPA is approving Pennsylvania's SIP revision from November 19, 2012 to update the SIP-approved MVEBs for the Lancaster County Maintenance Area to reflect the use of the MOVES model. EPA is also approving the update to the SIP-approved point source inventory. This SIP revision allows the Lancaster County Maintenance Area to continue to be in attainment of the 1997 8-Hour Ozone NAAQS. The updated MVEBs meet the adequacy requirements set forth in 40 CFR 93.118(e)(4)(i)-(vi), and have been correctly calculated to reflect the use of the MOVES model. Upon final approval, these updated MVEBs will be both adequate and SIP-approved for purposes of transportation conformity. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on October 7, 2013 without further notice unless EPA receives adverse comment by September 9, 2013. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

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

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

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

*B. Submission to Congress and the Comptroller General*

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

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action pertaining to the update of the SIP-approved MVEBs and point source inventory for the Lancaster Maintenance Area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: July 18, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by revising the entry for the 8-Hour Ozone Maintenance Plan and 2002 Base Year Emissions Inventory. The revised text reads as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(e) * * *

(1) * * *

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 8-Hour Ozone Maintenance Plan and 2002 Base Year Emissions Inventory. | Lancaster Area (Lancaster County). | 9/20/06, 11/8/06 | 7/6/07, 72 FR 36889 ..... | |
| | | 11/29/12 | 8/8/13 *[Insert page number where the document begins]*. | Revised 2009 and 2018 Motor Vehicle Emission Budgets. Revised 2009 and 2018 point source inventory. See sections 52.2043 and 52.2052. |
| * | * | * | * | * |

■ 3. Section 52.2043 is added to read as follows:

**§ 52.2043 Control strategy for maintenance plans: ozone.**

As of August 8, 2013, EPA approves the following revised 2009 and 2018 point source inventory for nitrogen oxides ($NO_X$) and volatile organic compounds (VOCs) for the Lancaster 1997 8-Hour Ozone Maintenance Area submitted by the Secretary of the Pennsylvania Department of Environmental Protection:

| Applicable geographic area | Year | Tons per day $NO_X$ | Tons per day VOCs |
|---|---|---|---|
| Lancaster 1997 8-Hour Ozone Maintenance Area ..... | 2009 | 3.2 | 5.5 |
| Lancaster 1997 8-Hour Ozone Maintenance Area ..... | 2018 | 3.6 | 7.7 |

■ 4. Section 52.2052 is added to read as follows:

**§ 52.2052 Motor vehicle emissions budgets for Pennsylvania ozone areas.**

As of August 8, 2013, EPA approves the following revised 2009 and 2018 Motor Vehicle Emissions Budgets (MVEBs) for nitrogen oxides ($NO_X$) and volatile organic compounds (VOCs) for the Lancaster 1997 8-Hour Ozone

Maintenance Area submitted by the Secretary of the Pennsylvania Department of Environmental Protection:

| Applicable geographic area | Year | Tons per day $NO_X$ | Tons per day VOCs |
|---|---|---|---|
| Lancaster 1997 8-Hour Ozone Maintenance Area | 2009 | 20.57 | 35.18 |
| Lancaster 1997 8-Hour Ozone Maintenance Area | 2018 | 10.14 | 14.29 |

[FR Doc. 2013–18878 Filed 8–7–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2012–0913; FRL–9843–7]**

## Partial Disapproval of State Implementation Plan; Arizona; Regional Haze Requirements

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a partial disapproval of the Arizona State Implementation Plan (SIP) to implement the regional haze program for the first planning period through 2018. Regional haze is caused by emissions of air pollutants from numerous sources located over a broad geographic area. The Clean Air Act (''CAA'' or the ''Act'') and EPA's regulations require states to adopt and submit to EPA SIPs that assure reasonable progress toward the national goal of achieving natural visibility conditions in 156 national parks and wilderness areas designated as Class I areas.

**DATES:** *Effective Date:* This rule is effective on September 9, 2013.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2012–0913 for this action. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

**FOR FURTHER INFORMATION CONTACT:** Thomas Webb, U.S. EPA, Region 9, Planning Office, Air Division, Air–2, 75 Hawthorne Street, San Francisco, CA 94105. Thomas Webb can be reached at telephone number (415) 947–4139 and via electronic mail at *webb.thomas@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

### Table of Contents

I. Overview of Proposed Action
II. Public Comments and EPA Responses
III. Summary of Final Action
IV. Statutory and Executive Order Reviews

### I. Overview of Proposed Action

We proposed on February 5, 2013, to disapprove Arizona's SIP to implement the regional haze program under 40 CFR 51.309.[1] Specifically, we proposed to disapprove in part a December 24, 2008, submittal by the Arizona Department of Environmental Quality (ADEQ) in which the State resubmitted materials previously submitted on December 23, 2003, and December 30, 2004 (collectively ''Arizona's 309 Regional Haze SIP'').[2] These SIP submittals were intended to address the regional haze requirements of the CAA and EPA's implementing regulations at 40 CFR 51.309 for four of Arizona's mandatory Class I areas. Our proposed rule includes additional information about these requirements and Arizona's SIP submittals.

### II. Public Comments and EPA Responses

During the 30-day comment period on our proposal, we received comments from:

- Eric Massey, Director Air Quality, ADEQ; and
- David Nimkin, Gloria Smith, Barbara Warren, Donna House and Dan Randolph, on behalf of National Parks Conservation Association, Sierra Club, Physicians for Social Responsibility (Arizona Chapter), Dine' Citizens Against Ruining Our Environment, and San Juan Citizens Alliance (collectively, the ''Conservation Organizations'').

We carefully considered these comments, which are located in the docket for this action. In the following sections, we provide summaries of and our responses to these comments.

*Comment 1:* ADEQ commented that its December 24, 2008, ''re-submittal'' letter was not a revision to Arizona's 309 Regional Haze SIP because it did not include new information and was not subject to a formal public comment period. ADEQ further asserted that its 2003 and 2004 SIP submittals were deemed complete by operation of law six months after submission, pursuant to CAA section 110(k)(1)(B), and that EPA should have acted on these submittals within 18 months pursuant to CAA section 110(k)(2).

*Response 1:* As an initial matter, ADEQ's comment appears to have no relevance to the substance of EPA's proposed action. Regardless of whether ADEQ's December 24, 2008, re-submittal letter was a SIP revision or merely a request that EPA act upon ADEQ's 2003 and 2004 SIP submittals, the fact remains that Arizona's 309 Regional Haze SIP does not satisfy the requirements of 40 CFR 51.309(d)(4) and is therefore not approvable. We also note that ADEQ's comment appears to contradict the statements made in the December 24, 2008, re-submittal letter itself.[3] The re-submittal letter states that:

> Plan submittal is consistent with the provisions of Arizona Revised Statutes (ARS) Title 49, §§ 49– 104, 49– 06, 49–404,49–406, 49–414, and 49–414.0 1 and the Code of Federal Regulations (CFR) Title 40, §§ 51.102–51.104. The plan also complies with the public process requirements in Section 110(a)(l) and (a)(2) of the Clean Air Act; 40 CFR 51.102 regarding preparation, notice, and submission of state implementation plans; and Arizona Revised Statutes 49–425 regarding notice and [public] review of rules.[4]

Consistent with these statements regarding public process, EPA viewed the re-submittal letter as a SIP revision. However, if Arizona did not intend for the letter to be a SIP revision, then we construe it as a withdrawal of those

[1] 78 FR 8083.

[2] As explained in our proposal, this disapproval is ''partial'' rather than ''full'' because EPA previously approved certain burning and smoke management rules that were part of the 2008 SIP submittal.

[3] Letter from Stephen A. Owens, ADEQ, to Wayne Nastri, EPA, December 24, 2008 (''re-submittal letter'').

[4] *Id.* at 1.

portions of the State's 2003 and 2004 SIP submittals addressing the stationary source requirements of 40 CFR 51.309(d)(4), as well as an acknowledgment of the State's failure to submit provisions to address eight of the State's Class I areas under 40 CFR 51.309(g). As the letter explains:

> This plan submittal does not include provisions under § 309(d)(4) or § 309(g). Due to the new requirements for stationary source control strategies based on the decision rendered in *Center for Energy and Economic Development (CEED)* v. *EPA,* 398 F.3d 653 (DC Cir. 2005), Arizona has not been able to complete revisions to § 309(d)(4) or complete § 309(g) by the deadline of December 17, 2007.[5]

Thus, the re-submittal letter clearly acknowledged that Arizona's 309 Regional Haze SIP lacked any provisions to address the critical requirements of 40 CFR 51.309(d)(4) and 51.309(g).

The absence of these provisions cannot be remedied by the fact that Arizona's 2003 and 2004 SIP submittals were deemed ''complete'' by operation of law. Section 110(k)(1)(A) of the CAA requires EPA to ''promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection.'' [6] Pursuant to this requirement, EPA has promulgated ''completeness criteria,'' consisting of administrative materials and technical support elements that must be included with all SIP submittals.[7] These criteria do not include the substantive provisions that a given SIP must include to comply with the minimum requirements of the CAA. Rather, such substantive requirements are set out in the CAA itself and in EPA's implementing regulations. Thus, the fact that the 2003 and 2004 SIP submittals were deemed ''complete'' with respect to the minimum criteria required under CAA section 110(k)(1)(A) does not mean that the submittals were complete in the sense that they contained the provisions necessary to satisfy the requirements of 40 CFR 51.309. On the contrary, ADEQ acknowledged in its re-submittal letter that Arizona's 309 Regional Haze SIP ''does not include provisions under § 309(d)(4) or § 309(g).'' [8]

Finally, ADEQ's assertion that EPA should have acted on the State's 2003 and 2004 SIP submittals within 18 months of December 30, 2004, is not persuasive. The D.C. Circuit's decision in *Center for Energy & Economic Development* v. *EPA,* 398 F.3d 653 (D.C. Cir. 2005) (''CEED''), which invalidated 40 CFR 51.309's stationary source requirements, was issued on February 18, 2005. In response to this decision, EPA proposed revisions to 40 CFR 51.309 on August 1, 2005.[9] Among other things, EPA proposed to allow states to submit or resubmit 309 SIPs at a later date in order to provide time for States to revisit the $SO_2$ milestones and backstop emission trading program. EPA further explained that:

> With respect to the other strategies contained in § 51.309, although these other provisions of § 51.309 were not affected by the decision in *CEED* v. *EPA* and may remain effective as a matter of State law in each State, the EPA cannot approve implementation plans under § 51.309 as meeting reasonable progress until the plans contain valid provisions for addressing stationary sources.[10]

Thus, EPA clearly indicated that we could not approve previously submitted 309 SIPs until they were resubmitted with valid provisions for addressing stationary sources. EPA ultimately set a deadline of December 17, 2007, for these re-submittals.[11] Regardless of whether ADEQ's December 24, 2008, re-submittal letter is characterized as a SIP revision or merely a prompt for EPA to act upon the State's earlier 2003 and 2004 SIP submittals, the fact remains that Arizona, by its own admission, failed to submit provisions addressing the requirements of 40 CFR 51.309(d)(4) and 51.309(g). Finally, even if it were true that EPA should have acted on Arizona's 2003 and 2004 SIP submittals within 18 months, it is irrelevant to the substance of the action EPA is taking in this final rule. EPA is addressing the approvability of Arizona's 309 Regional Haze SIP now and partially disapproving it because the SIP does not satisfy the requirements of 40 CFR 51.309(d)(4).

*Comment 2:* ADEQ commented that EPA had no authority to adopt a Federal Implementation Plan (FIP) in its December 5, 2012, final rule that established BART for three power plants in Arizona.[12] ADEQ argued that EPA's January 15, 2009, finding of failure to submit (''Finding''),[13] which provided the basis for EPA's FIP authority, was invalid because Arizona submitted 309 SIPs in 2003 and 2004, both of which were deemed complete by operation of law. Finally, ADEQ asserted that if EPA did have FIP authority, then it would extend only to the requirements of 40 CFR 51.309(d)(4) and 51.309(g), not to the requirement for BART.

*Response 2:* As an initial matter, this comment is not germane in any way to the present rulemaking, in which EPA is finalizing its partial disapproval of Arizona's 309 Regional Haze SIP for failure to comply with the requirements of 40 CFR 51.309(d)(4). Rather, ADEQ's comment appears to be a collateral challenge to EPA's Finding and other rulemakings EPA has conducted involving regional haze and BART requirements in Arizona. We note that ADEQ's objection to EPA's Finding comes nearly three years after the statutory deadline for challenging that action has passed. Under the CAA, any party seeking judicial review of EPA's Finding was required to file a petition for review within 60 days of publication of the Finding in the **Federal Register**, or by no later than March 16, 2009. No party, including Arizona, filed such a petition. Therefore, ADEQ's claim that EPA's Finding was invalid and that EPA did not have FIP authority to promulgate its December 5, 2012, final rule is time-barred.

We also disagree with the substance of ADEQ's comment. As ADEQ noted in its comment, EPA's authority to issue a FIP arises from one of three triggering events: (1) A finding that a state has failed to make a required SIP submittal; (2) a finding that a SIP submittal does not satisfy the minimum criteria of CAA section 110(k)(1)(A); or (3) the disapproval, in whole or in part, of a SIP submittal.[14] Contrary to ADEQ's assertion, the fact that Arizona's 2003 and 2004 SIP submittals were deemed ''complete'' by operation of law has no bearing on EPA's Finding, which was premised on the fact that Arizona failed to submit SIP provisions to satisfy the requirements of 40 CFR 51.309(d)(4) and 51.309(g). The State's 2003 and 2004 SIP submittals could not have addressed 40 CFR 51.309(d)(4) and 51.309(g) because the former requirement was modified in response to the D.C. Circuit's 2005 decision in CEED, while the latter requirement did not even exist until EPA finalized our revisions to 40 CFR 51.309 in 2006.[15] ADEQ acknowledged this fact in its December 24, 2008, re-submittal letter, which plainly stated that Arizona's 309 Regional Haze SIP addresses neither 40 CFR 51.309(d)(4) nor 51.309(g).[16]

Additionally, we disagree with ADEQ's contention that EPA's FIP

[5] *Id.* at 2.

[6] 42 U.S.C. 7410(k)(1)(A).

[7] 40 CFR part 51, Appendix V.

[8] Re-submittal letter at 2.

[9] 70 FR 44154 (August 1, 2005).

[10] *Id.* at 44165.

[11] *Id.* at 44166.

[12] 77 FR 72512 (December 5, 2012).

[13] 74 FR 2392 (January 15, 2009).

[14] 42 U.S.C. 7410(c)(1).

[15] 71 FR 60633 (October 13, 2006) codified at 40 CFR 51.309.

[16] Re-submittal letter at 2.

authority is somehow limited to the requirements of 40 CFR 51.309(d)(4) and 51.309(g). Section 309 is an alternative route to compliance with the regional haze rule that can only be implemented at the election of the state. The regional haze rule clearly explains that if a state chooses to fulfill its regional haze obligation under 40 CFR 51.309, but fails to submit the SIP provisions necessary to satisfy that obligation, then the state remains subject to the requirements of 40 CFR 51.308.[17] Thus, when Arizona failed to submit SIP provisions addressing the requirements of 40 CFR 51.309(d)(4) and 51.309(g) by the December 17, 2007, deadline, Arizona remained subject to the general requirements of 40 CFR 51.308. In other words, the regulatory gap left by Arizona's failure to submit a comprehensive 309 SIP was a duty to submit a 308 SIP. As a result, EPA's Finding triggered a duty on behalf of EPA to issue a FIP that satisfied the requirements of 40 CFR 51.308, which include the requirement to establish BART for certain stationary sources.

Finally, even if EPA's FIP authority were somehow limited to the requirements of 40 CFR 51.309(d)(4) and 51.309(g), those provisions are far more expansive than ADEQ suggests. Section 51.309(d)(4) governs emissions of nitrogen oxides ($NO_X$), particulate matter (PM), and sulfur dioxide ($SO_2$) from stationary sources that cause or contribute to visibility impairment in the Class I areas on the Colorado Plateau. In particular, 40 CFR 51.309(d)(4)(i) requires the establishment of quantitative $SO_2$ emission ''milestones'' that provide for emissions reductions, which ''must be shown to provide for greater reasonable progress than would be achieved by application of BART pursuant to § 51.308(e)(2).'' In addition, 40 CFR 51.309(d)(4)(vi) requires 309 SIPs to ''contain any necessary long term strategies and BART requirements for stationary source PM and $NO_X$ emissions.'' Finally, 40 CFR 51.309(g) includes the requirements for Arizona's eight other Class I Areas and mandates, among other things, the establishment of reasonable progress goals and implementation of ''any additional measures necessary to demonstrate reasonable progress,'' consistent with the requirements of 40 CFR 51.308(d)(1)–(4). In short, the requirements of 40 CFR 51.309(d)(4) and 51.309(g) encompass three critical elements of the regional haze program: Reasonable progress, long-term strategies, and BART (or ''better-than-BART'' alternatives) for $NO_X$, PM, and $SO_2$. Therefore, even if EPA's FIP authority were somehow limited to fulfilling the requirements of 40 CFR 51.309(d)(4) and 51.309(g), that authority nevertheless extends to each of these critical elements, which include BART.

*Comment 3:* ADEQ commented that EPA's delay in acting on Arizona's 309 Regional Haze SIP and the Agency's promulgation of a FIP in a separate rulemaking did not give Arizona an adequate chance to revise its SIP to address the identified deficiencies.

*Response 3:* Arizona has been on notice since August 1, 2005, when EPA proposed to amend 40 CFR 51.309 in response to the D.C. Circuit's decision in CEED, of the deficiencies associated with the State's 2003 and 2004 SIP submittals. There, EPA publicly stated that ''EPA cannot approve implementation plans under section 51.309 as meeting reasonable progress until the plans contain valid provisions for addressing stationary sources.'' [18] We also explained that ''[s]tates opting for § 51.309 will be required to resubmit SIPs some time after [the invalidated portions of the 309 regulations] have been rectified . . . .'' [19] EPA's October 2006 final rule amending 40 CFR 51.309 also made clear that Arizona would have to revise and resubmit its 309 SIP to address 40 CFR 51.309(d)(4) and 51.309(g) by December 17, 2007.[20] Arizona's December 24, 2008, re-submittal letter, which stated ''[t]his plan submittal does not include provisions under § 309(d)(4) or § 309(g),'' [21] illustrates that Arizona was well aware of these requirements and the deficiencies in its 309 SIP.

EPA found on January 15, 2009, that Arizona failed to re-submit the required provisions, again stating explicitly and on public record:

> Arizona, New Mexico, and Wyoming have opted to develop SIPs based on the recommendations of the Grand Canyon Visibility Transport Commission under 40 CFR 51.309. All three States have failed to submit the plan elements required by 40 CFR 51.309(g), the reasonable progress requirements for areas other than the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report. Arizona and New Mexico have also failed to submit the plan element required by 40 CFR 51.309(d)(4), the alternate stationary source program for control of sulfur dioxide ($SO_2$).[22]

Around the same time, EPA sent a letter to ADEQ notifying the State of the implications of its failure to submit the required SIP provisions, explaining that:

> Upon the effective date of the **Federal Register** notice, EPA must within two years either fully approve Arizona's regional haze SIP or promulgate a Federal implementation plan (FIP) as required by CAA section 110(c). Please be aware that EPA needs about 12 months after receipt of a SIP to take final action. If we do not have sufficient time to review and approve a submitted SIP revision, the CAA requires that EPA impose a FIP. In order to avoid having EPA issue a FIP, we strongly recommend that you submit your SIP revision within a year of this finding, or sooner if possible.[23]

Thus, over the last eight years, EPA has repeatedly and publicly specified the deficiencies in Arizona's 309 Regional Haze SIP and allowed ample time for Arizona to address these deficiencies.

*Comment 4:* The Conservation Organizations expressed their support for EPA's determination that Arizona's 309 Regional Haze SIP fails to comply with the requirements of the regional haze rule. They provided a summary of the requirements of 40 CFR 51.309(d)(4) and a history of Arizona's regional haze SIP submissions since EPA's 2006 revisions to the section 309 requirements, concluding that ''EPA's final rule should disapprove Arizona's 309 SIP for failure to comply with the requirements of Section 309(d)(4).'' They further asserted that ''EPA's final rule should find that Arizona declined to participate in the alternative Section 309 [Western Backstop Trading Program] and instead has chosen to address $SO_2$, $NO_X$, and PM reductions through the BART process and long-term strategy requirements found in Section 308.''

*Response 4:* We agree with this comment and acknowledge the Conservation Organizations' support for this rulemaking.

## III. Summary of Final Action

For the reasons set out in our proposed rule and in this final rulemaking, we are finalizing our partial disapproval of Arizona's 309 Regional Haze SIP. In particular, we are disapproving all portions of Arizona's 2003 and 2004 SIP submittals, except those portions that have already been

[17] See 40 CFR 51.309(a) (''Any Transport Region State electing not to submit an implementation plan under this section is subject to the requirements of § 51.308 in the same manner and to the same extent as any State not included within the Transport Region.''). See also 64 FR 35754, July 1, 1999 (explaining that ''the requirements of Section 51.309 . . . are not severable. States that wish to take advantage of the GCVTC's efforts and EPA's acceptance thereof are obligated to meet all of the requirements of section 51.309'' (emphasis added)).

[18] 70 FR 44165 (August 1, 2005).

[19] *Id.* at 44165, 44166.

[20] 71 FR 60633 (October 13, 2006) codified at 40 CFR 51.309.

[21] Re-submittal letter at 2.

[22] 74 FR 2393 (January 15, 2009).

[23] Letter from Deborah Jordan, EPA, to Stephen Owens, ADEQ (January 14, 2009).

approved and those portions pertaining to Reasonably Attributable Visibility Impairment (RAVI).

Under section 179(a) of the CAA, EPA's final disapproval of a submittal that addresses a requirement of CAA sections 171–193 or a revision that is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) starts a sanctions clock. Arizona's 309 Regional Haze SIP was not submitted to meet either of these requirements. Therefore, today's action will not trigger mandatory sanctions under CAA section 179(a).

In addition, CAA section 110(c)(1) requires EPA to promulgate a FIP at any time within two years after disapproving a SIP in whole or in part, unless EPA first approves a SIP correcting the deficiencies. As explained above, due to our previous Finding that Arizona failed to submit a complete regional haze SIP, EPA is already subject to a FIP duty under section 110(c)(1) with respect to the regional haze requirements for Arizona. Moreover, we are also subject to a set of court-ordered deadlines by which we must approve a SIP and/or promulgate a FIP that collectively meet the regional haze requirements for Arizona.[24] Thus, we do not construe today's partial disapproval of Arizona's 309 Regional Haze SIP as creating any new FIP obligation. However, as noted in our proposed rulemaking, Arizona is appealing the district court's entry and modification of the consent decree that set the deadlines for EPA action on regional haze plans for Arizona.[25] If Arizona's challenge ultimately results in any changes to the scope of EPA's existing FIP duty with respect to regional haze in Arizona, then today's action will trigger a two-year FIP clock for any additional regional haze requirements that are not subject to the previous FIP clock.

## IV. Statutory and Executive Order Reviews

### *A. Executive Order 12866, Regulatory Planning and Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the E.O.

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b).

### *C. Regulatory Reduction Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or SIP disapprovals under section 110 of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the disapproval of SIP revisions does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### *D. Unfunded Mandates Reform Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action disapproves certain SIP elements and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *E. Executive Order 13132, Federalism*

Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism 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 State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, because it merely disapproves certain SIP revisions implementing and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. It will not have

[24] *National Parks Conservation Association* v. *Jackson* (D.D.C. Case 1:11–cv–01548).

[25] *National Parks Conservation Association* v. *EPA* (D.C. Cir., USCA Case #12–5211).

substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 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 Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it disapproves certain SIP revisions.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (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 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population*

Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely disapproves certain SIP revisions under section 110 of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

*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. 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).

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 2013. 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. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides, Visibility.

Dated: July 26, 2013.

**Jared Blumenfeld,**

*Regional Administrator, EPA Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart D—Arizona

■ 2. Section 52.145 is amended by adding paragraph (h) to read as follows:

### § 52.145 Visibility protection.

* * * * *

(h) *Disapproval.* The following portions of the Arizona SIP are disapproved because they do not meet the applicable requirements of Clean Air Act sections 169A and 169B and the Regional Haze Rule at 40 CFR 51.309:

(1) Regional Haze State Implementation Plan for the State of Arizona (''Arizona 309 Regional Haze SIP'') submitted by the Arizona Department of Environmental Quality on December 23, 2003, with the exception of Chapter 5 (Strategy to Address Reasonably Attributable Visibility Impairment (RAVI)) and Appendix A–5 (Attributable Impairment).

(2) The Arizona Regional Haze State Implementation Plan Revision submitted by the Arizona Department of Environmental Quality on December 31, 2004, with the exception of the provisions already approved at 40 CFR 52.120(c)(131).

(3) Letter from Stephen A. Owens, Director, Arizona Department of Environmental Quality, dated December 24, 2008 re: Submittal of Arizona Regional Haze State Implementation Plan.

[FR Doc. 2013–18881 Filed 8–7–13; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 252**

**RIN 0750–AH92**

## Defense Federal Acquisition Regulation Supplement: Release of Fundamental Research Information (DFARS Case 2012–D054)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide guidance relating to the release of fundamental research information. This rule was previously published as part of the proposed rule 2011–D039, Safeguarding Unclassified DoD Information.

**DATES:** *Effective:* August 8, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dustin Pitsch, 571–372–6090.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD published a proposed rule, DFARS case 2011–D039, in the **Federal Register** at 76 FR 38089 on June 29, 2011, to address requirements for safeguarding unclassified information. The scope of this final rule is limited to only the modifications contained within the proposed rule to DFARS 252.204–7000, Disclosure of Information. This text was separated from the proposed rule, and is being published separately as a final rule, because the changes in this DFARS clause deal with the release of information on fundamental research projects and not safeguarding. This rule was initiated to implement guidance provided by the Under Secretary of Defense for Acquisition, Technology and Logistics (AT&L) in a memorandum on Fundamental Research dated May 24, 2010, and a memorandum on Contracted Fundamental Research dated June 26, 2008. The memoranda provided additional clarifying guidance to ensure that DoD does not restrict disclosure of the results of fundamental research, as defined by the National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, unless such research efforts are classified for reasons of national security or otherwise restricted by applicable Federal statutes, regulations, or executive orders.

The comment period originally closed on August 29th, 2011, and was extended to December 16th, 2011. DoD received comments on the proposed rule from forty-nine respondents; however, only fourteen (14) of the respondents addressed the changes contained within this final rule.

### II. Discussion and Analysis of the Public Comments

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

*A. Summary of Significant Changes From the Proposed Rule*

1. Subparagraph 252.204–7000(a)(1) is no longer being modified and will remain essentially intact.

2. Paragraph 252.204–7000(a)(3) is revised to no longer require a certification by the contracting component. Instead, the fundamental research determination must be made in writing.

3. Subparagraph 252.204–7000(b) is revised to modify the time period that requests for approval must be submitted to the contracting officer from 45 days to 10 business days. It also clarifies that the paragraph refers to the exception provided at subparagraph (a)(1).

*B. Analysis of Public Comments*

1. Clarification of Certification Process

*Comment:* Two respondents stated that the negotiation and determination of whether fundamental research is being performed should occur at the proposal stage whenever universities will be performing research services.

*Response:* Consistent with the text added at 252.204–7000(a)(3), fundamental research projects should be scoped and negotiated during the proposal stage and the written determination of fundamental research should be prepared prior to the research performer commencing work on the project.

*Comment:* Two respondents requested that definitions be provided for the following terms: ''prime contractor,'' ''research performer,'' and ''contracting component.'' An additional respondent requested that DoD define the terms ''project'' and ''certified.''

*Response:* The term ''contracting component'' was used in the proposed rule but was changed to ''contracting activity,'' which is defined in the FAR and supplemented within the DFARS. The meanings of the other terms in this rule do not vary from their usage in the commercial marketplace; therefore, explicit definitions will not be provided.

*Comment:* One respondent stated that the proposed rule does not allow for all circumstances in which contractors may be required to release unclassified information, e.g., compelled discovery during litigation. The respondent recommended that paragraph 252.204–7000(a)(1) of the DFARS text remain unchanged to allow the contracting officer to approve requests for disclosure in instances not outlined in the proposed rule.

*Response:* DoD has revised the final rule to keep the current text at DFARS 252.204–7000(a)(1) intact.

*Comment:* Two respondents expressed concern with the requirement that the contractor submit its request for approval at least 45 days before the proposed date for release of unclassified information. One respondent stated that there is no requirement in the NISPOM requiring the contractor to submit a request for information release to the contracting officer at least 45 days before the proposed date of the release. The respondent requested that DoD ensure that the requirements in the rule do not impact existing documents in an unintended way. Another respondent stated that when proposals are being prepared for new efforts, there is often insufficient time to provide a 45-day advance notice.

*Response:* The National Industrial Security Program Operating Manual (NISPOM) provides baseline standards for the protection of classified information in connection with classified contracts. The scope of DFARS 252.204–7000 is limited to the release of unclassified information; therefore, the requirements of this rule and NISPOM are mutually exclusive. However, due to advances in communication technology, since the clause was first added to the DFARS, DoD has revised the final rule to reduce the requirement to 10 business days, to alleviate burden on contractors.

*Comment:* One respondent stated that a presumption should exist that all funded research projects are fundamental research and that the information may be published without prior restriction unless an affirmative determination has been made by DoD that it is not fundamental research.

*Response:* The fundamental research presumption may be appropriate in instances when the research is funded through use of grants. However, the research performed in support of DoD contracts often falls in the categories of applied or advanced research and has the possibility of producing the seed for

future defense technologies and therefore needs restrictions in place.

*Comment:* Several respondents stated that the prime contractor should not be involved in the determination and/or certification that a project is fundamental research. Some stated that the determination should be limited to the research performer and the contracting component. Others stated that the prime contractor should be required to submit any subcontractor's request for fundamental research certification to the contracting officer.

*Response:* There was no certification requirement in the proposed rule. The final rule allows for the contracting activity to coordinate with both the prime contractor and the research performer when making a fundamental research determination. It is not appropriate for subcontractors to circumvent the prime contractor, because there is no privity of contract between the Government and the subcontractor.

2. National Security Decision Directive 189 (NSDD 189)

*Comment:* One respondent stated that the rule contradicts with NSDD 189, which requires that agencies determine classification requirements prior to award, while the proposed rule allows the determination to be made after award.

*Response:* The purpose of DFARS 252.204–7000 is to provide direction to contractors regarding when it is permissible for them to release unclassified information relating to DoD contracts. Instructions to the contracting activity concerning when classification determinations should be made fall under the National Industrial Security Program (NISP), which is outside of the scope of the clause and this rule.

3. Clarify/Expand Release Categories

*Comment:* One respondent stated that further clarification was needed to expressly permit release of unclassified information without the contracting officer's approval for reporting obligations included elsewhere in the contract and/or required by applicable law.

*Response:* DoD has revised the proposed rule to revert to the current DFARS text at 252.204–7000(a)(1) which contemplates all circumstances in which contractors may be required to release unclassified information. However, the contracting officer must be involved in the decision to release information pertaining to DoD contracts because of the potential security risks.

*Comment:* One respondent stated that the proposed rule should provide guidance on whether the restriction of unclassified information ''to anyone outside the contractor's organization'' applies to outsourced IT.

*Response:* Contractors should have controls in place that prevent the release of information by their subcontractors or outsourced IT through either flow-down of the clause at DFARS 252.204–7000 or obtaining nondisclosure agreements.

4. DoD Contact

*Comment:* One respondent stated that a post-contract DoD-wide point of contact should be contained in the rule to account for instances when the need for the release of information occurs after contract completion and the contracting officer is not reachable.

*Response:* The scope of DFARS 252.204–7000 is limited to the permissibility of the release of unclassified information relating to DoD contracts. In circumstances where the contracting officer cannot be reached, the applicable contracting activity should be contacted.

5. Prescription

*Comment:* One respondent stated that the proposed rule should make clear that it is not authorized for use in university-based Budget Activity 1 or 2 contracts, absent exceptional circumstances justifying extremely rare exceptions made only with the approval of high-level component management. Another respondent stated that the proposed clause should not be adopted without emphasizing the inapplicability of the rule to contracts for fundamental research.

*Response:* The prescription requires that the clause be used when the contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public. The contracting officer has the discretion to not include the clause in any solicitation or contract when a judgment has been reached that the information may be freely released to the public.

6. Grants/Cooperative Agreements

*Comment:* One respondent stated that the proposed rule does not give any indication of its applicability to grants and/or cooperative agreements.

*Response:* The DFARS applies to purchases and contracts by DoD contracting activities. The Department of Defense Grant and Agreement Regulatory System (DODGARS) is the system of regulatory policies and procedures for the award and administration of grants and cooperative agreements.

7. Scope of Fundamental Research Exemption

*Comment:* One respondent stated that the scope of the fundamental research exemption is not clear since it is not explicit in the DoD information definition.

*Response:* According to the NSDD 189, ''fundamental research'' means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.'' The exemption will apply when the nature of the research has been determined to meet this definition.

8. Flowdown

*Comment:* One respondent stated that the proposed rule contradicts USD(AT&L) memorandum dated May 24, 2010, stating that ''Provisions shall be made to accommodate such subcontracts for fundamental research and to ensure DoD restrictions on the prime contract do not flow down to the performer(s) of such research,'' by requiring the contractor to include a similar requirement in each subcontract. The respondent recommended that the paragraph be revised to state that the similar requirement is not required in subcontracts if any of the exemptions apply.

*Response:* In circumstances where a project is determined to be fundamental research in accordance with the final rule, the prime contractor will not be restricted on the release of information resulting from or arising during that project. Therefore, the determination will flow down to subcontractors for portions of the work determined to be fundamental research.

*Comment:* One respondent stated that significant outreach is needed to DoD firms to ensure they understand what constitutes fundamental research and that specific contracting terms are available that should be used in those instances.

*Response:* This rule aims to clarify issues surrounding restrictions currently being placed on the release of unclassified information arising from fundamental research projects. Developing a formal outreach program is outside of the scope of this rule, however the publication of this final rule serves as outreach for rulemaking action.

*C. Other Changes*

1. Subparagraph 252.204–7000(b)(1) of the proposed rule, which provided exceptions for information required as part of an official Defense Contract Audit Agency audit or DoD Inspector General investigation, or by a Congressional or Federal subpoena, is removed, because the clause did not previously protect the information from release under these circumstances.

2. Subparagraph 252.204–7000(b)(3) of the proposed rule is revised to delete ''except as otherwise provided by applicable Federal statutes regulations, or Executive orders.'' Subparagraph 252.204–7000(d) of the proposed rule is revised to clarify that the paragraph requiring the flowdown of the contract clause should also be included in any subcontracts, in order to provide flowdown to lower tier subcontracts.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

This final rule implements guidance provided by the Undersecretary of Defense for Acquisition, Technology and Logistics (AT&L) in a memorandum dated May 24, 2010, by providing a fundamental research exception to the general rule against disclosure of unclassified information. The subject matter of this final rule was previously included in proposed rule 2011–D039, which was published in the **Federal Register** on June 29, 2011 (76 FR 38089); however, the text was deemed more appropriate for a stand-alone case because this subject matter deals with the release of information and not the safeguarding of information. An initial regulatory flexibility analysis was prepared, and no public comments were received. Also, DoD received no comments by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

This final rule applies to all Federal contractors, regardless of size or business ownership, when responding to solicitations or being awarded contracts that include requirements that meet the definition of fundamental research as contained within NSDD 189. The final rule is not expected to have a significant impact on small entities, because the rule aims to implement policy guidance that is already being followed within DoD regarding restrictions on the disclosure of fundamental research.

The rule does not contain any reporting or recordkeeping requirements and does not require contractors to expend significant cost or effort. There are no known significant alternatives to the rule that would further minimize any economic impact of the rule on small entities.

**V. Paperwork Reduction Act**

The rule does not add any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 252**

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 252 is amended as follows:

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 252 continue to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR Chapter 1.

■ 2. Revise section 252.204–7000 to read as follows:

**252.204–7000 Disclosure of information.**

As prescribed in 204.404–70(a), use the following clause:

DISCLOSURE OF INFORMATION (AUG 2013)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Contracting Officer has given prior written approval;

(2) The information is otherwise in the public domain before the date of release; or

(3) The information results from or arises during the performance of a project that has been scoped and negotiated by the contracting activity with the Contractor and research performer and determined in writing by the Contracting Officer to be fundamental research in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the USD (AT&L) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008, (available at DFARS PGI 204.4).

(b) Requests for approval under paragraph (a)(1) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 10 business days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement, including this paragraph (c), in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

[FR Doc. 2013–18960 Filed 8–7–13; 8:45 am]

BILLING CODE 5001–06–P

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Part 252

**RIN 0750–AI00**

## Defense Federal Acquisition Regulation Supplement: Least Developed Countries That Are Designated Countries (DFARS Case 2013–D019)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a revision by the United States Trade Representative (USTR) to the list of least developed countries that are designated countries under the Trade Agreements Act of 1979.

**DATES:** *Effective:* August 8, 2013.

**FOR FURTHER INFORMATION CONTACT:** Amy G. Williams, telephone 571–372–6106.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

19 U.S.C. 2511(b)(4) allows the President to designate least developed countries as eligible countries under the Trade Agreements Act of 1979, allowing non-discriminatory treatment of the products of such countries in acquisitions subject to the World Trade Organization Government Procurement Agreement. This statutory authority has been delegated to the United States Trade Representative (USTR). The USTR selects the countries for such designation from the United Nations (UN) Least Developed Countries List. The USTR consults with other Government agencies on trade policy matters through the Trade Policy Review Group and the Trade Policy Staff Committee. These changes are necessary to reflect the UN General Assembly's current list of least developed countries. Based on changes to the UN Least Developed Countries List and the approval of the Trade Policy Staff Committee, the USTR has revised the list of least developed countries that are designated as eligible countries as follows:

- Changed the name of East Timor to Timor-Leste, reflecting the changed name on the UN list.
- Removed the Maldives, which is no longer a least developed country.
- Added South Sudan, which seceded from Sudan to form an independent state on July 9, 2011, and was formally recognized as a least developed country by the UN in December 2012. Although the United States continues to impose sanctions against Sudan, South Sudan is not subject to sanctions.

This final rule revises the definitions of ''designated country'' in various DFARS clauses (DFARS 252.225–7017, Photovoltaic Devices; DFARS 252.225–7021, Trade Agreements; and DFARS 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements).

**II. Publication of This Final Rule for Public Comment Is Not Required by Statute**

''Publication of proposed regulations,'' 41 U.S.C. 1707, is the statute that applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only revises the list of least developed countries that the USTR has designated as eligible for non-discriminatory treatment under the Trade Agreements Act. Addition of South Sudan and removal of Maldives will have no significant effect beyond the internal operating procedures of the Government or a significant cost or administrative impact on contractors or offerors.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, it was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 does not require publication for public comment.

**V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 252**

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 252 is amended as follows:

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continue to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**252.225–7017 [Amended]**

■ 2. Amend section 252.225–7017 by—

■ a. Removing the clause date ''(DEC 2012)'' and adding ''(AUG 2013)'' in its place; and

■ b. In paragraph (a), in the definition of ''Designated country'' in paragraph (iii), removing the countries of ''East Timor'' and ''Maldives'' and adding, in alphabetical order, the countries of ''South Sudan'' and ''Timor-Leste''.

**252.225–7021 [Amended]**

■ 3. Amend section 252.225–7021 by—

■ a. Removing the clause date ''(DEC 2012)'' and adding ''(AUG 2013)'' in its place; and

■ b. In paragraph (a), in the definition of ''Designated country'' in paragraph (iii), removing the countries of ''East Timor'' and ''Maldives'' and adding, in alphabetical order, the countries of ''South Sudan'' and ''Timor-Leste''.

**252.225–7045 [Amended]**

■ 4. Amend section 252.225–7045 by—

■ a. Removing the clause date ''(NOV 2012)'' and adding ''(AUG 2013)'' in its place; and

■ b. In paragraph (a), in the definition of ''Designated country'' in paragraph (3), removing the countries of ''East Timor'' and ''Maldives'' and adding, in alphabetical order, the countries of ''South Sudan'' and ''Timor-Leste''.

[FR Doc. 2013–18968 Filed 8–7–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 95

**[Docket No. DOT–OST–2013–0015]**

**RIN 2105–AE22**

### Advisory Committees (RRR)

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule removes DOT's advisory committee regulations. The DOT is removing the regulations because they have been made obsolete by other laws, regulations, and agency procedures.

**DATES:** This rule is effective August 8, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jill Laptosky, Attorney–Advisor, Office of General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590. She may also be reached by telephone at 202–493–0308 or by email at *jill.laptosky@dot.gov.*

**SUPPLEMENTARY INFORMATION:** On January 12, 1968, the Department published a final rule to provide uniform regulations at 49 CFR part 95, relating to the formation and use of advisory committees. *See* 33 FR 466. Among its major provisions, part 95 set forth regulations governing the use of advisory committees, industry advisory committees, committee meetings, and conflicts of interest. This rule was published pursuant to Executive Order 11007, dated February 26, 1962, which prescribed general rules for the formation and use of advisory committees by departments and agencies of the Government, and authorized Department heads to prescribe additional regulations consistent with the order. Part 95 was amended 4 months after its issuance to allow the Secretary of Transportation, or his or her designee, to waive the requirements relating to the chairmanship of industry committees under certain circumstances.[1]

Since the issuance of part 95, the universe surrounding advisory committees has changed in several notable ways. Executive Order 11007 has been superseded.[2] Congress passed the Federal Advisory Committee Act of 1972 (FACA) (Pub. L. 92–463; 5 U.S.C. App. 2). The FACA formalizes a process for the establishment, operation, oversight, and termination of Federal advisory committees. To further transparency in Government, Congress passed the Government in the Sunshine Act of 1976.[3] The Act applies to Federal advisory committees[4] and specifies situations when Federal agencies can close Federal advisory committee meetings to the public.[5] Additionally, DOT issued a departmental order that sets forth internal policies and procedures relating to committee management.[6] Subsequently, Executive Order 12024 delegated to the Administrator of the General Services Administration (GSA) all of the functions vested in the President by FACA.[7] The GSA has issued regulations relating to Federal advisory committees, which were most recently amended in 2001.[8]

Notwithstanding these changes, our departmental regulations governing advisory committees have substantively remained unchanged since their early amendment in 1968.[9] As a result, these regulations are now obsolete, unnecessary, duplicative, or inconsistent with FACA's progeny. We are removing part 95 because the current body of law (e.g., FACA, GSA regulations, DOT Order 1120.3B) governing the use and management of Federal advisory committees are sufficient. Revising part 95 would only result in unnecessary duplication that would simply reiterate the provisions found in other law.

Under the Administrative Procedure Act, an agency may waive the normal notice and comment procedures if the action is a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(3)(A). Since part 95 contains obsolete departmental procedures relating to advisory committees, notice and comment is not necessary. For the same reason, the rule can become effective immediately. *See* 5 U.S.C. 553(d)(1).

[1] 33 FR 6913 (May 8, 1968) (amending 49 CFR 95.11 to provide authority for the Secretary of Transportation or his or her designee to waive the requirements of § 95.11(b) relating to the chairmanship of industry advisory committees whenever compliance with those requirements would interfere with the proper functioning of the committee or would be impracticable, adequate provisions are made to otherwise ensure Government control of the committee's operation, the waiver would be in the public interest, and the meetings of the committee would be conducted in the presence of a full-time salaried officer or employee of the Government).

[2] *See* Exec. Order No. 11,769 (1974); Exec. Order No. 11,686 (1972); Exec. Order No. 11,671 (1972).

[3] 5 U.S.C. 552b.

[4] 5 U.S.C. 552b(a).

[5] 5 U.S.C. 552b(c).

[6] DOT Order 1120.3B (Sept. 23, 1993).

[7] Exec. Order No. 12,024 (Dec. 1, 1977). The Reorganization Plan of 1977 transferred advisory committee functions from OMB to GSA.

[8] 66 FR 37728 (July 19, 2001) (amending GSA's Federal advisory committee regulations at 41 CFR parts 101–6 and 102–3).

[9] Part 95 was updated twice after 1968. *See* 35 FR 5331 (March 31, 1970) (adding the Urban Mass Transportation Administration (UMTA) and National Highway Safety Board (NHSB); 36 FR 431 (January 13, 1971) (updating part 95 to reflect the abolishment of NHSB and the establishment of the National Highway Traffic Safety Administration). However, part 95 has not since been updated to replace UMTA with the Federal Transit Administration and Federal Motor Carrier Safety Administration. In addition, part 95 has also not been updated to show that the U.S. Coast Guard is no longer housed in DOT or to add the Maritime Administration, Pipeline and Hazardous Materials Safety Administration, and Research and Innovative Technology Administration.

## Regulatory Analyses and Notices

### *Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures*

The DOT has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of DOT's regulatory policies and procedures. Since this rulemaking removes obsolete regulations relating to departmental procedure and practice, the DOT anticipates that this rulemaking will have no economic impact.

Additionally, this action fulfills the principles of Executive Order 13563, specifically those relating to retrospective analyses of existing rules. This rule is being issued as a result of the reviews of existing regulations that DOT periodically conducts. The DOT is streamlining its regulations by removing a rule that is outmoded and ineffective.

### *Regulatory Flexibility Act*

Since notice and comment rulemaking is not necessary for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply. However, DOT has evaluated the effects of this action on small entities and has determined that the action would not have a significant economic impact on a substantial number of small entities because it has no substantive impact on any entities.

### *Unfunded Mandates Reform Act of 1995*

This final rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995) as it will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $148.1 million or more in any 1 year (2 U.S.C. 1532).

### *Executive Order 13132 (Federalism Assessment)*

Executive Order 13132 requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4,

1999, and the DOT has determined that this action would not have a substantial direct effect or federalism implications on the States and would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions. Therefore, consultation with the States is not necessary.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The DOT has analyzed this final rule under the PRA and has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

*National Environmental Policy Act*

The DOT has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the quality of the environment.

*Executive Order 13175 (Tribal Consultation)*

The DOT has analyzed this action under Executive Order 13175 and believes that the action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

*Executive Order 13211 (Energy Effects)*

The DOT has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The DOT has determined that this is not a significant energy action under that order since 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. Therefore, a Statement of Energy Effects is not required.

**List of Subjects in 49 CFR Part 95**

Advisory committees.

Issued on: July 25, 2013.

**Anthony R. Foxx,**

*Secretary.*

For the reasons stated in the preamble and under the authority of 49 U.S.C. 322, the Office of the Secretary amends 49 CFR by removing and reserving part 95.

## PART 95—[REMOVED AND RESERVED]

[FR Doc. 2013–19087 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–9X–P

# Proposed Rules

Federal Register
Vol. 78, No. 153
Thursday, August 8, 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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 890

**RIN 3206–AM85**

### Federal Employees Health Benefits Program: Members of Congress and Congressional Staff

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing a proposed rule to amend the Federal Employees Health Benefits (FEHB) Program regulations regarding coverage for Members of Congress and congressional staff.

**DATES:** OPM must receive comments on or before September 9, 2013.

**ADDRESSES:** Send written comments to Chelsea Ruediger, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 2H28, 1900 E Street NW., Washington, DC 20415. You may also submit comments using the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Chelsea Ruediger at (202) 606–0004.

**SUPPLEMENTARY INFORMATION:** This proposed rule is intended to amend FEHB Program eligibility regulations to comply with section 1312 of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152 (the Affordable Care Act or the Act). Subparagraph 1312(d)(3)(D) of the Affordable Care Act states that, ''Notwithstanding any other provision of law . . . the only health plans that the Federal Government may make available to Members of Congress and congressional staff with respect to their service as a Member of Congress or congressional staff shall be health plans that are—(I) created under this Act (or an amendment made by this Act); or (II) offered through an Exchange established under this Act (or an amendment made by this Act).'' The Act defines ''Member of Congress'' as any member of the House of Representatives or the Senate and ''congressional staff'' as all full-time and part-time employees employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.

Currently, Members of Congress (including Delegates to the House of Representatives and the Resident Commissioner from Puerto Rico) and congressional employees (which include each Member's respective personal staffs, staffs of House and Senate leadership committees, other committee staff and administrative office staff) meet the definition of employee in 5 U.S.C. 8901 of title 5 and are, therefore, eligible to enroll in the FEHB Program.

While the Affordable Care Act does not amend 5 U.S.C. 8901, the effect of the ''notwithstanding'' clause of section 1312 is to limit the ability of Members of Congress and congressional staff to purchase health benefits plans for which OPM may contract under chapter 89. Section 1312 specifies that ''the only health plans that the Federal Government may make available'' are those that are either ''created under'' the ACA, or ''offered through an Exchange established under'' the Act. The health benefits plans for which OPM can contract under chapter 89 are not ''created under'' the ACA, nor are they offered through the Exchanges. Therefore, Members of Congress and congressional staff who are employed by the official office of a Member of Congress may no longer purchase the health benefits plans for which OPM contracts under chapter 89. As part of their service, they are limited to purchasing plans from Exchanges. This proposed rule implements this mandate.

#### Effective Date of Termination of Coverage

Though the Affordable Care Act does not provide a specific effective date for Subparagraph 1312(d)(3)(D), OPM has concluded that the most reasonable reading of the statute is that enrollment in FEHB contracted plans under chapter 89 of title 5 will no longer be available to Members of Congress and congressional staff who are employed by the official office of a Member of Congress as of January 1, 2014, the date under the Act that Exchanges (also called Health Insurance Marketplaces) established under the Affordable Care Act will be available for providing health insurance coverage.

Accordingly, we are proposing that FEHB health plan enrollment for Members of Congress and congressional staff employed by the official office of a Member of Congress terminate (with a 31-day extension of coverage and opportunity for conversion) on the first day of the last pay period in which they are eligible for FEHB. FEHB coverage will continue through the end of the pay period in which enrollment is terminated. Therefore, the termination of coverage will be effective at midnight on December 31, 2013.

#### Members of Congress and Congressional Staff

The proposed rule defines a ''Member of Congress'' as a member of the Senate or of the House of Representatives, a Delegate to the House of Representatives (which includes delegates from the District of Columbia and the territories), and the Resident Commissioner of Puerto Rico. Under the Affordable Care Act, territories are not required to establish an Exchange but may elect to do so. We seek comment on the health plans made available to Members of Congress who represent territories that do not establish Exchanges.

The proposed rule utilizes the statutory definition for congressional staff. Because there is no existing statutory or regulatory definition of ''official office,'' the proposed rule delegates to the employing office of the Member of Congress the determination as to whether an employed individual meets the statutory definition. OPM seeks comment on this proposal.

Based on research related to the administration of congressional staffing, including communication with the respective House and Senate administrative and disbursement offices, OPM has determined that Members' offices are best equipped to make the determination as to whether an individual is employed by the ''official office'' of that Member. OPM's understanding is that congressional staff often have allocated to them a percentage of work as personal staff and a percentage of work as committee or leadership committee staff. It also is

common for the percentage to change during the year. Moreover, staff are often unaware of these percentages or budgetary source of their compensation. OPM believes that allowing the employing office to make the determination as to whether particular individuals are employed by the ''official office'' is most appropriate, and will allow such determinations to be made by the office of the Member of Congress, which is their employer. As part of their responsibility to make this determination, the employing offices shall be the final authority with respect to the determination for each individual. Under these proposed regulations, OPM will not review or overturn these determinations. OPM seeks comment on this proposed approach.

The proposed rule provides that a designation as a congressional staff member who is employed by the official office of a Member of Congress will be an annual designation made prior to October of each year for the following year based on expected work. The designation must be made prior to October of the year before the coverage year to allow the individual to participate in either the appropriate Exchange open season in October or the FEHB Program open season in November for the following year.

The proposed rule also states that the designation will be effective for the entire FEHB Program plan year during which the staff member works for that Member of Congress. OPM believes that it would be unduly disruptive for an individual to move back and forth from Exchange coverage to FEHB Program coverage mid-year. In addition, due to the complexity of congressional staffing assignments, OPM's understanding is that payroll changes may be made without the congressional staff member being aware of these changes. Therefore, OPM has proposed that individuals maintain their designations for an entire year so long as they continue to be employed by the same Member of Congress. OPM seeks comment on the feasibility of this method.

**Clarification of Meaning of ''Health Benefit Plan Under This Chapter'' As Used in 5 U.S.C. 8905(b) and 5 U.S.C. 8906**

As noted above, the ACA circumscribes the ability of the Federal Government to offer health insurance to Members of Congress and certain congressional staff in connection with their service to only those plans offered on Exchanges. The ACA did not, however, alter the definition of ''employee'' as used in 5 U.S.C. 8901(1)(B) & (C) or the definition of ''health benefits plan'' under 5 U.S.C. 8901(6). Although, pursuant to its authority under chapter 89 of title 5, OPM will have no role in ''contracting for'' or ''approving'' health benefit plans that are offered through the Exchanges, there is no doubt that such plans fit within the definition of ''health benefit plan'' under 8901(6). This proposed regulation imposes no new requirements on qualified health plans or Exchanges.

Prior to the passage of the ACA, there was no need for OPM to clarify that the term ''health benefits plan under this chapter'' as used in section 8905(b) and 8906 included plans other than those health benefits plans for which OPM contracted or which OPM approved, pursuant to its authority under 5 U.S.C. 8902, 8903 and 8903a. Because there are now employees covered by chapter 89 who will be purchasing health benefits plans on Exchanges, we believe that it is appropriate to clarify that the provisions that authorize an employer contribution for ''health benefits plans under this chapter,'' and authorize the continuation of such coverage into retirement, includes all health benefits plans fitting within the definition set forth in 8901(6). The revisions adopted here have no impact on the availability to Members of Congress and Congressional Staff Members of the contribution established in 5 U.S.C. 8906. Health benefit plans, as defined at 5 U.S.C. 8901(6), will encompass health benefit plans offered through an Exchange.

The revisions adopted here also will have no impact on the ability of Members of Congress and congressional staff who are employed by the official office of a Member of Congress to continue being enrolled in their existing health benefit plans when they become annuitants. Pursuant to 5 U.S.C. 8905(b), an annuitant who at the time he/she becomes an annuitant was enrolled in a health benefit plan under chapter 89 (which, by definition, would include a health benefit plan offered through an Exchange) may continue his/her enrollment in the health benefit plan offered through the Exchange under the conditions of eligibility prescribed by OPM in this part.

In order to establish that the contributions and withholdings will be appropriately accounted for pursuant to section 8909 of title 5, we have added new paragraph (h) to § 890.501. The two enrollment categories used by FEHB, self or self and family, are not generally applicable in an Exchange. In an Exchange, a family's premium will generally be based on the actual composition of the family (for example, one adult, two adults, one adult and two children, etc.). A state may also choose to establish family tiers that may differ from the two enrollment categories used by FEHB. Therefore, subparagraph (h)(1) reflects that OPM will apply the self and family contribution level to any Exchange enrollment category other than one adult/individual. Subparagraph (h)(2) clarifies the accounting issue with respect to payments for health benefits plans under Exchanges.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only involves the issue of where Members of Congress and certain congressional staff may purchase their health insurance, and does not otherwise alter the FEHB program.

**Executive Order 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

**Federalism**

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

**List of Subjects in 5 CFR Part 890**

Administration and general provisions; Health benefits plans; Enrollment, Temporary extension of coverage and conversion; Contributions and withholdings; Transfers from retired FEHB Program; Benefits in medically underserved areas; Benefits for former spouses; Limit on inpatient hospital charges, physician charges, and FEHB benefit payments; Administrative sanctions imposed against health care providers; Temporary continuation of coverage; Benefits for United States hostages in Iraq and Kuwait and United States hostages captured in Lebanon; Department of Defense Federal Employees Health Benefits Program demonstration project; Administrative practice and procedure, Employee benefit plans, Government employees,

Reporting and recordkeeping requirements, Retirement.

**Elaine Kaplan,**

*Acting Director. U.S. Office of Personnel Management.*

Accordingly, OPM is proposing to amend title 5, Code of Federal Regulations as follows:

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 is revised to read as follows:

**Authority:** 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061; Public Law 111–148, as amended by Public Law 111–152.

■ 2. Amend § 89 0.101 adding definitions for ''congressional staff member'' and ''Member of Congress'' to paragraph (a) to read as follows:

### § 890.101 Definitions; time computations.

(a) * * *

*Congressional staff member* means an individual who is a full-time or part-time employee employed by the official office of a Member of Congress, whether in Washington, DC or outside of Washington, DC.

* * * * *

*Member of Congress* means a member of the Senate or of the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner of Puerto Rico.

* * * * *

■ 3. Amend § 890.102 by adding paragraphs (c)(9) and (10) and revising paragraph (e) to read as follows:

### § 890.102 Coverage.

* * * * *

(c) * * *

(9) The following employees are not eligible to purchase a health benefit plan for which OPM contracts or which OPM approves under this subsection, but may purchase health benefit plans, as defined in 5 U.S.C. 8901(6), that are offered by an Exchange, pursuant to § 1312(d)(3)(D) of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152 (the Affordable Care Act or the Act):

(i) A Member of Congress.

(ii) A congressional staff member, if the individual works for a Member of Congress and is determined by the employing office of the Member of Congress to meet the definition of congressional staff member in § 890.101 of this part effective January 1, 2014, or in any subsequent calendar year. Designation as a congressional staff member shall be an annual designation made prior to October of each year for the following year. The designation shall be made for the duration of the year during which the staff member works for that Member of Congress beginning with the January 1st following the designation and continuing to December 31st of that year.

* * * * *

(e) With the exception of those employees or groups of employees listed in paragraph (e)(1) of this section, the Office of Personnel Management makes the final determination of the applicability of this section to specific employees or groups of employees.

(1) Employees identified in paragraph (c)(9)(i) and (ii) of this section.

(2) [Reserved]

* * * * *

■ Amend § 890.201 by adding paragraph (d) to read as follows:

### § 890.201 Minimum standards for health benefits.

* * * * *

(d) Nothing in this part shall limit or prevent a health insurance plan purchased through an Exchange, pursuant to section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152 (the Affordable Care Act or the Act), by an employee otherwise covered by 5 U.S.C. 8901(1)(B) and (C) from being considered a ''health benefit plan under this chapter'' for purposes of 5 U.S.C. 8905(b) and 5 U.S.C. 8906.

■ 4. Amend § 890.303 by revising paragraph (b) to read as follows:

### § 890.303 Continuation of enrollment.

* * * * *

(b) *Change of enrolled employees to certain excluded positions.* Employees and annuitants enrolled under this part who move, without a break in service or after a separation of 3 days or less, to an employment in which they are excluded by § 890.102(c), continue to be enrolled unless excluded by § 890.102(c)(4), (5), (6), (7), or (9).

* * * * *

■ 5. Amend § 890.304 by revising paragraph (a)(1)(iii) to read as follows.

### § 890.304 Termination of enrollment.

(a) * * *

(1) * * *

(iii) The last day of the pay period in which his employment status or the eligibility of his position changes so that he is excluded from enrollment.

* * * * *

■ 6. Amend § 890.501 by adding paragraph (h) to read as follows:

### § 890.501 Government contributions.

* * * * *

(h)(1) The Government contribution for an employee who enrolls in a health benefit plan offered through an Exchange, pursuant to section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152 (the Affordable Care Act or the Act), or an annuitant whose enrollment in a health benefit plan offered through such an Exchange continues, pursuant to 5 U.S.C. 8905(b), shall be calculated in the same manner as for other employees and annuitants.

(2) Government contributions and employee withholdings for employees who enroll in a health benefit plan offered through an Exchange, pursuant to section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act, Public Law 111–152 (the Affordable Care Act or the Act), or annuitants whose enrollment in a health benefit plan offered through such an Exchange continues, pursuant to 5 U.S.C. 8905(b), shall be accounted for pursuant to 5 U.S.C. 8909 and such monies shall only be available for payment of premiums, and costs in accordance with 5 U.S.C. 8909(a)(2).

[FR Doc. 2013–19222 Filed 8–7–13; 8:45 am]

BILLING CODE 6325–63–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2009–0811; Directorate Identifier 2008–NE–41–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce Corporation Turbofan Engines

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

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

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD)

that applies to certain Rolls-Royce Corporation (RRC) AE 3007A series turbofan engines. The existing AD currently requires removing certain high-pressure turbine (HPT) stage 2 wheels, or performing inspections on them, and reduces their approved life limits. This proposed AD would clarify the AE 3007A turbofan engine model applicability, would further reduce the approved life limits of affected HPT stage 2 wheels, and would eliminate the inspections required by the existing AD. We are proposing this AD to prevent uncontained failure of the HPT stage 2 wheel, damage to the engine, and damage to the airplane.

**DATES:** We must receive comments on this proposed AD by October 7, 2013.

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

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

For service information identified in this proposed AD, contact Rolls-Royce Corporation, 450 South Meridian Street, Mail Code NB–01–06, Indianapolis, IN 46225, phone: 317–230–1667; email: *CMSEindyOSD@rolls-royce.com;* Internet: *www.rolls-royce.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

## Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–7836; fax: 847–294–7834; email: *kyri.zaroyiannis@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0811; Directorate Identifier 2008–NE–41–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

## Discussion

On September 1, 2010, we issued AD 2010–19–01, Amendment 39–16429 (75 FR 57660, September 22, 2010), for RRC AE 3007A series turbofan engines with an HPT stage 2 wheel, part number (P/N) 23069438, 23069592, 23074462, 23074644, 23075345, or 23084520, installed. AD 2010–19–01 requires removing certain HPT stage 2 wheels, or performing repetitive eddy current inspections (ECIs) or surface wave ultrasonic test (SWUT) inspections on them for cracks. AD 2010–19–01 also reduces the approved life limits of certain HPT stage 2 wheels. AD 2010–19–01 resulted from reports of cracked HPT stage 2 wheels. We issued AD 2010–19–01 to prevent uncontained failure of the HPT stage 2 wheel, damage to the engine, and damage to the airplane.

## Actions Since Existing AD Was Issued

Since we issued AD 2010–19–01 (75 FR 57660, September 22, 2010), RRC did additional analysis and concluded that lower life limits for the affected HPT stage 2 wheels are necessary. RRC based their results on inspection data collected under AD 2010–19–01. In addition, we determined that it is appropriate to establish the new lower life limit to remove the parts from service, and to eliminate the inspection requirements that were needed to provide additional data in support of the analysis for the reduced life limits. We also changed the applicability from RRC AE 3007A series turbofan engines to AE 3007A, A1, A1/1, A1/2, A1/3, A1P, A1E, and A3 turbofan engines, for added clarity. The AE 3007A2 turbofan engine is not included in the applicability because affected HPT stage 2 wheels are not installed on that engine.

## Relevant Service Information

We reviewed RRC Alert Service Bulletin (ASB) No. AE 3007A–A–72–414, Revision 1, dated December 5, 2012. The ASB lists the lower approved life limits of the affected HPT stage 2 wheels.

## FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in RRC AE 3007A, A1, A1/1, A1/2, A1/3, A1P, A1E, and A3 turbofan engines with affected HPT stage 2 wheels, installed.

## Proposed AD Requirements

This proposed AD would clarify the AE 3007A turbofan engine model applicability from stating AE 3007A series turbofan engines, to stating AE 3007A, A1, A1/1, A1/2, A1/3, A1P, A1E, and A3 turbofan engines. This proposed AD would also further reduce the approved life limits of affected HPT stage 2 wheels, and would eliminate the initial and repetitive ECIs and SWUT inspections on HPT stage 2 wheels for cracks as required by the existing AD 2010–19–01 (75 FR 57660, September 22, 2010).

## Costs of Compliance

We estimate that this proposed AD would affect 18 engines installed on airplanes of U.S. registry. We also estimate that a replacement HPT stage 2 wheel would cost about $145,524, and that it would be replaced during engine shop visit at no additional labor cost. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $2,619,432.

## Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska 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.

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–19–01, Amendment 39–16429 (75 FR 57660, September 22, 2010), and adding the following new AD:

**Roll-Royce Corporation (Formerly Allison Engine Company):** Docket No. FAA–2009–0811; Directorate Identifier 2008–NE–41–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by October 7, 2013.

**(b) Affected ADs**

This AD supersedes AD 2010–19–01, Amendment 39–16429 (75 FR 57660, September 22, 2010).

**(c) Applicability**

This AD applies to the following Rolls-Royce Corporation (RRC) AE 3007A, A1, A1/1, A1/2, A1/3, A1P, A1E, and A3 turbofan engines:

(1) With an installed high-pressure turbine (HPT) stage 2 wheel, part number (P/N) 23084520, or

(2) With an installed HPT stage 2 wheel, P/N 23069438, 23069592, 23074462, 23074644, or 23075345, except for the HPT stage 2 wheel serial numbers listed in Table 2 through Table 5 of RRC Alert Service Bulletin (ASB) No. AE 3007A–A–72–414, Revision 1, dated December 5, 2012. Those HPT stage 2 wheels maintain their existing approved life limits.

**(d) Unsafe Condition**

This AD was prompted by stress and lifing analysis resulting in lower approved life limits for certain HPT stage 2 wheels. We are issuing this AD to prevent uncontained failure of the HPT stage 2 wheel, damage to the engine, and damage to the airplane.

**(e) Compliance**

Comply with this AD within the compliance times specified, unless already done.

(1) For HPT stage 2 wheels, P/N 23069438 and P/N 23069592, do the following:

(i) For HPT stage 2 wheels that have 9,500 cycles since new (CSN) or more on the effective date of this AD, remove the HPT stage 2 wheel from service within 15 cycles-in-service (CIS) after the effective date of this AD.

(ii) After the effective date of this AD, do not approve for return to service any engine with an HPT stage 2 wheel, P/N 23069438 or P/N 23069592, that exceeds the new life limit of 9,500 CSN.

(2) For HPT stage 2 wheels, P/N 23074462, do the following:

(i) For AE 3007A1E turbofan engines with HPT stage 2 wheels installed that have 7,500 CSN or more on the effective date of this AD, and for the AE 3007A, A1, A1/1, A1/2, A1/3, A1P, and A3 turbofan engines with HPT stage 2 wheels installed that have 9,500 CSN or more on the effective date of this AD, remove the wheel from service within 15 CIS after the effective date of this AD.

(ii) Thereafter:

(A) Do not approve for return to service any AE 3007A1E turbofan engine with an HPT stage 2 wheel, P/N 23074462, installed, that exceeds the new life limit of 7,500 CSN; and

(B) Do not approve for return to service any AE 3007A, A1, A1/1, A1/2, A1/3, A1P, and A3 turbofan engines with an HPT stage 2 wheel, P/N 23074462, installed, that exceeds the new life limit of 9,500 CSN.

(C) Throughout the life of the HPT stage 2 wheel, always use the lowest life limit applicable to any engine model in which the part was used in service. If life usage records are not sufficient to identify all engine models in which the part has been flown, the lowest life applicable to any engine model for which the part is eligible must be used.

(3) For HPT stage 2 wheels, P/N 23074644 and P/N 23075345, do the following:

(i) For HPT stage 2 wheels that have 9,500 CSN or more on the effective date of this AD, remove the HPT stage 2 wheel from service within 15 CIS after the effective date of this AD.

(ii) Thereafter, do not approve for return to service any engine with an HPT stage 2 wheel, P/N 23074644 or P/N 23075345, installed, that exceeds the new life limit of 9,500 CSN.

(4) For HPT stage 2 wheels, P/N 23084520, do the following:

(i) For HPT stage 2 wheels that have 23,000 CSN or more on the effective date of this AD, remove the HPT stage 2 wheel from service before the next flight after the effective date of this AD.

(ii) Thereafter, do not approve for return to service any engine with an HPT stage 2 wheel, P/N 23084520, installed, that exceeds the new life limit of 23,000 CSN.

**(f) Alternative Methods of Compliance**

The Manager, Chicago Aircraft Certification Office, may approve alternative methods of compliance for this AD. Use the procedures 14 CFR 39.19 to make your request.

**(g) Related Information**

(1) For more information about this AD, contact Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, Small Airplane Directorate, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–7836; fax: 847–294–7834; email: *kyri.zaroyiannis@faa.gov.*

(2) Refer to RRC ASB No. AE 3007A–A–72–414, Revision 1, dated December 5, 2012, for related information.

(3) For service information identified in this AD, contact Rolls-Royce Corporation, 450 South Meridian Street, Mail Code NB–01–06, Indianapolis, IN 46225, phone: 317–230–1667; email: *CMSEindyOSD@rolls-royce.com;* Internet: *www.rolls-royce.com.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on August 1, 2013.

**Robert J. Ganley,**

*Acting Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2013–19162 Filed 8–7–13; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1908**

**[Docket No. OSHA–2010–0010]**

**RIN 1218–AC32**

## Consultation Agreements: Proposed Changes to Consultation Procedures

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Withdrawal of proposed rule; termination of rulemaking.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) published a Notice of Proposed Rulemaking (NPRM) on September 3, 2010, proposing to amend its regulations for the federally-funded On-site Consultation Program to: Clarify, so it more directly reflects the wording of section 21(d) of the Occupational Safety and Health Act, (OSH Act), the length of the exemption period provided to sites that have had their names removed from OSHA's Programmed Inspection Schedule; and to clarify the high priority enforcement cases when OSHA may initiate a non-programmed inspection at those sites that have achieved recognition and exemption status. The Agency has decided to withdraw the proposed rule.

**DATES:** This withdrawal becomes effective August 8, 2013.

**FOR FURTHER INFORMATION CONTACT:** *For press inquiries:* For press inquiries about this notice contact Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999 or *Meilinger.Francis2@dol.gov.*

*For general and technical information:* Mr. Patrick Showalter, Director, Directorate of Cooperative and State Programs, Office of Small Business Assistance, Room N–3660, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2220 or *Showalter.Patrick@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

OSHA administers and provides federal funding for the On-site Consultation Program, which offers free and confidential safety and health advice to small and medium sized businesses across the country, with priority given to high-hazard worksites. This program assists employers who may lack the resources to employ safety professionals, to comply with the requirements of the OSH Act, and to create safer and healthier workplaces. Trained safety and health professionals, provided either by state agencies or public universities, work with employers to identify workplace hazards, provide advice on compliance, and assist in establishing safety and health management systems. On-site Consultation services are separate from OSHA's enforcement activities and do not result in penalties or citations.

The On-site Consultation Program's Safety and Health Achievement Recognition Program (SHARP) recognizes small employers who operate an exemplary safety and health management system. Employers who successfully complete a comprehensive On-site consultation visit, correct all hazards identified during the visit, and implement an ongoing safety and health program to identify and correct workplace hazards, may be recommended for and may receive SHARP status. Those that have received SHARP status will receive an exemption from OSHA's Programmed Inspection Schedule during a specified period. Acceptance of a worksite into SHARP from OSHA is an achievement that singles out a business as a model for worksite safety and health.

In a NPRM, published on September 3, 2010, OSHA proposed revising its regulations for the On-site Consultation Program in the **Federal Register** (75 FR 54064–54069). The proposed rule included three new provisions. One provision in the proposal dealt with the types of high priority federal enforcement inspections that could interrupt an ongoing consultation visit. Another provision of the proposal dealt with the circumstances under which OSHA may conduct a high priority enforcement visit at a workplace that has either achieved SHARP recognition or is working towards it. The final issue in the proposal was the length of time an employer that has qualified for SHARP may be exempted from OSHA's Programmed Inspection Schedule. Although OSH Act section 21(d) authorizes a one-year exemption, OSHA has for many years exercised its inherent discretion over inspection scheduling to extend this exemption period to two years

OSHA provided a 60-day comment period on the proposed rule. OSHA received 89 comments from various OSHA stakeholders including employers, organizations representing small business and other employers, labor unions and other worker safety advocates.

### II. Reasons for Withdrawal of Proposed Rule

All the changes OSHA had proposed were very minor in nature. However, many stakeholders expressed concern that the proposed changes would reduce an employer's incentive to participate in the On-site Consultation program. Several commentators expressed concerns that these changes would increase OSHA enforcement activities at worksites that have already demonstrated excellence in their safety and health management systems. Other commentators appeared to believe that the Agency was trying to eliminate exemptions entirely or take incentives away. OSHA did not intend any of these results. However, in light of the magnitude of the concerns expressed compared to the relatively minor changes OSHA intended, the Agency has decided to withdraw the proposed rule. All rulemaking participants agree with OSHA that the consultation program and the SHARP recognition program are valuable ways to assist and recognize small employers who are working to improve their workplaces. If the small changes OSHA proposed could have the effect of discouraging participation in the programs, the Agency does not believe it is worth amending the rule.

### III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, directed the preparation of this notice. It is issued pursuant to 7(c), 8, 18, 21(d) and 23(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657, 667, 670 672) and Secretary of Labor's Order No. 1–2012 (77 FR 3912), January 25, 2012; No. 3–2000 (65 FR 50017), No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on July 24, 2013.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2013–19126 Filed 8–7–13; 8:45 am]

**BILLING CODE 4510–26–P**

**DEPARTMENT OF THE INTERIOR**

**Office of Natural Resources Revenue**

**30 CFR Parts 1202, 1205, and 1210**

**[Docket No. ONRR–2011–0013; DS63610300 DR2PS0000.CH7000 134D0102R2]**

**RIN 1012–AA02**

## Reporting and Paying Royalties on Federal Leases

**AGENCY:** Office of Natural Resources Revenue, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Natural Resources Revenue (ONRR) is proposing new regulations to implement section 6(d) of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. The new regulations would prescribe when a Federal lessee must report and pay royalties on the volume of oil and gas it takes from a lease or on the volume to which it is entitled based on its ownership interest in the lease.

**DATES:** Comments must be submitted on or before October 7, 2013.

**ADDRESSES:** You may submit comments to ONRR on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1012–AA02 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- Federal eRulemaking Portal: *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ONRR–2011–0013, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. ONRR will post all comments.
- Mail comments to Armand Southall, Regulatory Specialist, ONRR, P.O. Box 25165, MS 61030A, Denver, Colorado 80225–0165.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

*Information Collection Request (ICR) Comments:* Submit written comments by either fax (202) 395–5806 or email (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for the Department of the Interior [OMB Control Number ICR 1012–0NEW as it relates to this proposed rule, Reporting and Paying Royalties on Federal Leases]. Please also send a copy to ONRR by one of the methods above.

**FOR FURTHER INFORMATION CONTACT:** For comments or questions on procedural issues, contact Armand Southall, Regulatory Specialist, at (303) 231–3221. For questions on technical issues, contact one of the authors: Sarah Inderbitzin at (303) 231–3748, Roman Geissel at (303) 231–3226, or Lydia Barder at (303) 231–3570.

**SUPPLEMENTARY INFORMATION:**

### I. Purpose of the Regulatory Action

a. The proposed rule, known as Takes vs. Entitlements, would make substantive changes to the regulations in order to implement section 6(d) of the Royalty Simplification and Fairness Act (RSFA). Section 6(d), titled ''Volume Allocation of Oil and Gas Production,'' amended section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1721, by adding new paragraphs (k)(1) through (5), 110 Stat. 1713, 1714.

b. This rulemaking would implement FOGRMA paragraphs 111(k)(1) through (4). The new regulations would prescribe when a Federal lessee must report and pay royalties on the volume of oil and gas it takes from a lease or on the volume to which it is entitled based on its ownership interest in the lease.

### II. Summary of Major Provisions of the Regulatory Action in Question

In this proposed rule, we would amend title 30 of the *Code of Federal Regulations* (CFR) part 1202, subparts C and D, relating to the volume of production on which lessees must pay royalties. We also would amend subparts D and J to clarify that lessees should report gas volumes produced from Federal and Indian leases consistent with Bureau of Land Management (BLM) or Bureau of Ocean Energy Management (BOEM) regulations and notices. Because RSFA, including the takes versus entitlements provisions in 30 U.S.C. 1721(k), applies only to Federal leases, the only portions of this rule that apply to Indian leases are those specifically noted in the preamble or the proposed regulations.

This proposed rule also would add a new 30 CFR part 1205. Subpart A would explain the general provisions of the rule, define the leases to which the rule applies, and provide definitions of terms used in the rulemaking. Subpart B would explain the basic reporting and payment requirements for each of the three classes of leases FOGRMA paragraph 111(k)(1) identifies: 100-percent Federal agreements, leases in mixed agreements, and leases not contained in agreements (stand-alone leases), as the following table shows.

| If you are a lessee of a lease or portion of a lease that is . . . | Then you must report and pay royalties based on . . . |
|---|---|
| (1) Not contained in an agreement (stand-alone) | The volume of production you take from the lease or portion of a lease that is not in an agreement. |
| (2) In a 100-percent Federal agreement | The volume of production you take from the lease or portion of the lease in a 100-percent Federal agreement. |
| (3) In a mixed agreement | Your entitled share of production allocated to the lease or portion of the lease in the mixed agreement. |

Subpart C would explain how lessees can propose and receive approval to use alternatives to the reporting requirements for leases in 100-percent Federal agreements. Subpart D would explain (1) How lessees can use the marginal property reporting exception for mixed agreements that meet specific criteria, (2) identify the determining criteria, and (3) explain how to report on an eligible marginal property.

### III. Costs and Benefits

ONRR estimates the net cost of compliance to industry in the first year this rule is effective would be $643,378 and $7,544 in subsequent years. We base the requests for alternate reporting costs on an estimated 250 requests for alternate reporting based on entitlements rather than takes. ONRR estimates that these requests will take 10 hours each to complete, not including an additional one-quarter hour for recordkeeping. Thus, the hour burden in the first year would be 2,563 hours. We estimate the labor costs of these hours, coupled with the $2,400 fee per request for alternate reporting, would be $717,898. In subsequent years, ONRR expects requests for alternate reporting would drop to 23 per year, and requests to terminate alternate reporting would be 2 per year. Using the

same calculations, ONRR expects the cost for alternate reporting in subsequent years would be $66,976.

We estimated marginal property qualification based on 3,600 producing mixed agreements, allowing one-half hour to determine average daily well production and one-quarter hour for recordkeeping. The hour burden would be 2,700 hours, and the cost would be $124,200, based on the same cost factor used in determining the costs for alternate reporting.

ONRR estimates the reduction in reporting burden would save industry 4,320 hours per year. Using the same cost factor that we used in the costs for alternate reporting and determining marginal property qualification, the benefit to industry would be $198,720 per year.

Adding the costs and subtracting the benefit accrued provides the net cost to industry of $643,378 in the first year and $7,544 in subsequent years.

ONRR believes the costs and benefits to state governments would be minimal and are not quantifiable at this time.

ONRR believes the Federal Government would benefit by a reduced burden and clearer reporting instructions for verifying production reports. ONRR also believes the Federal Government may benefit because (1) the reduced burden of reporting may extend the life on marginal properties, and (2) the diminished out-of-pocket expenses may enhance lease investment.

## IV. Introduction

On August 13, 1996, the President signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Public Law 104–185, 110 Stat. 1700, as corrected by Public Law 104–200. Section 6(d) of RSFA amended section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). This rulemaking would implement FOGRMA paragraphs 111(k)(1) through (4), which Congress enacted to clarify and resolve the long-standing issues regarding so-called ''takes versus entitlements.'' The issues arose primarily where the amount of natural gas taken and sold from Federal leases in a unit or communitization agreement was not equal to the lessee's entitled share based on the lessee's ownership interest in its leases in the unit or communitization agreement. These imbalances led to numerous questions about who should report and pay on what volumes and for what leases.

In an earlier effort to resolve these issues, ONRR's predecessor organization, Minerals Revenue Management (MRM), a program of Minerals Management Service (MMS), published an advance notice of proposed rulemaking on June 1, 1992 (57 FR 23068), seeking comments on valuation and reporting and paying royalties on production from Federal agreements. (Hereafter, in this rulemaking, we will refer only to ONRR, although actions may have occurred before ONRR was established.) We formed the Federal Gas Valuation Negotiated Rulemaking Committee, one purpose of which was to seek ways to resolve these issues. Subsequently, we published a proposed rule on November 6, 1995 (60 FR 56007), which contained reporting and payment provisions similar to FOGRMA paragraphs 111(k)(1) through (4). However, the proposed rule was withdrawn on April 22, 1997 (62 FR 19536).

Prior to initiating this rulemaking, in order to implement FOGRMA paragraphs 111(k)(1) through (4), we sought input from interested states, oil and gas trade associations, and our own ONRR analysts. We held outreach meetings on October 30, November 19, and December 6, 1996, and obtained input on general definitions, the reporting requirements for 100-percent Federal agreements, the definition of a ''marginal property,'' and the determination of a marginal property reporting exception.

Subsequently, ONRR began drafting a proposed rule. However, during that process, several issues came up regarding how this proposed rule should apply to production that is commingled prior to the royalty measurement point. Thus, we held additional public meetings on December 14, 2005, and May 10, 2006, to solicit input on this issue. We also published advance notices of proposed rulemaking on November 29, 2005 (70 FR 71421), and April 7, 2006 (71 FR 17774), giving examples of this issue and requesting comments.

## V. Explanation of Proposed Amendments

Before reading the additional explanatory information below, please turn to the proposed rule language that immediately follows the List of Subjects in 30 CFR parts 1202, 1205, and 1210 and signature page in this proposed rule. This language will be codified in the CFR if this rule is finalized as written.

After you have read the rule, please return to the preamble discussion below. The preamble contains additional information about the rule, such as why we defined a term in a certain manner, why we chose a certain reporting procedure over another, and how we interpret the law this rule would implement.

### *A. Section-By-Section Analysis of Proposed Changes to 30 CFR Part 1202—Royalties, Subpart C—Federal and Indian Oil, Subpart D—Federal Gas, and Subpart J—Gas Production From Indian Leases*

ONRR proposes to amend subparts C, D, and J relating to the Federal and Indian production volumes on which you must pay royalties.

§ 1202.100 Royalty on Oil

This rule proposes to eliminate the current requirement to trace the sale of oil production that you do not take from a Federal lease by removing the reference to Federal leases in paragraph (e) and expressly limiting its applicability to Indian leases only.

This rule also proposes to revise paragraph (f) to read as follows:

*Federal oil.* The regulations explaining when you must report and pay royalties on the volume of oil you take from your Federal lease, including Federal leases committed to a federally approved unitization or communitization agreement, or on the entitled share of production from or allocated to your Federal lease, are found in 30 CFR part 1205.

Existing paragraph (f) provides that lessees may request that ONRR establish a valuation method other than that required in 30 CFR part 1206, under certain conditions. We propose to revise this paragraph because the revised regulations for Federal and Indian oil in 30 CFR part 1206 now contain similar, but less proscriptive, provisions. See 30 CFR 1206.59 (Indian oil) and 30 CFR 1206.107 (Federal oil). We also propose to revise existing paragraph (f) to direct lessees of Federal oil and gas production to the regulations pertaining to the reporting and payment of royalties on Federal oil proposed under this rulemaking in a new part 1205 in 30 CFR.

Finally, because this subpart applies to both Federal and Indian oil, we propose to add headings to the paragraphs to make it clear to the reader which paragraphs apply only to Federal oil or Indian oil.

Under existing regulations, if another person takes and disposes of a portion of Federal production to which you were entitled but did not take, the actual disposition of that production by the other person controls its valuation. By removing the reference to Federal leases in this section and limiting its applicability to Indian leases only, the portion of oil production to which you were entitled but did not take from a Federal lease would be valued under 30

CFR part 1206, subpart C, as production not sold under an arm's-length contract.

§ 1202.150 Royalty on Gas

This rule proposes to separate the requirements applicable to Indian leases from those for Federal leases. Thus, the proposed rule would retain the existing requirements for Indian leases but would eliminate the current requirement to trace the sale of gas production that you do not take from a Federal lease because RSFA takes versus entitlements provisions apply only to Federal leases. This proposed rule also would remove references to 30 CFR part 1206 regarding valuation and, instead, direct lessees to 30 CFR part 1205 because proposed §§ 1205.104 and 1205.30 explain how to value volume differences under this rule. Accordingly, the proposed rule would revise paragraph § 1202.150(e) to refer lessees of Federal leases to 30 CFR part 1205 as follows:

The regulations explaining when you must report and pay royalties on the volume of gas you take from your Federal lease, including Federal leases committed to a federally approved unitization or communitization agreement, or on the entitled share of production from or allocated to your Federal lease, are found in 30 CFR part 1205.

§ 1202.152 Standards for Reporting and Paying Royalties on Gas

The current regulations provide in the first sentence of paragraph (a)(1)(i) that persons responsible for reporting royalties or production must ''[r]eport gas volumes and British thermal unit (Btu) heating values, if applicable, under the same degree of water saturation.'' The first sentence of paragraph (a)(2) provides that ''[t]he frequency and method of Btu measurement as set forth in the lessee's contract shall be used to determine Btu heating values for reporting purposes.'' However, we believe it is more appropriate for such persons to report volumes consistent with the requirements of the agencies managing lease operations, inspections, and enforcement. Thus, this rule proposes to replace paragraphs (a)(1) and (a)(2) with a new paragraph (a) to refer lessees to BLM (for Federal and Indian leases) and BOEM (for offshore leases) regulations, orders, and notices for the requirements to report volumes. However, we are also making such reporting ''subject to ONRR verification based on third party data.'' This addition to the rule will ensure that ONRR can verify the Btus you report using data from third parties, including, but not limited to, purchaser or plant statements or receipts.

§ 1202.558 What standards do I use to report and pay royalties on gas?

The current regulations provide in the first sentence of paragraph (a)(1) that persons responsible for reporting royalties or production must ''[r]eport gas volumes and British thermal unit (Btu) heating values, if applicable, under the same degree of water saturation. Report gas volumes and Btu heating value at a standard pressure base of 14.73 psia [pounds per square inch absolute] and a standard temperature of 60 degrees Fahrenheit. Report gas volumes in units of 1,000 cubic feet (Mcf).'' The first sentence of paragraph (a)(2) provides that ''You must use the frequency and method of Btu measurement stated in your contract to determine Btu heating values for reporting purposes.'' However, we believe it is more appropriate for such persons to report volumes consistent with the requirements of the agency managing lease operations, inspections, and enforcement. Thus, this rule proposes to replace paragraphs (a)(1) and (a)(2) with a new paragraph (a) to refer lessees to BLM regulations, orders, and notices for the requirements to report volumes. However, we are also making such reporting ''subject to ONRR verification based on third party data.'' This addition to the rule will ensure that ONRR can verify the Btus you report using data from third parties, including, but not limited to, purchaser or plant statements or receipts.

*B. Section-by-Section Analysis of 30 CFR Part 1205—Reporting and Paying Royalties on Federal Leases*

We propose to add a new part 1205 to our regulations in 30 CFR. This part would implement the new reporting and payment requirements in FOGRMA paragraphs 111(k)(1) through (4) for Federal oil and gas leases.

Subpart A—General Provisions

§ 1205.1 What is the purpose of this part?

This section would explain the purpose of part 1205 and emphasize that reporting and payment requirements under this new part would not alter a lessee's ultimate royalty liability and obligations for oil or gas produced from Federal leases.

§ 1205.2 What leases are subject to this part?

This section would explain that this part applies only to Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). Because RSFA applies only to Federal oil and gas leases, this part would not apply to: (1) Federal leases for minerals other than oil and gas; (2) Indian mineral leases; or (3) Leases for which the Federal Government became the lessor when it acquired a mineral interest subject to a private mineral lease.

§ 1205.3 What definitions apply to this part?

This section defines certain terms used in part 1205. Only definitions requiring supplementary explanations are discussed below. See the proposed rule language for a complete list of terms and definitions.

*100-percent Federal agreement* would mean any agreement that contains only Federal leases having the same fixed royalty rate and funds distribution. A 100-percent Federal agreement would exclude any agreement that includes leases subject to the Gulf of Mexico Energy Security Act of 2006 (GOMESA).

Paragraph 111(k)(1)(A) of FOGRMA defines 100-percent Federal agreements as agreements containing ''. . . only Federal leases with the same royalty rate and funds distribution . . . .'' In the proposed rule, we added the word ''fixed'' before ''royalty rate'' in the definition because royalty rates on variable rate leases in an agreement may be different for each reporting period, based on volumes produced and the number of wells. Because there is little chance that, in any month, the royalty rates for fixed and variable rate leases in an agreement would be identical, we would restrict 100-percent Federal agreements to only those leases having the same fixed royalty rate. We believe this reflects the statutory intent.

We excluded leases subject to GOMESA because of the unique funds distribution requirements for those leases. The funds distribution formulas established by GOMESA result in a different fund distribution for every lease, regardless of a lease's inclusion in a unit or communitization area. Because the distribution formulas established by GOMESA result in a different funds distribution for every lease, 30 U.S.C. 1721(k)(1)(A) does not apply to GOMESA leases. Furthermore, unlike Outer Continental Shelf Lands Act Section 8(g) leases, 43 U.S.C. 1337(g), for which funds are disbursed to not more than two state entities by lease and production month, GOMESA funds are accumulated from all leases subject to its requirements and are then disbursed the following calendar year to the four Gulf producing states—and their political subdivisions. Thus, including GOMESA leases in the definition of 100-percent Federal agreement would prove too administratively burdensome, given their unique distribution requirements.

*Barrels of oil equivalent (BOE)* would mean the combined equivalent production of oil and gas stated in barrels of oil. This definition would explain that each barrel of oil production is equal to one BOE and each 6,000 cubic feet (6 Mcf) of gas production is equal to one BOE. This definition is the same as the one published in the marginal property rule (30 CFR 1204.2).

*Combined equivalent production* would mean the total of all oil and gas production for the marginal property, stated in BOE. This definition is the same as the one published in the marginal property rule (30 CFR 1204.2).

*Commingling approval* would be defined as the BLM or the Bureau of Safety and Environmental Enforcement (BSEE) approved surface mixing of production from two or more independent leases or agreements, before measurement for royalty purposes. The commingling approval identifies how the volume measured at the approved point of royalty measurement must be allocated to each lease or agreement subject to the commingling approval. Further, as discussed in § 1205.104 below, a commingling approval affects both your take volume and your entitled volume, because the sum of all the lessees' take volumes—or, as the case may be, entitled volumes—from a lease must equal the total volume allocated to the lease under the commingling approval.

*Delegated State* would mean a state with which ONRR has entered into a delegation agreement under 30 U.S.C. 1735.

*Lessee* would be defined as any person to whom the United States issues an oil and gas lease, an assignee of all or a part of the record title interest, or any person to whom operating rights in a lease have been assigned. This definition essentially follows the definition contained in section 3 of FOGRMA, 30 U.S.C. 1702, as amended by RSFA section 2(1), Public Law 104–185, 110 Stat. 1700.

*Mixed agreement* would mean any agreement other than a 100-percent Federal agreement. Mixed agreements contain any mixture of Federal, Indian, state, or private mineral estates; or contain all Federal leases with different royalty rates or funds distribution. A mixed agreement would include any agreement that contains leases subject to GOMESA. For example, a communitization agreement with two Federal leases—one with a fixed 12½-percent royalty rate and one with a variable royalty rate based on volume of production—would be a mixed agreement.

*Take* would be defined as any oil or gas volumes removed or sold from a lease or agreement, as measured at or allocated from an approved point of royalty measurement. For stand-alone leases, the take volume is the volume measured at the approved point of royalty measurement for the lease. For leases in a 100-percent Federal agreement or subject to a commingling approval, the take volume for an individual lease is the volume allocated back to the lease after measurement at an approved point of royalty measurement for the agreement or commingling approval.

Paragraphs 111(k)(1)(A) and (C) of FOGRMA, in describing situations in which lessees are to report and pay based on actual take volume, state that a lessee or its designee will report and pay royalties on stand-alone leases and leases in 100-percent Federal agreements based on the ''actual volume of production sold by or on behalf of that lessee.'' Congress did not define ''sold'' in RSFA. Therefore, we found it necessary to define ''sold'' in this rulemaking as ''take'' for the following reasons:

(1) It is plain from the context of paragraphs 111(k)(1)(A) and (C) that Congress was referring to the actual royalty-bearing volume taken by the lessee, and not just to production whose title was transferred to another party in return for money.

(2) There are other important and frequently used royalty-bearing dispositions of production other than exchanging production for money. Any production ''removed from the lease,'' and not used in lease operations, is royalty-bearing. Limiting this rule to apply only to ''sold'' volumes, as that term is commonly used, would greatly complicate royalty computations on many leases because it would require more than one reporting and payment method depending upon the type of disposition. This would defeat Congress' intent in RSFA to simplify reporting and payment.

(3) Long-standing lease terms and existing valuation regulations require royalty to be paid on any production measured at an approved point of royalty measurement, regardless of whether that production is subsequently ''sold'' in the technical sense. See 30 CFR 1206.103 for Federal oil and 30 CFR 1206.154 for Federal gas. Nothing in RSFA purports to change that requirement. For example, assume gas is removed from a lease at an approved point of royalty measurement and stored offsite in an underground gas storage reservoir without first being exchanged for money. Royalty would be due at the time the gas is measured and removed from the lease, not later when it is removed from storage and exchanged for money.

Thus, to accurately capture the paying and reporting concept we believe Congress intended in RSFA, we defined the word ''take'' to include ''sold.'' Accordingly, for purposes of this rule, ''take'' production defines the total body of production from a lease or agreement on which royalty is due during a reporting period. We believe this definition of ''take'' is the proper interpretation of the word ''sold'' in RSFA and reflects the statutory intent. We specifically request comments on this interpretation.

The following examples for stand-alone Federal leases illustrate the concept of ''takes'':

- First, assume you have a proceeds-sharing agreement in which a fellow interest owner in your Federal lease sells your portion of the lease production and shares the proceeds received from that sale with you. The other interest owner is deemed to have taken your production on your behalf, and you must report and pay royalty on the volumes for which you received proceeds.
- Second, assume you have a contract in which you and a fellow interest owner in a Federal lease take all the production from a Federal lease in alternate months. In the months in which your fellow interest owner sells all of the production, including your entitled share, your fellow interest owner is deemed to have taken all of the production and must report and pay royalties on all of the production. You would not have to report and pay royalty on any volumes for those months.

We specifically request comments on this definition of ''take'' and its relationship to total production that is ''sold'' from a lease or agreement.

## Subpart B—Reporting and Paying Royalties on Federal Leases

Subpart B would describe how you must report and pay royalties each month based on the type of lease you have.

### § 1205.101 How do I report and pay royalties?

This section would explain the reporting and payment requirements for stand-alone leases, leases in a 100-percent Federal agreement, and leases in a mixed agreement. This section would use a chart to aid understanding.

Paragraph (a)(1) would explain that if you take production from a stand-alone lease (this would include a portion of a

lease that is not part of an agreement), you must report and pay royalties based on the production you take. For example, assume you are a lessee for a stand-alone Federal lease under the following conditions:

| Volume produced from the lease (A) | Your ownership interest in the lease (B) | Volume you take from the lease (C) | Volume on which you report and pay royalty (D) (D) = (C) |
|---|---|---|---|
| 1,000 Mcf | 40% | 700 Mcf | 700 Mcf |

Thus, when you pay royalty on a stand-alone lease, your entitled volume based on your ownership interest in the lease (1,000 Mcf × 40% = 400 Mcf) is not used in the computation to determine the volumes on which you report and pay. Rather, you would report and pay royalty on the 700 Mcf you actually took.

Paragraph (a)(2) would explain that if you are a lessee taking production from a 100-percent Federal agreement, you must report and pay based on the production you take. For example, assume you are a lessee for one lease in a 100-percent Federal agreement under the following conditions:

| Volume produced from the agreement (A) | Percent of volume allocated to your lease from the agreement (B) | Your ownership interest in one lease in the agreement (C) | Volume you take from the agreement (D) | Volume on which you report and pay royalty (E) (E) = (D) |
|---|---|---|---|---|
| 1,000 Mcf | 50% | 10% | 800 Mcf | 800 Mcf |

Thus, when you pay royalty on a 100-percent Federal agreement, your entitled volume (1,000 Mcf × 50% × 10% = 50 Mcf) is not used in the computation to determine the volumes on which you report and pay. Rather, you would report and pay royalty on the 800 Mcf you actually took.

Paragraph (a)(3) would explain the reporting requirements for lessees in mixed agreements. The proposed rule would require lessees to report and pay royalties based on their entitled share of the volume allocated to their lease from the agreement, regardless of the volume they take. For example, assume you are a lessee for a Federal lease in a mixed agreement under the following conditions:

| Volume produced from the agreement (A) | Percent of volume allocated to your lease from the agreement (B) | Your ownership interest in one lease in the agreement (C) | Volume you take from the agreement (D) | Volume on which you report and pay royalty (E) (A) × (B) × (C) |
|---|---|---|---|---|
| 1,000 Mcf | 60% | 30% | 300 Mcf | 1,000 Mcf × 60% × 30% = 180 Mcf |

Thus, when you pay royalty on a lease in a mixed agreement, your take volume (Column D, 300 Mcf) is not used in the computation to determine the volumes on which you report and pay. Rather, you would report and pay royalty on the 180 Mcf to which you were entitled.

Paragraph (b) would explain that if you are a lessee for more than one lease in a 100-percent Federal agreement, you must allocate and report for each lease based on its allocated share. See §§ 1202.100(e) and 1202.150(e). ONRR considered allowing lessees to report on only one of their leases in a 100-percent Federal agreement but decided the adverse impact to minimum royalty obligations for all other leases in the agreement outweighed the benefits of simplified reporting for one lease. Leases must meet the minimum royalty obligation at the end of each lease year. If we were to allow lessees to report on only one of their leases in an agreement, then the other leases in the agreement might not meet their minimum royalty obligation by the end of the lease year. In that case, lessees would have to pay minimum royalty on all of their other leases in the agreement in order for the other leases to meet their minimum royalty obligation.

§ 1205.102 How do I determine my take volume?

This section would explain that your take volume is the volume you, or someone on your behalf, removed or sold from your lease or leases. In this proposed rulemaking, as discussed above, ONRR is using the term ''sold'' in the definition of ''take.'' The underlying requirement is that the sum of all take volumes reported for the lease must equal the volume upon which royalty is due.

ONRR is not a party to the decisions that determine which lessees take what volume. Those decisions are made solely between lessees, operators, purchasers, and transporters of the oil and gas. However, we routinely verify that the combined volumes reported and paid by all lessees or designees on their royalty reports are equal to the volumes removed or sold from the lease or agreement as reported on corresponding production reports submitted by operators of a lease or agreement. To minimize questions when volumes

reported on the royalty report do not match volumes reported on production reports, we strongly recommend that all parties to the ''take'' decisions establish procedures to ensure that all removed or sold volumes are accounted for and paid in every reporting period. In addition, we recommend that all parties take the necessary steps to ensure that minimum royalty obligations are met for each lease in an agreement.

§ 1205.103 How do I determine my entitled volume in a mixed agreement?

This section would explain that you would determine your entitled volume by multiplying your entitled share in the lease by the volume of production allocated to your lease under the agreement allocation schedule.

The determination of entitled volumes is not based on your ownership interest in a specific well on a lease. Consider the example in which you own 100 percent of the operating rights in the only Federal lease in a mixed agreement, and you chose not to participate in the drilling of the only well drilled on the agreement (non-consent well). Depending on the terms of your operating agreement, you might not be entitled to any production until, for example, 200 percent of the development costs are paid in full. Despite the fact that you do not receive production for a period of time, you must report and pay royalties on the full volume allocated to your Federal lease under the agreement allocation schedule.

§ 1205.104 How do I determine value for my entitled volume in a mixed agreement?

This section would explain how to value volumes you report for a mixed agreement.

Paragraph (a) would explain that if you take less than your entitled volume of production from a mixed agreement during a month, then the royalty value you must use for the difference is the volume weighted-average unit value for the total volume you take from the property during that month, as determined under part 1206 of this title.

Paragraph (b) would explain that, if you do not take any production to which you were entitled from a mixed agreement during a month, then the royalty value for your entitled share for that month is the value determined for non-arm's-length dispositions under 30 CFR 1206.103 for oil; 30 CFR 1206.152(c) for unprocessed gas; and 30 CFR 1206.153(c) for processed gas.

§ 1205.105 How does a commingling approval affect my take volume?

When BSEE or BLM approves either surface or downhole commingling of production before royalty measurement, the commingling approval identifies where the production will be measured for royalty purposes and how that measured volume will be allocated to each lease or agreement subject to the commingling approval. This section would explain that, if your lease is a stand-alone lease subject to a BLM or BSEE commingling approval, or in an agreement that is subject to a BLM or BSEE commingling approval, the volume allocated to the lease or agreement under the commingling approval is the production taken from the lease or agreement and the total volume upon which royalties must be paid. In other words, the commingling approval dictates the total volume removed or sold from the lease or agreement, and hence your takes from the lease. For example, assume two stand-alone Federal leases, each with a single lessee, are subject to a commingling approval under the following conditions:

| Lease | Percent of production allocated to each lease under commingling approval (A) | Volume measured at approved point of royalty measurement under commingling approval (B) | Volume allocated to each lease under commingling approval (C) (A) × (B) | Volumes nominated and delivered (taken) by each lessee (D) | Over or <under> taken volumes for each lease (E) (D) − (C) |
|---|---|---|---|---|---|
| 1 | 25 | 5,000 Mcf | 1,250 Mcf | 1,000 Mcf | <250 Mcf> |
| 2 | 75 | | 3,750 Mcf | 4,000 Mcf | 250 Mcf |

Under proposed § 1205.101(a)(1), a lessee of a stand-alone Federal lease—assuming it was not subject to a commingling approval—would be required to report on the take volume, Column D. However, because of the commingling approval, this proposed § 1205.104 would require a lessee to report and pay royalties on the total volume allocated to each lease under the commingling approval—that is, Column C—whether or not that volume equals the take volume. Thus, in this example, the lessee for Lease 1 would have to report and pay royalties on 1,250 Mcf, rather than the 1,000 Mcf it actually took; and the lessee for Lease 2 would have to report and pay royalties on 3,750 Mcf, rather than the 4,000 Mcf it actually took. This example does not address the more complicated situation in which stand-alone leases have multiple owners and the total takes of the lessees of one of the leases does not equal the volume upon which royalties are due under the commingling approval. In those situations, lessees must report and pay on the full volume allocated to each lease under the commingling approval.

Note that the effect of a commingling approval would be slightly different for leases in 100-percent Federal agreements, because the commingling approval would dictate the total volume allocated to the agreement, not the individual leases. Once the volume allocated to the agreement is established by the commingling approval, you would then have to allocate that volume to your leases in the agreement and report and pay accordingly. See § 1205.101(b), discussed above. We realize that there are other alternatives to handle the commingling situation. We solicit comments on the proposed method for handling commingling and welcome suggestions for alternatives.

§ 1205.106 Are there exceptions to the reporting and payment requirements in this subpart?

This section would explain the two exceptions to the reporting and payments requirements in this subpart.

Paragraph (a) would explain that you may qualify for an alternative to the royalty reporting and payment requirements for 100-percent Federal agreements under § 1205.101(a)(2) if you meet certain requirements. Subpart C would explain the requirements for alternative reporting, which are discussed further below.

Under proposed paragraph (b), you also could qualify to report on your take volume rather than entitled volume,

with appropriate adjustments after year-end, if your mixed agreement is a marginal property. Subpart D would explain the requirements for the marginal property reporting exception, which are discussed further below.

Subpart C—Reporting and Paying Royalties on Federal Leases Under an Alternative Method for a 100-Percent Federal Agreement

Subpart C would explain the requirements for requesting approval for, and using an alternative method of, reporting and paying royalties for Federal leases that participate in a 100-percent Federal agreement. This subpart implements FOGRMA paragraph 111(k)(3), which provides that, under certain conditions, lessees in an agreement may request an alternative method of reporting and paying royalties other than that prescribed under paragraphs 111(k)(1) and (2).

§ 1205.201 How do I qualify for alternative reporting and payment for a 100-percent Federal Agreement?

This section would explain that you may qualify for an alternative to the royalty reporting and payment requirements for agreements under subpart B if:

(a) You are in a 100-percent Federal agreement;

(b) You and all other lessees in the agreement concur in writing to the alternative method; and

(c) The alternative does not reduce the total monthly royalty obligation reported and paid to ONRR.

During the outreach meetings, participants discussed FOGRMA paragraph 111(k)(3) at length. Meeting participants provided input that RSFA was intended to give lessees in 100-percent Federal agreements the option to report on their entitled volume rather than on their take volume. We are proposing to restrict alternative methods to 100-percent Federal agreements, primarily because it is impracticable to fully effectuate as written since ONRR cannot require private and state lessees in a mixed agreement to use an alternative method or report in accordance with Federal regulations. Nor can we apply FOGRMA enforcement authorities to such entities even if they agree in writing to an alternative methodology because any right to enforce would derive from the contractual agreement, not FOGRMA.

We are specifically requesting comments on whether or not we should allow alternative reporting for mixed agreements. In your comments, please provide any legal authority for your position and specific examples of how it would be applied to mixed agreements.

§ 1205.202 How do I request alternative reporting and payment for a 100-percent Federal Agreement?

This section would explain the information that ONRR would need to adequately review a proposed alternative method of reporting and payment.

Paragraph (a) would explain that, to obtain approval to use an alternative method of royalty reporting and payment, you must submit one written request to ONRR on behalf of all lessees of leases in the agreement.

Paragraph (b) would explain that, in your request, you must describe the proposed alternative, identify the agreement and all the leases in the agreement, identify all lessees and their ownership interest in each Federal lease in the agreement, and include a copy of the written consent to the alternative method from all lessees in the agreement. Paragraph (b) also would explain that you must demonstrate that the proposed alternative method will not reduce the total monthly royalties due for the agreement. In addition, paragraph (b) would explain that you must submit a nonrefundable processing fee of $2,400 to ONRR, under 30 CFR 1218.51, for each agreement for which you request an alternative method of reporting and payment. If you did not submit the full fee, we would return the request unprocessed. If we returned the request unprocessed for failure to pay the fee, you could not appeal the return of the request. Finally, paragraph (b) would provide that ONRR may periodically adjust the $2,400 fee to account for increases in our actual costs due to inflation and increases in Federal employee salaries. If we adjusted the fees, we would publish a notice in the **Federal Register**.

Our rationale for collecting the fee is as follows. We would recover its costs under the Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701 *et seq.,* for Federal offshore leases, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701, for Federal onshore leases. As part of this proposed rule, we analyzed the proposed cost recovery fees for reasonableness according to the factors in FLPMA section 304(b). Although the IOAA does not contain the same ''reasonableness factors'' as FLPMA section 304(b), the factors we considered under FLPMA to determine reasonable fees led us to conclude that the fees for offshore leases should be the same as the fees for onshore leases.

The reasonableness factors required by FLPMA are: (a) Actual costs (exclusive of management overhead); (b) the monetary value of the rights or privileges sought by the applicant; (c) the efficiency to the Federal Government processing involved; (d) that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant; (e) the public service provided; and (f) other factors relevant to determining the reasonableness of the costs.

The method used to evaluate the factors is twofold. First, ONRR estimated the actual costs and evaluated each of the remaining FLPMA reasonableness factors (b) through (f) individually to decide whether the factor might reasonably lead to an adjustment in actual costs. If so, we then weighed that factor against the remaining factors to determine whether another factor might reasonably increase, decrease, or eliminate the contemplated adjustment. On the basis of this twofold analysis, we determined what final fee is reasonable. We cannot recover an amount greater than its actual costs, so any final adjustment cannot result in a fee greater than actual costs.

Reasonableness Factors Required by FLPMA

(a) Actual Costs

*Actual costs* means the financial measure of resources ONRR would expend to process a request that a lessee or its designee would be allowed to report under an alternative method. Actual costs include, but are not limited to, the costs of special studies, monitoring compliance with this part, termination of relief authorized under this part, or any other relevant action. Actual costs include both direct and indirect costs, exclusive of management overhead. Management overhead costs means costs associated with the ONRR directorate, except where a member of such staff is required to perform work on a specific case. Section 304(b) of FLPMA requires that management overhead be excluded from chargeable costs.

Our direct costs include expenditures for labor, material, and equipment usage connected with processing the requests. We calculated direct costs by estimating the average time it would take ONRR personnel to complete similar existing tasks.

Our indirect costs include items such as rent and overhead (excluding management overhead). We calculated our indirect cost rate by dividing the

indirect costs described above by the total direct program costs to arrive at an indirect cost percentage. Then we multiplied the direct costs to process a request for alternative reporting by the indirect cost percentage and added that figure to the direct costs to determine its total actual costs of $60.00 per hour = $40.10 per hour [2011 GS–12, Step 5] × 1.5 [benefits cost factor]. This method of calculating costs is a generally accepted practice in both the private and public sectors.

Our method of establishing actual costs involved estimating the average cost of processing an individual request. Processing requests consists of two phases. In the first phase, ONRR personnel would review and analyze the proposed alternative method and provide preliminary approval, modification, or denial. In the second phase, we would communicate the decision to the lessee.

We estimated that it would take an average of 40 hours to review and respond to a request for an alternative method of reporting and paying. We concluded that, while it might be possible to track costs and reasonableness on a case-by-case basis, it would be so inefficient and expensive as to be considered unreasonable. Using an hourly cost of $60.00 per hour for both direct and indirect costs, we determined that our average cost to process each request to use alternative reporting would be approximately $2,400.

(b) Monetary Value of the Rights and Privileges Sought

*Monetary value of the rights and privileges sought* means the objective worth of the alternative reporting method sought or taken, in financial terms, to the lessee or its designee. We rejected the idea of trying to calculate monetary value on a case-by-case basis as too time consuming, wasteful of resources, and subject to endless disputes. Instead, we have attempted to calculate an average or estimated figure to represent the monetary value of rights for possible alternatives under this rulemaking. In addition, we took into account equitable considerations involving the costs to process relative to the monetary value of the relief sought.

We determined that approving a proposal that would allow lessees to report and pay on their entitled share of production, rather than reporting on the required takes method, would allow the company to use only one system for reporting and would simplify the overall process for them. Approving this alternative would benefit lessees and their designees by decreasing the total number of hours they would devote manually to complete royalty reports for a portion of their Federal leases. We estimated the maximum monetary benefit of these relief options could be as high as $552 annually = 1 hour per month savings × 12 months × $46/hour. The hourly labor cost of $46 is based on the Bureau of Labor Statistics National Occupational Employment and Wage Estimates. However, we did not adjust our actual costs for this factor.

(c) Efficiency to the Federal Government Processing Involved

*Efficiency to the Federal Government processing involved* means the ability of the United States to process a request for an alternative method of reporting and paying royalties under § 1205.202 with a minimum of waste, expense, and effort. Implicit in this factor is the establishment of a cost recovery process that does not cost more to operate than ONRR would collect and does not unduly increase the costs to be recovered. As noted in the above section on actual costs, we determined that it would be inefficient to determine actual cost data on a case-by-case basis. Estimates based on our experience indicate that the cost of maintaining actual cost data on specific cases would be unreasonably high, and the amount potentially collectible could be relatively small. This is principally because our automated accounting system would have to be extensively reprogrammed to add a relatively few items of information. Thus, we would use cost estimates derived from previously collected data.

Because RSFA specifies that any alternative method of reporting and paying royalties may not reduce the royalty obligation, ONRR must perform sufficient review of each request to assure that this requirement would be met. We believe the actual cost estimate from factor (a) above anticipates an efficient process that would provide for the necessary technical review. The procedures we would use in processing the data would be based on standardized steps for similar ONRR transactions in order to eliminate duplication and extraneous procedures. Therefore, we believe factor (c) would be the most efficient processing method. Accordingly, because factor (c) would be an efficient processing method, we have made no adjustment to actual costs as a result of this factor.

(d) Cost Incurred for the Benefit of the General Public Interest

*Cost incurred for the benefit of the general public interest* (public benefit) means funds the United States would expend in connection with the processing of a request for alternative reporting under § 1205.202, for studies or data collection determined to have value or utility to the United States or the general public, separate and apart from the document processing. It is important to note that this definition addresses funds that would be expended in connection with a request. There is another level of public benefit that includes studies that we are required, by statute or regulation, to perform regardless of whether a request is received. The costs of such studies are excluded from any cost recovery calculations from the outset. Therefore, no additional reduction from costs recovered is necessary in relation to these studies.

Our analysts concluded that the processing of requests for alternative methods of reporting and paying royalties under this proposed rule did not, as a rule, produce studies or data collection that might benefit the public to any appreciable degree. Therefore, any possible benefits of such studies to the public are balanced by their possible benefits to the applicant. Accordingly, we made no adjustment to actual costs based on this factor.

(e) Public Service Provided

*Public service provided* means tangible improvements or other direct benefits, such as reduced administrative costs, with significant public value, that are expected in connection with approval of an alternative method of reporting and paying royalties. The definition specifically notes that negative factors, such as an adverse impact on royalty or ONRR's audit ability, could preclude considering an improvement as a public service. The definition also notes that data collection we would need in order to monitor an alternative reporting and payment method does not constitute a public service. This definition distinguishes the factor of *public service provided* (a benefit resulting from activities associated with the underlying relief) from the factor of *cost incurred for the benefit of the general public interest* (which relates to benefits of the document processing itself).

We determined that the alternative reporting and payment options under this rule would provide the benefit of reducing our costs by decreasing the total number of hours we would devote to processing documents and correcting errors. We anticipate approving simpler reporting and payment methods under this rule. Therefore, we determined that the Federal Government would benefit under this factor to some extent.

However, we made no adjustment to actual costs based on this factor because this benefit is encompassed by our actual cost estimate under factor (a) discussed above.

(f) Other Factors

The final reasonableness factor is *other factors* relevant to determining the reasonableness of the costs. We examined some of the possible alternative reporting and payment methods that could be requested under this section to determine whether other factors warranted a reduction in the proposed fee from our actual costs.

Personnel with expertise and program management responsibilities in the particular area of the transaction reviewed the possible alternative reporting and payment methods. Our personnel weighed the proposed processing fee against their knowledge of the value of similar transactions. Our analysts concluded that factor (b) *monetary value of the rights* was clearly so far above the expected processing cost that a fee set at actual costs would be reasonable.

In our outreach sessions, industry representatives indicated that significant processing fees would likely result in industry not submitting requests for alternative reporting and payment methods. Representatives of independent oil and gas producers stated that processing fees likely would discriminate against the small producers. However, those outreach sessions were held more than 12 years ago. Our personnel concluded that currently, the value of the rights was clearly so far above the expected processing cost, that a fee set at actual costs would be appropriate. Accordingly, we did not adjust the actual costs based on other factors. As a result, we determined that a processing fee of $2,400 per request would meet the reasonableness factors of FLPMA for onshore leases, and we would apply the same rate to offshore leases. We invite comments specifically concerning the amount of the proposed processing fee.

Paragraph (c) of § 1205.202 would explain that RSFA section 4(f), 30 U.S.C. 1724(f), requires that Federal oil and gas lessees maintain records for 7 years after the royalty obligation becomes due. Since the methodology requested and approved under an alternative method of reporting and payment request applies to all periods from the date of approval until such time that the alternative method is terminated, this proposed paragraph would require lessees to keep all records pertaining to the request for an alternative method until 7 years after termination of the alternative method.

§ 1205.203 Who will approve, deny, or modify my request for alternative reporting and payment for a 100-percent Federal agreement?

Paragraph 111(k)(3) under FOGRMA requires the Secretary or the delegated state to determine whether to approve a request for alternative reporting and payment. This section would explain that ONRR would decide whether to approve your request for alternative reporting and payment. However, if there is a delegated state, we would consult with the state before making a decision.

§ 1205.204 How will I know if I am approved for alternative reporting and payment for a 100-percent Federal agreement?

This section would explain that, when ONRR receives your request for alternative reporting and payment under § 1205.202, we would notify you in writing as follows:

Paragraph (a) would provide that, if your request for alternative reporting and payment is complete, we may approve, deny, or modify your request.

Paragraph (b) would provide that if your request for alternative reporting and payment is not complete, we would notify you that your request is incomplete and identify any missing information. Under paragraph (1), you would have to submit the missing information within 60 days of your receipt of our notice that your request is incomplete. Under paragraph (2), after you submit the missing information, ONRR could approve, deny, or modify your request for alternative reporting and payment under § 1205.203.

Under paragraph (b)(3), if you do not submit the missing information within 60 days, we would return your request for alternative reporting and payment as incomplete. If we returned your request because it was incomplete, then we would not return any processing fee you submitted with your request. In addition, if we returned your request as incomplete, it would not be considered an appealable denial of your request. However, under paragraph (4), you could submit a new request for alternative reporting and payment under this subpart, including another processing fee, at any time following our return of your incomplete request.

§ 1205.205 When must I begin using the alternative method for a 100-percent Federal agreement?

This section would explain when you must begin using the alternative method.

Paragraph (a) would apply to lessees who requested the alternative method. Thus, the proposed rule would provide that, if you are a lessee for a lease in an agreement when you submit a request under § 1205.202, you would begin using the alternative method of royalty reporting and payment for the production month after you receive written approval from ONRR.

Paragraph (b) would apply to a lessee who becomes the lessee for a lease in an agreement for which there is already an approved alternative method of royalty reporting and payment. In such cases, the lessee would begin reporting under the alternative method for the production month in which it became the lessee.

§ 1205.206 What if I want to stop reporting and paying under the approved alternative method for a 100-percent Federal agreement?

This section would explain that, if you want to stop using the approved alternative method of royalty reporting and payment under paragraph (a), then you would have to obtain written concurrence from all lessees in the agreement to stop using the alternative method. Under paragraph (b), you would have to provide a copy of the written concurrence to ONRR and the delegated state.

§ 1205.207 When must I stop using the approved alternative method for a 100-percent Federal agreement?

This section would explain when the approval to use an alternative method ends.

Under paragraph (a), if you request to stop using the approved alternative method under § 1205.206, you would stop using the approved alternative method of royalty reporting and payment beginning with the production month after you receive written notice of approval from ONRR. You would then return to using the reporting and payment requirements of § 1205.101(a)(2) or (3).

Paragraph (b) would explain that you would stop using the approved alternative method of royalty reporting and payment beginning within 60 days after you receive written notice from:

(1) ONRR that your approval, under this subpart, is terminated; or

(2) BLM or BSEE that either a non-Federal tract or a tract that you

determine has a different royalty rate or funds distribution has been added to your agreement.

Paragraph (c) would explain that a change in a lessee's ownership interests after the initial approval for alternative reporting and payment would not terminate an approval.

Paragraph (d) would explain that ONRR would terminate an approval in any instance where we believed it would be in the United States' best interest.

Subpart D—Reporting and Paying Royalties on Marginal Properties

Subpart D would provide a reporting and payment exception for properties that qualify as marginal properties and would describe how the exception would work.

§ 1205.301 What is the marginal property reporting and payment exception?

This reporting option would be a reporting and payment exception to the requirements under § 1205.101(a)(3) for mixed agreements. Under FOGRMA paragraph 111(k)(4), lessees would be allowed to report royalties for their leases in mixed agreements that qualify as marginal properties based on takes rather than entitlements for a calendar year or portion thereof (if they sell or acquire an interest in the marginal property during the calendar year). We believe this provision of RSFA was intended to minimize the out-of-pocket royalty payments from smaller producers who do not take their full entitled share each month. The exception applies only to mixed agreements because 100-percent Federal agreements and stand-alone Federal leases must already pay based on takes under FOGRMA paragraphs 111(k)(1)(A) and (C), as implemented under proposed § 1205.101(a)(1) and (2). Therefore, because RSFA is silent on this point, we concluded in § 1205.101(a)(3) that this exception can apply only to mixed agreements.

§ 1205.302 What is a marginal property under this subpart?

We propose to define a ''marginal property'' based on the definition in FOGRMA paragraph 111(k)(4). Paragraph 111(k)(4) defines a ''marginal property'' as:

> . . . a *lease* that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 thousand cubic feet of gas per well per day, or a combination thereof, determined by dividing the average daily production of crude oil and natural gas from producing wells on such *lease* by the number of such wells, unless the Secretary, together with the State concerned, determines that a different production is more appropriate. (Emphasis added.)

Thus, as discussed above, a marginal property would be defined as a mixed agreement that produces an average of less than 15 barrels of oil equivalent (BOE) per well producing day.

However, we had to consider an additional issue that the definition of ''marginal property'' in paragraph 111(k)(4) presents. Participants at our outreach meetings discussed the administrative burdens that this definition would impose on lessees and ONRR, or a delegated state, if we did not interpret the term ''lease'' to mean an ''agreement.'' For example:

- By defining a marginal property as a lease within an agreement, lessees would incur substantial cost to identify the specific lease on which each agreement well is located and the specific volumes attributable to each well for each lease each month, in order to calculate the average daily well production by lease.
- The regulations require lessees to report production from wells in agreements to ONRR on production reports at the agreement level and not on a specific lease. If ONRR were to define a marginal property as only a lease, we would not have the data to determine which wells correspond to a specific lease in an agreement. Therefore, ONRR could not verify lessee calculations of average daily well production to ensure that only marginal properties are taking advantage of the exception.

To address this issue, meeting participants provided input that a marginal property should be determined on the basis of the production level of the entire mixed agreement, not on an individual lease basis. We specifically request comments on the proposed definition of ''marginal property.''

§ 1205.303 How do I determine if my property is a marginal property?

Also discussed during the outreach meetings was the production threshold that would qualify a property for the marginal property reporting exception. Paragraph 111(k)(4) of FOGRMA provides a production threshold of less than 15 BOE per well producing day. However, it also allows the Secretary, together with the state concerned [the state that receives a portion (prescribed by statute) of the royalties from a Federal onshore or offshore lease (30 U.S.C. 1702(31)], to determine a different production threshold. After much discussion, the participants agreed to adopt the production level identified in paragraph 111(k)(4). Although we considered publishing an annual list of qualified properties, we determined that it would not be possible for ONRR to publish accurately and timely a list of qualified marginal properties. Therefore, this proposed rule would require lessees to perform the calculations necessary to identify qualified marginal properties.

To determine if your lease would meet the qualifications for a marginal property under the proposed rule for the next calendar year, you would:

(1) Calculate the total volume of oil and gas produced from your property during the period between July of the previous year and June of the current year. We propose to use a base period of July through June to allow sufficient time to adjust the production data before the following calendar year reporting period begins.

(2) Divide the total gas production (in Mcf) by 6 to convert the gas volume to BOE (see definition of BOE in § 1205.3 above) and add that total to the oil volume (in barrels).

(3) Calculate the total number of days each well actually produced during the same time period (include all producing wells in the mixed agreement, including those that are not located on a Federal tract).

(4) Divide the total produced volume by the total well producing days. If your calculated average daily well production is less than 15 BOE, your property would qualify for the marginal property exception.

§ 1205.304 When may I begin using the marginal property exception?

This section would explain that you may begin reporting under the marginal property exception in the January production month of the calendar year following the base period. It also would explain that you do not need to notify ONRR of your intent to report and pay using the exception.

§ 1205.305 How long must I use the marginal property exception?

Paragraph (a) of this section would explain that once lessees begin using the marginal property reporting exception, they must continue to use the exception through the end of the calendar year. This requirement would establish a uniform period during which royalty payments made on the takes basis can be compared to royalty payments due on an entitlement basis.

Paragraph (b) of this section would explain what happens if you sell your interest in a lease during a calendar year in which you were using the marginal property exception. In that situation, the reporting period during which you must

use the marginal property exception is only the period of your ownership.

§ 1205.306 How do I report under the marginal property exception?

This section would explain how you report the take volume under the marginal property exception for your Federal leases in a mixed agreement.

§ 1205.307 What if the take volume I reported does not equal my entitled volume for one or more of my Federal leases for the calendar year?

This section would explain what to do if the total takes volume on which you report and pay during the calendar year under the marginal property exception does not equal your total entitled volume for each of your Federal leases in the agreement. In that situation, you would report the difference between your entitled share and your take volume and pay additional royalties or report a credit within 6 months of the end of that calendar year. You would report the difference (true up) on the Report of Sales and Royalty Remittance, Form MMS–2014, for each of your leases as either an underpayment or an overpayment for the entire calendar year. It would not matter whether you took more or less during each individual month, but rather, if you took more or less for the entire calendar year. Thus, if for any month your takes did not equal your entitlements but, for the calendar year they were equal, you would not have to report any adjustment.

Paragraph (a) of this section would explain that you must calculate the difference between the take volume you reported under the marginal property exception and your entitled volume for the calendar year in which you used the exception.

Paragraph (b) would explain that you report the difference calculated in paragraph (a) of this section:

(1) On Form MMS–2014, Report of Sales and Royalty Remittance;

(2) By June 30 of the calendar year immediately following the calendar year for which you used the marginal property exception;

(3) As underpaid (a positive amount on Form MMS–2014 when your total takes are less than your entitlements) or overpaid (a negative amount on Form MMS–2014 when your total takes exceed your entitlements);

(4) As a single-line entry for each lease and product from the lease;

(5) Using the correct adjustment reason code for reporting under this section; and

(6) Using the December sales month of the calendar year for which you used the marginal property exception.

Paragraph (c) would explain that you do not adjust the monthly royalty lines you reported under § 1205.306(c) if the take volume you reported was accurate.

For example, assume you own an interest in a Federal lease in a mixed agreement that qualifies for the marginal property reporting exception. Assume that the lease royalty rate is 16⅔ percent.

| Total annual production from the agreement (A) | Your ownership interest in the lease (B) | Percent of production allocated to your lease from the agreement (C) | Calculation of your entitled share (volume) from the agreement (D) (A) × (B) × (C) |
|---|---|---|---|
| 12,000 bbl | 60% | 40% | 12,000 bbl × 60% × 40% = 2,880 bbl |

The volume on which you report royalty would be calculated as your entitled share from the mixed agreement, or 2,880 barrels (bbl), multiplied by the lease royalty rate of 16.667 percent, which equals 480 bbl.

Further, assume that you would report based on your takes from the mixed agreement for the year under the marginal property exception. You reported a take volume of 3,500 bbl. The volume on which you report royalty would be your take volume from the mixed agreement (3,500 bbl × 16.667% [lease royalty rate] = 583 bbl). You would calculate your annual adjustment to entitlements as follows:

| Your entitled volume from the mixed agreement for royalty purposes (A) | Your take volume from the mixed agreement for royalty purposes (B) | Calculation of annual adjustment to entitlements (C) (A) − (B) |
|---|---|---|
| 480 bbl | 583 bbl | 480 bbl − 583 bbl = −103 bbl |

The volume for royalty purposes of a negative 103 barrels means you overpaid the royalties for this lease for the calendar year. Thus, you would report the royalties associated with the negative 103 barrels on your Form MMS–2014 following current reporting instructions.

This section also would explain that you would not have to adjust each line you reported during the calendar year (unless you originally reported those lines incorrectly). For example, based on your lease ownership percentage and your lease participation in the mixed agreement, assume you were entitled to take 500 bbl of oil and 10,000 Mcf of gas for the year. However, you actually took 600 bbl of oil and 9,000 Mcf of gas. You would be required to report an adjustment line for each product for your lease for the year. Therefore, you would report one net line for oil showing a negative 100 bbl and one net line for gas showing a positive 1,000 Mcf.

You would not be required to back out all previously reported lines when you report your annual adjustment from takes to entitlements. However, if you made an error when reporting your take volume during the calendar year, then you would be required to submit

amended royalty reports correcting the lines originally submitted.

You would report a single line for adjustments to your transportation and processing allowances. A positive value on your adjustment would show that you overclaimed an allowance based on your take volume under the marginal property exception.

§ 1205.308 How do I determine the royalty value for the difference between my take volume and entitled volume?

This section would explain how to value any volumes you report under § 1205.307.

Paragraph (a) would explain how to value production that you take from a qualifying marginal property during the calendar year when you report a difference between your take and entitled volume under § 1205.307. In that instance, the royalty value you use for the difference would be based on the volume weighted-average unit value as determined under part 1206 of this title for the total volume you take from the property during that calendar year.

Paragraph (b) would explain what you must do if you do not take production from a marginal property during the calendar year but you report a difference under § 1205.307. In that instance, the royalty value for the difference would be the value for non-arm's-length dispositions determined under part 1206 of this title.

§ 1205.309 What must I do if I underpay royalties under this subpart?

This section would explain that you must pay any additional royalty due under paragraph (a) based on your entitled share plus accrued interest, if the difference you reported under § 1205.307 is positive, indicating that you underpaid royalties. Paragraph (b) would explain that you would owe interest on your underpaid royalties. As prescribed under 30 CFR part 1218, you would owe interest from the beginning of the calendar year following the calendar year you used the marginal property exception until the date you pay the additional royalties. For example, if you paid the additional royalties on January 1 of the following calendar year, you would owe no interest. If you paid the additional royalties on February 28, you would owe interest from January 1 until February 28.

§ 1205.310 What must I do if I overpay royalties under this subpart?

Paragraph (a) would explain that if you reported a negative difference under § 1205.307, then you are entitled to a credit for the amount of overpaid royalties.

Paragraph (b) would explain that you are entitled to a credit for the overpaid amount from January 1 of the calendar year following the calendar year for which you used the marginal property exception until the earlier of:

(1) The date you reported the negative difference under § 1205.307; or

(2) June 30 of the calendar year immediately following the year you used the marginal property exception.

Paragraph (c) would explain that ONRR will pay interest on the overpayment after you take the credit.

§ 1205.311 What must I do if I erroneously report using the marginal property exception?

This section would explain that if you have reported royalties using the marginal property exception for a property that is not a qualified marginal property, you must amend your Form MMS–2014. You also would owe (or receive) interest as determined under part 1218 of this title and, depending on the circumstance, you could be subject to civil penalty procedures under part 1241 of this title.

§ 1205.312 What must I do if my property no longer qualifies as a marginal property under this subpart?

This section would explain that if your property ceases to qualify for the marginal property exception, you must return to reporting under the requirements of § 1205.101(a)(3) beginning the next calendar year.

*C. Proposed Changes to 30 CFR Part 1210—Forms and Reports*

We would make a technical amendment to the table at 30 CFR 1210.10 by adding the OMB control number for the new ICR.

**VI. Procedural Matters**

*1. Summary Cost and Royalty Impact Data*

We summarized below the estimated costs and benefits of this proposed rule for the three affected groups—industry, state and local governments, and the Federal Government. We segregated the costs into two categories—those costs that would be incurred in the first year after this rule is effective; and those costs that would be incurred on a continuing basis each year thereafter.

The cost and benefit information in Item 1 of the Procedural Matters is used as the basis for Departmental certifications in Items 2 through 10.

A. Industry

| Description (see corresponding narrative below) | <Cost>/Benefit Amount | |
|---|---|---|
| | First year | Subsequent years |
| Cost—Requests for Alternative Reporting | $<717,898> | $<66,976> |
| Cost—Determining Marginal Property Qualification | <124,200> | <124,200> |
| Benefit—Simplified Reporting for Marginal Properties | 198,720 | 198,720 |
| Net Cost or Benefit to Industry | <643,378> | 7,544 |

*Cost—Requests for Alternative Reporting.* We estimate alternative reporting requests would cost industry $717,898 in the first year and $66,976 each year thereafter. We estimate that industry would submit 250 requests in the first year for an alternative method of reporting and payment. There are about 200 offshore and 50 onshore 100-percent Federal agreements on which ONRR expects submission of requests to allow lessees to continue to report on an entitlements basis rather than change to a takes reporting basis as required by RSFA. We estimate that each request would take approximately 10 hours to complete, for a total of 2,500 hours. We estimate the recordkeeping associated with each request would be one-quarter hour. We estimate the total burden in the first year would be 2,563 hours = 2,500 reporting hours + 63 recordkeeping hours. We used tables from the Bureau of Labor Statistics to estimate the hourly cost for industry accountants in a metropolitan area. We added a multiplier of 1.4 for industry benefits. The industry labor cost factor for accountants would be approximately $46 per hour = $32.83 [mean hourly wage] × 1.4 [benefits cost factor]. Using a labor cost factor of $46 per hour, we estimate the total first-year cost to

industry would be $117,898 = 2,563 reporting hours × $46/hour. Industry must also submit processing fees for each of the 250 requests amounting to $600,000 = 250 requests × $2,400 fee. Thus, the estimated total industry costs for alternative reporting requests in the first year would be $717,898 = $117,898 + $600,000.

In subsequent years, we estimate the number of alternative reporting requests would decrease from 250 to 23 annually, thus lowering the cost to industry. We also estimate that industry would file two termination requests for their respective alternative method, which would result in an annual estimate of 256 hours (25 requests [23 alternative reporting requests + 2 termination requests] × 10 reporting hours) + 6 hours (25 requests × 0.25 recordkeeping hours). Based on the labor cost factor of $46 per hour, we estimate the total annual cost would be $11,776 = 256 hours × $46 per hour. Industry also would submit the $2,400 processing fee for the 23 new alternative reporting requests, which would cost $55,200 = 23 requests × $2,400 processing fee. Thus the estimated total costs, in subsequent years, for alternative requests would be $66,976 = $11,776 + $55,200.

*Cost—Determining Marginal Property Qualification.* We estimate approximately 3,600 producing mixed agreements would qualify for the marginal property reporting and payment exception, and 1,000 lessees reporting royalties for these mixed agreements would try to avail themselves of the marginal property reporting exception. Industry would be required to determine whether or not their mixed agreements qualify as a marginal property on a yearly basis by calculating the average daily well production for the agreement, resulting in an annual estimate of 2,700 hours = (3,600 mixed agreements × 0.5 hours) + (3,600 mixed agreements × 0.25 recordkeeping hours). Based on the labor cost factor of $46 per hour, we estimate the total annual cost would be $124,200 = 2,700 hours × $46/hour.

*Benefit—Simplified Reporting for Marginal Properties.* ONRR estimates that simplified reporting for marginal properties would save industry $198,720 per year. We estimate that approximately 3,600 producing mixed agreements would qualify for the marginal property exception on an annual basis. For each marginal property, we estimate that there would be an average of two leases with two payors and one line each for oil and gas products reported on each payor and lease on Form MMS–2014 each month. We estimate eight lines would be reported monthly on Form MMS–2014 per marginal property. Therefore, for these qualifying marginal properties, a total of 28,800 lines would be reported on Form MMS–2014 monthly or 345,600 lines annually calculated as follows:

3,600 agreements × 2 payors per marginal property × 2 leases per marginal property × 2 reported lines per lease × 12 months.

Due to the reporting relief provided by this proposed rulemaking, we estimate that the reporting burden for Form MMS–2014 would be reduced by 25 percent for qualifying marginal properties, from 345,600 lines annually to 259,200 lines annually, a reduction of 86,400 lines. We estimate that the total annual burden reduction for this information collection would be 4,320 hours calculated as follows:

(86,400 lines × 20% manually submitted × 7/60 hours per manual line) + (86,400 lines × 80% electronically submitted × 2/60 hours per electronic line).

The estimated annual savings to industry would be $198,720 = 4,320 hours × $46 per hour.

B. State and Local Governments

State revenues may be negatively impacted by the marginal property reporting exception because royalty payments may be deferred for up to 18 months. We believe the impact would be minimal because small producers would be more likely to use the marginal property exception than large producers. We are specifically requesting comments from both states and industry on what impact states may incur due to the marginal property reporting exception.

States may realize additional royalty revenues in future years if RSFA has the desired effect of extending the life of marginal properties. These benefits are not quantifiable at this time.

C. Federal Government

*Benefit—Reduced Operating Costs for Fewer Reported Lines.* We estimate that the Federal Government may benefit from clearer takes versus entitlement reporting procedures. More accurate reporting based on clearer reporting instructions would reduce ONRR resources needed to identify, notify, and resolve which parties are responsible for the reporting and payment of royalties on Federal oil and gas leases. However, these savings are not quantifiable at this time.

Further, the Federal Government may realize additional royalty revenues in future years if: (a) the savings to lessees and designees from the marginal property reporting exception has the desired outcome of extending the production life of marginal properties; and (b) reduced out-of-pocket expenses motivates lessees to invest in further lease development. However, these additional revenues are not quantifiable at this time.

*2. Regulatory Planning and Review (E.O. 12866)*

This document is a significant rule, and the Office of Management and Budget (OMB) has reviewed this proposed rule under Executive Order 12866. We have made the assessments required by E.O. 12866, and the results are given below.

a. This proposed rule would not have an effect of $100 million or more per year on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The Costs and Benefits table, in Item 1 above, demonstrates that the economic impact on industry would be well below the $100 million threshold used to define a rulemaking as having a significant impact on the economy.

b. This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. ONRR is the only agency that promulgates rules for reporting royalties on Federal oil and gas leases. Because this proposed rule would address only reporting and payment issues, it would not affect inspections and other actions that BLM, BSEE, or states perform.

c. This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This proposed rule could raise novel legal or policy issues. This proposed rule would codify Interior Board of Land Appeals decisions and provide additional details about the reporting and payment methods mandated by RSFA.

*3. Regulatory Flexibility Act*

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Approximately 2,500 different companies submit royalty and production reports to ONRR each month. In addition, approximately 200 of these 2,500 companies are large businesses under the U.S. Small Business Administration definition because they have over 500 employees.

The remaining 2,300 companies are considered to be small businesses.

As documented in Item 1A Industry (costs and benefits) in the Procedural Matters section, we believe industry would indeed have net savings after the first year as a result of the provisions in this proposed rule. The most significant costs in the first year after this rule became effective would be the initial programming costs necessary to incorporate rule provisions into each company's automated reporting system. As stated earlier, we believe most of these costs would be incurred by very large companies with complex automated reporting systems. Consequently, we believe this proposed rule would have an overall positive economic effect on small businesses. In addition to the monetary benefits discussed in Item 1A, this proposed rule would have other beneficial effects unique to small businesses.

Small businesses would be better able to match royalty payments with the cash flow from the sale of production. This proposed rule would require lessees to pay royalties on stand-alone leases and 100-percent Federal agreements on a takes basis; that is, only when the lessee sells or removes production. This procedure would be substantially different from current requirements that lessees pay on their entitled share regardless of who took production. This proposed rule also would allow lessees to pay on a takes basis for mixed agreements if the agreement qualifies as a marginal property. Typically, as properties near the end of their productive life, larger companies with higher overhead divest their marginal properties to smaller companies who can operate the properties more profitably. Consequently, we anticipate that most reporting relief granted under the marginal property reporting exception would be for small entities. Paying on a takes basis would reduce the number of out-of-pocket royalty payments that would otherwise occur under entitlement reporting.

The marginal property exception would also benefit small businesses reporting on a takes basis because it would allow lessees to ''true up'' to their entitled share up to 6 months after the calendar year. The lessee's decision to defer the true-up adjustment and associated royalty payment would be strictly discretionary. For example, the lessee could choose to true up by January 1 of the next calendar year and avoid any interest charges. On the other hand, the lessee could make a conscious decision to defer out-of-pocket royalty payments and use the funds for other purposes for up to 6 months. For example, lessees could choose to invest the money if the return on investment is higher than the interest that will be due to the Government at the end of the time period, or use the funds temporarily to capitalize development of their oil and gas properties while awaiting a more permanent source of funds. An important benefit of this proposed rule would provide greater flexibility for small businesses to meet their unique cash management needs.

*4. Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. The effect would be limited to a maximum estimated at $3,534,730 = $3,842,098 × (2,300 small businesses/2,500 companies). See Item 1 above.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. See Item 1 above.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rulemaking would benefit U.S.-based enterprises if finalized as written.

*5. Unfunded Mandates Reform Act*

This proposed rule would not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. This proposed rule would not have a significant or unique effect on state, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*6. Takings (E.O. 12630)*

Under the criteria in Executive Order 12630, this proposed rule would not have any significant takings implications. This proposed rule would not impose conditions or limitations on the use of any private property. Therefore, a takings implication assessment is not required.

*7. Federalism (E.O. 13132)*

Under the criteria in Executive Order 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule would affect the timing of royalty reports to the Federal Government but not the amount paid and, ultimately, distributed to the states. Consequently, this proposed rule would not substantially and directly affect the relationship between Federal and state governments or impose costs on states or localities. Therefore, a Federalism Assessment is not required.

*8. Civil Justice Reform (E.O. 12988)*

This proposed rule would comply with the requirements of Executive Order 12988. Specifically, this proposed rule:

a. Would meet the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation.

b. Would meet the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*9. Consultation With Indian Tribes (E.O. 13175)*

Under the criteria in Executive Order 13175, we have evaluated this proposed rule and determined that it would have no potential effects on federally recognized Indian tribes. This proposed rule would have no tribal implications that impose substantial direct compliance costs on Indian tribal governments.

*10. Paperwork Reduction Act of 1995*

This proposed rule would create a new part 1205 containing new information collection requirements. The title of the new information collection request (ICR) is ''30 CFR Part 1205, Takes vs. Entitlements.'' ONRR is submitting this ICR to OMB for review and approval, as required under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* This proposed rule also would amend paragraphs in part 1202 but would not change the information collection requirements already approved for that part under OMB Control Number 1012–0004. In addition, the proposed rule would make a technical amendment to the table at § 1210.10 by adding the OMB control number for the new ICR.

As part of our continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on any aspect of the reporting burden through the information collection process. Please see *ICR Comments* under the **ADDRESSES** section to submit comments.

The OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, submit public

comments to OMB within 30 days in order to ensure their maximum consideration. However, we will consider all comments received during the comment period for this notice of proposed rulemaking.

The intent of this rulemaking is to implement provisions of RSFA governing when a Federal lessee must report and pay on the oil and gas volumes it takes from a lease, or on the volume it is entitled to, based on its ownership interest in the lease. We collect this information to ensure that lessees accurately value and properly pay royalties. In the first year, we expect that ONRR would receive approximately 250 requests for an alternative method of royalty reporting and payment for agreements.

If a lessee of a Federal agreement, with concurrence of all lessees, wants to begin or end an alternative method of royalty reporting and payment, the lessee must submit a written request to ONRR. The lessee must submit the company's name, address, phone number, and a contact name; the agreement number and a list of leases in the agreement for the property being considered for beginning or ending the alternative method of royalty reporting and payment; a list of all lessees and their ownership interest in the leases in the agreement; and documentation that will support the concurrence of all lessees to beginning or terminating such alternative method of reporting. If the request is to begin an alternative reporting method, the lessee also must submit a description of the alternative method and documentation that will prove that such an alternative method does not reduce the amount of royalty obligation.

We estimate that ONRR would receive approximately 250 requests in the first year for an alternative method of royalty reporting and payment on 100-percent Federal agreements from the lessees. We expect 200 offshore and 50 onshore submitted requests, allowing lessees to continue to report on an entitlements basis instead of changing to a takes-reporting basis as required by RSFA. Each request for alternative reporting would be subject to a non-refundable processing fee of $2,400. Lessees would take approximately 10 hours to complete submission of each request and an additional one-quarter hour for recordkeeping. We estimate the total annual burden would be 2,563 hours = (250 requests × 10 reporting hours) + (250 requests × 0.25 recordkeeping hours). In subsequent years, we expect the number of requests to decrease, thus lowering the cost to industry. We also estimate that industry would file annually two termination requests of their respective alternative method, resulting in an annual estimate of 21 hours = (2 termination requests × 10 reporting hours) + (2 termination requests × 0.25 recordkeeping hour).

We estimate a total of 2,584 burden hours for the new requirements. The following table shows the proposed requirements and burden hours for this rule and new ICR, by CFR citation.

BURDEN BREAKDOWN

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| **PART 1205—REPORTING AND PAYING ROYALTIES ON FEDERAL LEASES** | | | | |
| **Subpart B—Reporting and Paying Royalties on Federal Leases** | | | | |
| 1205.101 (a)(1), (a)(2), and (a)(3). | (a) Unless you qualify for the exceptions in subparts C and D of this part, you must report and pay royalties. * * * | Hour burden covered under OMB Control No. 1012–0004 (formerly 1010–0139). | | |
| 1205.105 (a) | The volume allocated to a lease or agreement under a BLM or BSEE commingling approval is the volume on which you and all other lessees must report and pay under §1205.101(a)(1) through (3). | | | |
| 1205.106 (a) and (b). | There are two exceptions to the reporting and payment requirements in this subpart: (a) You may qualify for an alternative to the royalty reporting and payment requirements for 100-percent Federal agreements under § 1205.101(a)(2) if you meet certain requirements. The requirements for alternative reporting are explained in subpart C; or (b) You may qualify to report on your take volume rather than entitled volume, with appropriate adjustments after year-end, if your mixed agreement is a marginal property. Requirements for the marginal property reporting exception are explained in subpart D. | AUDIT PROCESS. See note. | | |
| **Subpart C—Reporting and Paying Royalties on Federal Leases Under an Alternative Method for a 100-percent Federal Agreement** | | | | |
| 1205.201 (a) | You may qualify for an alternative to the royalty reporting and payment requirements for agreements under subpart B if: (a) You are in a 100-percent Federal agreement; | AUDIT PROCESS. See note. | | |
| 1205.201 (b) | (b) You and all other lessees in the agreement concur in writing to the alternative method; and | Hour burden covered under 30 CFR 1205.202. | | |
| 1205.201 (c) | (c) The alternative does not reduce the total monthly royalty obligation reported and paid to ONRR. | AUDIT PROCESS. See note. | | |
| 1205.202 (a), (b), and (c). | (a) To obtain approval to use an alternative method of royalty reporting and payment, you must submit one written request to ONRR on behalf of all lessees of leases in the agreement. | 10.25 | 250 | 2,563 |

BURDEN BREAKDOWN—Continued

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| | (b) The request you submit under paragraph (a) of this section must contain the following documents and information:<br>(1) A description of the proposed alternative reporting and payment method.<br>(2) The agreement number and a list of the leases in the agreement.<br>(3) A list of all lessees and their ownership interest in the leases in the agreement.<br>(4) A copy of the lessees' written concurrence to the alternative method required under § 1205.201(b).<br>(5) Documentation showing that the proposed alternative method does not reduce the total monthly royalty obligation reported and paid to ONRR for the leases in the agreement.<br>(6) A non-refundable processing fee of $2,400 for each request you make for an agreement under this section:<br>(i) You must pay the processing fee to ONRR following the requirements for making payments found in 30 CFR 1218.51. You are not required to use Electronic Funds Transfer (EFT) for these payments.<br>(ii) If you do not remit the full amount of the processing fee with your request, ONRR will return your request unprocessed. If ONRR returns your unprocessed request for failure to pay the fee, you may not appeal the return of your request.<br>(iii) ONRR may adjust the processing fee by providing notice in the **Federal Register**.<br>(c) You must retain all records pertaining to your request for an alternative method for 7 years after termination of the alternative method. | | | |
| 1205.204 (a) | When ONRR receives your request for alternative reporting and payment under § 1205.202, ONRR will notify you in writing as follows:<br>(a) If your request for alternative reporting and payment is complete, ONRR may approve, deny, or modify your request in writing. * * *. | AUDIT PROCESS. See note. | | |
| 1205.204 (b)(1) and (4). | (b) If your request for alternative reporting and payment is not complete, ONRR will notify you in writing that your request is incomplete and identify any missing information.<br>(1) You must submit the missing information within 60 days of your receipt of ONRR's notice. * * *.<br>(4) You may submit a new request. * * * ..... | Hour burden covered under 30 CFR 1205.202. | | |
| 1205.205 (a) and (b). | (a) If you are a lessee for a lease in an agreement when you submit a request under § 1205.202, you must begin using the alternative method of royalty reporting and payment for the production month after you receive written approval from ONRR.<br>(b) If you become a lessee for a lease in an agreement for which there is an approved alternative method of royalty reporting and payment, you must begin reporting under the alternative method for the production month in which you become a lessee. | Hour burden covered under OMB Control No. 1012–0004. | | |
| 1205.206 (a) and (b).<br><br>1205.207 (a) and (b). | If you want to stop using the approved alternative method of royalty reporting and payment, you must:<br>(a) Obtain written concurrence from all lessees in the agreement to stop using the alternative method; and<br>(b) Provide a copy of the written concurrence to ONRR and the delegated state, if applicable.<br>(a) If you request to stop using the approved alternative method under § 1205.206, then you must stop using the approved alternative method of royalty reporting and payment beginning with the production month after you provide a copy of the written concurrence to ONRR and the delegated state, if applicable.<br>(b) You must stop using the approved alternative method of royalty reporting and payment within 60 days after you receive written notice from BLM or BSEE notifying you that a non-Federal tract or a tract with a different royalty rate or funds distribution has been added to your agreement. | 10.25 | 2 | 21 |

BURDEN BREAKDOWN—Continued

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| **Subpart D—Reporting and Paying Royalties on Marginal Properties** | | | | |
| 1205.301 (a), (b), and (c). | (a) The marginal property exception allows you to report and pay on your take volume each month and adjust to your entitled volume after the end of the calendar year rather than reporting and paying based on your entitled volume each month as required under § 1205.101(a)(3).<br>(b) You may use the marginal property exception if: .....<br>(1) Your lease is in a mixed agreement; and .....<br>(2) The mixed agreement qualifies as a marginal property under this subpart.<br>(c) You may report and pay using the marginal property exception regardless of whether any other lessee or designee who pays royalties for that marginal property uses the exception. | Hour burden covered under OMB Control No. 1012–0004. | | |
| 1205.305 (a) | (a) If you start using the marginal property exception . . . then you must report and pay. * * * | Hour burden covered under OMB Control No. 1012–0004. | | |
| 1205.306 (a) and (b). | If you want to report and pay under the marginal property exception, you must:<br>(a) First, determine your take volume from the qualifying marginal property under § 1205.102.<br>(b) Second, report and pay for each of your Federal leases in the qualifying marginal property by allocating the take volume determined in paragraph (a) of this section to all of your leases in the agreement based on the approved agreement allocation schedule. | | | |
| 1205.307 (a), (b), and (c). | If the take volume you reported under § 1205.306(b) does not equal your entitled volume for the calendar year, for each of your Federal leases in the qualifying marginal property, you must:<br>(a) Calculate the difference between the take volume you reported under the marginal property exception and your entitled volume for the calendar year in which you used the exception; and<br>(b) Report the difference calculated in paragraph (a) of this section:<br>(1) On Form MMS–2014, Report of Sales and Royalty Remittance<br>(2) By June 30 of the calendar year immediately following the calendar year for which you used the marginal property exception.<br>(3) As a positive amount on Form MMS–2014 when your total takes are less than your entitlements, or a negative amount on Form MMS–2014 when your total takes exceed your entitlements.<br>(4) As a single-line entry for each lease and product from the lease.<br>(5) Using the correct adjustment reason code for reporting under this section.<br>(6) Using the December sales month of the calendar year for which you used the marginal property exception.<br>(c) Do not adjust the monthly royalty lines you reported under § 1205.306(b) if the take volumes you reported were accurate. | | | |
| 1205.309 (a) and (b). | If the difference you report under § 1205.307 is positive and you underpaid royalties for the qualifying marginal property, then you:<br>(a) Must pay the additional royalty owed when you report the difference under § 1205.307; and<br>(b) Will owe interest on the additional royalty you reported and paid under paragraph (a) of this section at the rate prescribed under part 1218 of this title. You will owe interest beginning January 1 of the calendar year following the calendar year for which you used the marginal property exception until the date you paid the additional royalties due. | Hour burden covered under OMB Control No. 1012–0004. | | |

BURDEN BREAKDOWN—Continued

| 30 CFR | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| 1205.311 (a), (b), and (c). | If you erroneously report using the marginal property exception on a property that is not a qualified marginal property, you:<br>(a) Must amend all erroneously submitted Form MMS–2014s to report your entitled volume for each calendar month;<br>(b) Will owe any associated interest calculated under part 1218 of this title; and<br>(c) May be subject to civil penalties under part 1241 of this title ..... | | | |
| 1205.312 (a), (b), and (c). | (a) Your property must qualify for the marginal property exception under this subpart for each calendar year based on production during the base period.<br>(b) If you find that your property is no longer eligible for the marginal property exception because production increased in the most recent base period, you must stop using the exception as of December 31 of the year in which the most recent base period ends.<br>(c) If you do not stop using the marginal property exception as required under paragraph (b) of this section, then you:<br>(1) Will owe late payment interest determined under part 1218 of this title from the date you were required to stop using the exception under paragraph (b).<br>(2) May be subject to civil penalties under part 1241 of this title .... | AUDIT PROCESS. See note. | | |
| Burden Hour Total | | ..... | 252 | 2,584 |

**Note:** AUDIT PROCESS—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because ONRR staff asks non-standard questions to resolve exceptions. 5 CFR 1320.4(a)(2).

*Public Comment Policy:* The PRA (44 U.S.C. 3501 *et seq.*) provides that 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. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency to ''. . . consult with members of the public and affected agencies concerning each proposed collection of information. . . .'' ONRR is specifically soliciting comments on the following aspects of this collection: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. Other than the $2,400 fee for each alternative reporting request (§ 1205.202(b)(6)), we have not identified any other costs. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Federal Government; or (iv) as part of customary and usual business or private practices.

ONRR will summarize written responses to this proposed information collection and address them in our final rule. We will provide a copy of the ICR to you, without charge upon request, and also post the ICR at *http://www.onrr.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We will post all comments in response to this proposed information collection at *http://www.regulations.gov*.

*11. National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this rule is categorically excluded under: ''(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature.'' See 43 CFR 46.210(i) and the DOI Departmental Manual, part 516, section 15.4.D. We have also determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments would have no consequences with respect to the physical environment. This rule would not alter in any material way natural resource exploration, production, or transportation.

*12. Data Quality Act*

In developing this proposed rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554), also known as the Information Quality Act. The Department of the Interior has issued

guidance regarding the quality of information that it relies on for regulatory decisions. This guidance is available on DOI's Web site at *http://www.doi.gov/ocio/iq.html*.

*13. Effects on the Energy Supply (E.O. 13211)*

This proposed rule would not be a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

*14. Clarity of This Regulation*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ''**ADDRESSES**'' section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*15. Public Availability of Comments*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

**List of Subjects in 30 CFR Parts 1202, 1205, and 1210**

Indian leases, Actual disposition, Royalty purposes, Outer Continental shelf, Indian lands, Mineral resources, Mineral royalties, Natural gas, Oil, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: August 1, 2013.

**Rhea Suh,**

*Assistant Secretary, Policy, Management and Budget.*

For the reasons stated in the preamble, the Office of Natural Resources Revenue proposes to amend 30 CFR parts 1202 and 1210, and add 30 CFR part 1205 as set forth below:

## PART 1202—ROYALTIES

■ 1. The authority for part 1202 continues to read as follows:

**Authority:** 5 U.S.C. 301 *et seq.,* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

### Subpart C—Federal and Indian Oil

#### § 1202.100 Royalty on oil.

■ 2. Amend § 1202.100 by revising paragraphs (e)(1), (e)(2), (e)(3), and (f) to read as follows:

* * * * *

(e)(1) *Indian oil.* This paragraph (e) applies only to Indian leases. In those instances where the lessees of any Indian lease committed to a federally approved unitization or communitization agreement do not actually take the proportionate share of the agreement production attributable to their lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement nonetheless is subject to the royalty payment and reporting requirements of this title. Except as provided in paragraph (e)(2) of this section, the value, for royalty purposes, of production attributable to unitized or communitized leases will be determined in accordance with 30 CFR part 1206. In applying the requirements of 30 CFR part 1206 to Indian leases, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take, will be considered as controlling in arriving at the value, for royalty purposes, of that portion, as if the person actually selling or disposing of the production were the lessee of the Indian lease.

(e)(2) If an Indian lessee takes less than its proportionate share of agreement production, upon request of the lessee, ONRR may authorize a royalty valuation method different from that required by paragraph (e)(1) of this section, but consistent with the purposes of these regulations, for any volumes not taken by the lessee but for which royalties are due.

(e)(3) For purposes of this section, all persons actually taking volumes in excess of their proportionate share of production in any month under a unitization or communitization agreement shall be deemed to have taken ratably from all persons actually taking less than their proportionate share of the agreement production for that month.

* * * * *

(f) *Federal oil.* The regulations explaining when you must report and pay royalties on the volume of oil you take from your Federal lease, including Federal leases committed to a federally approved unitization or communitization agreement, or on the entitled share of production from or allocated to your Federal lease, are found in 30 CFR part 1205.

* * * * *

### Subpart D—Federal Gas

#### § 1202.150 Royalty on gas.

■ 3. Amend § 1202.150 by revising paragraph (e) to read as follows:

* * * * *

(e) The regulations explaining when you must report and pay royalties on the volume of gas you take from your Federal lease, including Federal leases committed to a federally approved unitization or communitization agreement, or on the entitled share of production from or allocated to your Federal lease, are found in 30 CFR part 1205.

#### § 1202.152 Standards for reporting and paying royalties on gas.

■ 4. Amend § 1202.152 by revising paragraphs (a)(1) and (a)(2) to read as follows:

(a) You must report gas volumes and British thermal unit (Btu) heating values using the frequencies and methods required under BLM and Bureau of Ocean Energy Management (BOEM) regulations, orders, and notices subject to ONRR verification based on third party data.

* * * * *

### Subpart J—Gas Production From Indian Leases

#### § 1202.558 What standards do I use to report and pay royalties on gas?

■ 5. Amend § 1202.558 by revising paragraphs (a)(1) and (a)(2) to read as follows:

(a) You must report gas volumes and Btu heating values using the frequencies and methods required under BLM regulations, orders and notices, subject to ONRR verification based on third party data.

* * * * *

■ 6. Add part 1205 to read as follows:

## PART 1205—REPORTING AND PAYING ROYALTIES ON FEDERAL LEASES

### Subpart A—General Provisions

1205.1 What is the purpose of this part?

1205.2 What leases are subject to this part?
1205.3 What definitions apply to this part?

**Subpart B—Reporting and Paying Royalties on Federal Leases**

1205.101 How do I report and pay royalties?
1205.102 How do I determine my take volume?
1205.103 How do I determine my entitled volume in a mixed agreement?
1205.104 How do I determine value for my entitled volume in a mixed agreement?
1205.105 How does a commingling approval affect my take volume?
1205.106 Are there exceptions to the reporting and payment requirements in this subpart?

**Subpart C—Reporting and Paying Royalties on Federal Leases Under an Alternative Method for a 100-Percent Federal Agreement**

1205.201 How do I qualify for alternative reporting and payment for a 100-percent Federal agreement?
1205.202 How do I request alternative reporting and payment for a 100-percent Federal agreement?
1205.203 Who will approve, deny, or modify my request for alternative reporting and payment for a 100-percent Federal agreement?
1205.204 How will I know if I am approved for alternative reporting and payment for a 100-percent Federal agreement?
1205.205 When must I begin using the alternative method for a 100-percent Federal agreement?
1205.206 What if I want to stop reporting and paying under the approved alternative method for a 100-percent Federal agreement?
1205.207 When must I stop using the approved alternative method for a 100-percent Federal agreement?

**Subpart D—Reporting and Paying Royalties on Marginal Properties**

1205.301 What is the marginal property reporting and payment exception?
1205.302 What is a marginal property under this subpart?
1205.303 How do I determine if my property is a marginal property?
1205.304 When may I begin using the marginal property exception?
1205.305 How long must I use the marginal property exception?
1205.306 How do I report under the marginal property exception?
1205.307 What if the take volume I reported does not equal my entitled volume for one or more of my Federal leases for the calendar year?
1205.308 How do I determine the royalty value for the difference between my take volume and entitled volume?
1205.309 What must I do if I underpay royalties under this subpart?
1205.310 What must I do if I overpay royalties under this subpart?
1205.311 What must I do if I erroneously report using the marginal property exception?
1205.312 What must I do if my property no longer qualifies as a marginal property under this subpart?

**Authority:** 5 U.S.C. 301 *et seq.,* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

## Subpart A—General Provisions

### § 1205.1 What is the purpose of this part?

(a) This part explains when you must report and pay royalties on:

(1) The volume of oil and gas you take from your Federal lease; or

(2) The entitled share of production from or allocated to your Federal lease.

(b) The requirements of this part do not alter a lessee's liability to pay royalty on the percentage of lease production equal to the lessee's working interest percentage, record title interest, or operating rights ownership in a lease.

(c) The requirements of this part do not alter a lessee's responsibility to timely pay annual obligations specified in lease terms such as minimum royalty payments.

### § 1205.2 What leases are subject to this part?

(a) This part applies to all Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS).

(b) This part does not apply to:

(1) Federal leases for minerals other than oil and gas;

(2) Indian mineral leases; or

(3) Leases for which the Federal Government became the lessor when it acquired a mineral interest subject to a private mineral lease.

### § 1205.3 What definitions apply to this part?

The following definitions apply to this part:

*100-percent Federal agreement* means any agreement that contains only Federal leases having the same fixed royalty rate and funds distribution. A 100-percent Federal agreement excludes any agreement that includes leases subject to the Gulf of Mexico Energy Security Act of 2006 (GOMESA).

*Agreement* means an agreement for exploration or development of mineral resources from identified tracts of properties described in 30 CFR chapters II or V (offshore) or 43 CFR part 3000 (onshore) that is approved by the Bureau of Safety and Environmental Enforcement (BSEE) or the Bureau of Land Management (BLM), as applicable. The most common agreements are enhanced recovery units, unit participating areas, unitization agreements, and communitization agreements. For purposes of this part, agreements fall into two categories: 100-percent Federal agreements and mixed agreements.

*Approved point of royalty measurement* means the point where BLM or BSEE determines the volume of oil or gas is removed from a lease or agreement. The BLM designates this point under 43 CFR 3162.7 for onshore leases, and BSEE designates this point under 30 CFR part 250, subpart L, for OCS leases. When production from different leases or agreements is commingled before the approved point of royalty measurement, the commingling approval defines how the total volume measured at the approved point of royalty measurement is allocated to each lease or agreement subject to the commingling approval.

*Barrels of oil equivalent (BOE)* means the combined equivalent production of oil and gas stated in barrels of oil. Each barrel of oil production is equal to one BOE. Also, each 6,000 cubic feet (6 Mcf) of gas production is equal to one BOE.

*Base period* means the 12-month period from July 1 through June 30 immediately preceding the calendar year for which you elect to report and pay using the marginal property reporting exception in subpart D.

*Calendar year* means the January through December production months.

*Combined equivalent production* means the total of all oil and gas production for the marginal property, stated in BOE.

*Commingling approval* means the BLM- or BSEE-approved surface mixing of production from two or more independent leases or agreements, before measurement for royalty purposes.

*Delegated state* means a state with which ONRR has entered into a delegation agreement under 30 U.S.C. 1735.

*Designee* means the person designated by a lessee under 30 CFR 1218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

*Entitled share* means the percentage of the volume of production equal to your working interest percentage or operating rights ownership in a lease.

*Lessee* means any person to whom the United States issues an oil and gas lease, or any person to whom all or a part of a lessee's record title interest or operating rights in a lease have been assigned.

*Mixed agreement* means any agreement other than a 100-percent Federal agreement. Mixed agreements contain any mixture of Federal, Indian, state or private mineral estates, or contain all Federal leases with different royalty rates or funds distribution. A

mixed agreement includes any agreement that contains leases subject to GOMESA.

*Operator* means any person, including the lessee, who has control of, or who manages operations affecting any Federal oil and gas lease. ''Operator'' also means any entity engaged in the business of developing, drilling for, or producing oil or gas or that has the responsibility for reporting production from a lease or portion thereof.

*Producing wells* means only those producing oil or gas wells that contribute to the sum of BOE used in the calculation under §§ 1205.302 and 1205.303. Producing wells do not include injection wells, disposal wells and water source wells. Wells with multiple zones commingled downhole are considered a single well.

*Take* means any oil or gas volumes removed or sold from a lease or agreement, as measured at or allocated from an approved point of royalty measurement. For stand-alone leases, the take volume is the volume measured at the approved point of royalty measurement for the lease. For leases in a 100-percent Federal agreement or subject to a commingling approval, the take volume for an individual lease is the volume allocated back to the lease after measurement at an approved point of royalty measurement for the agreement or commingling approval.

*You and your* means the lessee or its designee for a lease.

## Subpart B—Reporting and Paying Royalties on Federal Leases

### § 1205.101 How do I report and pay royalties?

(a) Unless you qualify for the exceptions in subparts C and D of this part, you must report and pay royalties as stated in the table below:

| If you are a lessee of a lease or portion of a lease that is . . . | Then you must report and pay royalties based on . . . |
|---|---|
| (1) Not contained in an agreement (stand-alone) | The volume of production you take from the lease or portion of a lease that is not in an agreement. |
| (2) In a 100-percent Federal agreement | The volume of production you take from the lease or portion of the lease in a 100-percent Federal agreement. |
| (3) In a mixed agreement | Your entitled share of production allocated to the lease or portion of the lease in the mixed agreement. |

(b) If you report and pay royalties under paragraph (a)(2) of this section for more than one lease in a 100-percent Federal agreement, you must allocate the volume to each lease in the agreement according to the agreement allocation schedule.

### § 1205.102 How do I determine my take volume?

The volume of production you take is the volume you, or someone on your behalf, sold from your lease or leases. See § 1205.105 to determine how a commingling approval may affect your take volume.

### § 1205.103 How do I determine my entitled volume in a mixed agreement?

Your entitled volume is your entitled share in a lease or portion of a lease multiplied by the volume of production allocated to your lease under the agreement allocation schedule. See § 1205.105 to determine how a commingling approval may affect your entitled volume.

### § 1205.104 How do I determine value for my entitled volume in a mixed agreement?

(a) If you take less than your entitled volume of production from a mixed agreement during a month, then the royalty value you must use for the difference is the volume weighted-average unit value for the total volume you take from the property during that month, as determined under part 1206 of this title.

(b) If you do not take any production to which you were entitled from a mixed agreement during a month, then the royalty value for your entitled share for that month is the value determined for non-arm's-length dispositions under 30 CFR 1206.103 for oil; 30 CFR 1206.152(c) for unprocessed gas; and 30 CFR 1206.153(c) for processed gas.

### § 1205.105 How does a commingling approval affect my take volume?

(a) The volume allocated to a lease or agreement under a BLM or BSEE commingling approval is the volume on which you and all other lessees must report and pay under § 1205.101(a)(1) through (3).

(b) The sum of the volumes all lessees report under paragraph (a) of this section must equal the total volume allocated to the lease or agreement under the commingling approval.

### § 1205.106 Are there exceptions to the reporting and payment requirements in this subpart?

There are two exceptions to the reporting and payment requirements in this subpart:

(a) You may qualify for an alternative to the royalty reporting and payment requirements for 100-percent Federal agreements under § 1205.101(a)(2) if you meet certain requirements. The requirements for alternative reporting are explained in subpart C; or

(b) You may qualify to report on your take volume rather than entitled volume, with appropriate adjustments after year-end, if your mixed agreement is a marginal property. Requirements for the marginal property reporting exception are explained in subpart D.

## Subpart C—Reporting and Paying Royalties on Federal Leases Under an Alternative Method for a 100-Percent Federal Agreement

### § 1205.201 How do I qualify for alternative reporting and payment for a 100-percent Federal agreement?

You may qualify for an alternative to the royalty reporting and payment requirements for agreements under subpart B if:

(a) You are in a 100-percent Federal agreement;

(b) You and all other lessees in the agreement concur in writing to the alternative method; and

(c) The alternative does not reduce the total monthly royalty obligation reported and paid to ONRR.

### § 1205.202 How do I request alternative reporting and payment for a 100-percent Federal agreement?

(a) To obtain approval to use an alternative method of royalty reporting and payment, you must submit one written request to ONRR on behalf of all lessees of leases in the agreement.

(b) The request you submit under paragraph (a) of this section must contain the following documents and information:

(1) A description of the proposed alternative reporting and payment method.

(2) The agreement number and a list of the leases in the agreement.

(3) A list of all lessees and their ownership interest in the leases in the agreement.

(4) A copy of the lessees' written concurrence to the alternative method required under § 1205.201(b).

(5) Documentation showing that the proposed alternative method does not reduce the total monthly royalty obligation reported and paid to ONRR for the leases in the agreement.

(6) A non-refundable processing fee of $2,400 for each request you make for an agreement under this section.

(i) You must pay the processing fee to ONRR following the requirements for making payments found in 30 CFR 1218.51. You are not required to use Electronic Funds Transfer (EFT) for these payments.

(ii) If you do not remit the full amount of the processing fee with your request, ONRR will return your request unprocessed. If ONRR returns your unprocessed request for failure to pay the fee, you may not appeal the return of your request.

(iii) ONRR may adjust the processing fee by providing notice in the **Federal Register**.

(c) You must retain all records pertaining to your request for an alternative method for 7 years after termination of the alternative method.

**§ 1205.203 Who will approve, deny, or modify my request for alternative reporting and payment for a 100-percent Federal agreement?**

(a) If there is not a delegated state for your lease in a 100-percent Federal agreement, only ONRR will decide whether to approve, deny, or modify your request for alternative reporting and payment.

(b) If there is a delegated state for your lease in a 100-percent Federal agreement, ONRR will decide whether to approve, deny, or modify your request for alternative reporting and payment after consulting with the delegated state.

**§ 1205.204 How will I know if I am approved for alternative reporting and payment for a 100-percent Federal agreement?**

When ONRR receives your request for alternative reporting and payment under § 1205.202, we will notify you in writing as follows:

(a) If your request for alternative reporting and payment is complete, ONRR may approve, deny, or modify your request in writing.

(1) If ONRR approves your request for alternative reporting and payment, ONRR will notify you with specifics of the approval.

(2) If ONRR denies your request for alternative reporting and payment, ONRR will notify you of the reasons for denial and your appeal rights under part 1290, subpart B, of this chapter.

(3) If ONRR modifies your request for alternative reporting and payment, ONRR will notify you of the modifications.

(i) You have 60 days from your receipt of the notice to either accept or reject any modification(s) in writing.

(ii) If you reject the modification(s) or fail to respond to the notice, ONRR will deny your request. ONRR will notify you in writing of the reasons for denial and your appeal rights under part 1290, subpart B, of this chapter.

(b) If your request for alternative reporting and payment is not complete, ONRR will notify you in writing that your request is incomplete and identify any missing information.

(1) You must submit the missing information within 60 days of your receipt of ONRR's notice that your request is incomplete.

(2) After you submit all required information, ONRR may approve, deny, or modify your request for alternative reporting and payment under paragraph (a) of this section.

(3) If you do not submit all required information within 60 days of your receipt of ONRR's notice that your request is incomplete, we will return your request as incomplete. If ONRR returns your unprocessed request because it is incomplete:

(i) ONRR will not return the processing fee you paid under § 1205.202; and

(ii) You may not appeal the return of your request.

(4) You may submit a new request including another processing fee for alternative reporting and payment under this subpart at any time after ONRR returns your incomplete request.

**§ 1205.205 When must I begin using the alternative method for a 100-percent Federal agreement?**

(a) If you are a lessee for a lease in an agreement when you submit a request under § 1205.202, you must begin using the alternative method of royalty reporting and payment for the production month after you receive written approval from ONRR.

(b) If you become a lessee for a lease in an agreement for which there is an approved alternative method of royalty reporting and payment, you must begin reporting under the alternative method for the production month in which you become a lessee.

**§ 1205.206 What if I want to stop reporting and paying under the approved alternative method for a 100-percent Federal agreement?**

If you want to stop using the approved alternative method of royalty reporting and payment, you must:

(a) Obtain written concurrence from all lessees in the agreement to stop using the alternative method.

(b) Provide a copy of the written concurrence to ONRR and the delegated state, if applicable.

**§ 1205.207 When must I stop using the approved alternative method for a 100-percent Federal agreement?**

(a) If you request to stop using the approved alternative method under § 1205.206, then you must stop using the approved alternative method of royalty reporting and payment beginning with the production month after you provide a copy of the written concurrence to ONRR and the delegated state, if applicable.

(b) You must stop using the approved alternative method of royalty reporting and payment within 60 days after you receive written notice from BLM or BSEE notifying you that a non-Federal tract or a tract with a different royalty rate or funds distribution has been added to your agreement.

(c) A change in a lessee's ownership interests after the initial approval for alternative reporting and payment will not terminate the approval.

(d) ONRR will terminate an approval in any instance when it believes it is in the best interest of the United States.

## Subpart D—Reporting and Paying Royalties on Marginal Properties

**§ 1205.301 What is the marginal property reporting and payment exception?**

(a) The marginal property exception allows you to report and pay on your take volume each month and adjust to your entitled volume after the end of the calendar year rather than reporting and paying based on your entitled volume each month as required under § 1205.101(a)(3).

(b) You may use the marginal property exception if:

(1) Your lease is in a mixed agreement; and

(2) The mixed agreement qualifies as a marginal property under this subpart.

(c) You may report and pay using the marginal property exception regardless of whether any other lessee or designee who pays royalties for that marginal property uses the exception.

**§ 1205.302 What is a marginal property under this subpart?**

A marginal property is an agreement that, during the base period, has a

combined equivalent production averaging less than 15 barrels of oil equivalent (BOE) per well producing day, as calculated under § 1205.303.

**§ 1205.303 How do I determine if my property is a marginal property?**

To determine if your property meets the marginal property qualifications for the next calendar year, you must:

(a) Calculate the total volume of oil and gas produced from your property during the base period (starting July of the previous year through June of the current year).

(b) Divide the total gas production (in Mcf) by 6 and add that total to the oil volume (in barrels) to arrive at the total BOE.

(c) Calculate the total number of days each well actually produced during the same time period (include all producing wells in the mixed agreement, including those that are not located on a Federal tract).

(d) Divide the total produced volume by the total well producing days.

If your calculated average daily well production is less than 15 BOE, your property qualifies for the marginal property exception.

**§ 1205.304 When may I begin using the marginal property exception?**

(a) After determining your property qualifies as a marginal property during the base period, you may begin using the marginal property reporting exception in the January production month of the calendar year following the base period.

(b) If you become a lessee of a qualifying marginal property during the calendar year, you may begin using the marginal property exception in the production month in which you became a lessee.

(c) You do not need to notify ONRR of your intent to use the marginal property reporting exception.

**§ 1205.305 How long must I use the marginal property exception?**

(a) If you start using the marginal property exception during any part of the calendar year and you do not dispose of your interest in the property during that calendar year, then you must report and pay under the exception through the December production month of that calendar year.

(b) If you dispose of your interest in a qualified marginal property during the calendar year, then you must use the exception through the last production month in which you had an ownership interest in the property. If the take volume you reported during your period of ownership does not equal your entitled volume, you must adjust your payments under §§ 1205.307 through 1205.310, except that:

(1) You must use as the sales month the last month you had an ownership interest rather than the December sales month required under § 1205.307(b)(6).

(2) Interest will be calculated from the first day of the month following the month you disposed of your ownership interest rather than January 1 of the calendar year following the calendar year for which you used the marginal property exception as prescribed under § 1205.309(b).

**§ 1205.306 How do I report under the marginal property exception?**

If you want to report and pay under the marginal property exception you must:

(a) First, determine your take volume from the qualifying marginal property under § 1205.102.

(b) Second, report and pay for each of your Federal leases in the qualifying marginal property by allocating the take volume determined in paragraph (a) of this section to all of your leases in the agreement based on the approved agreement allocation schedule.

**§ 1205.307 What if the take volume I reported does not equal my entitled volume for one or more of my Federal leases for the calendar year?**

If the take volume you reported under § 1205.306(b) does not equal your entitled volume for the calendar year, for each of your Federal leases in the qualifying marginal property, you must:

(a) Calculate the difference between the take volume you reported under the marginal property exception and your entitled volume for the calendar year in which you used the exception.

(b) Report the difference calculated in paragraph (a) of this section:

(1) On Form MMS–2014, Report of Sales and Royalty Remittance.

(2) By June 30 of the calendar year immediately following the calendar year for which you used the marginal property exception.

(3) As a positive amount on Form MMS–2014 when your total takes are less than your entitlements, or as a negative amount on Form MMS–2014 when your total takes exceed your entitlements.

(4) As a single-line entry for each lease and product from the lease.

(5) Using the correct adjustment reason code for reporting under this section.

(6) Using the December sales month of the calendar year for which you used the marginal property exception.

(c) Do not adjust the monthly royalty lines you reported under § 1205.306(b) if the take volume you reported was accurate.

**§ 1205.308 How do I determine the royalty value for the difference between my take volume and entitled volume?**

(a) If you take production from a qualifying marginal property during the calendar year and you report a difference between your take volume and entitled volume under § 1205.307, the royalty value you must use for the difference is based on the volume weighted-average unit value for the total volume you take from the property during that calendar year, as determined under part 1206 of this title.

(b) If you do not take production from a marginal property during the calendar year but you report a difference under § 1205.307, the royalty value for the difference is the value determined for non-arm's-length dispositions under 30 CFR 1206.103 for oil; 30 CFR 1206.152(c) for unprocessed gas; and 30 CFR 1206.153(c) for processed gas.

**§ 1205.309 What must I do if I underpay royalties under this subpart?**

If the difference you report under § 1205.307 is positive and you underpaid royalties for the qualifying marginal property, then you:

(a) Must pay the additional royalty owed when you report the difference under § 1205.307; and

(b) Will owe interest on the additional royalty you reported and paid under paragraph (a) of this section at the rate prescribed under part 1218 of this title. You will owe interest beginning January 1 of the calendar year following the calendar year for which you used the marginal property exception until the date you paid the additional royalties due.

**§ 1205.310 What must I do if I overpay royalties under this subpart?**

If the difference you report under § 1205.307 is negative and you overpaid royalties for the qualifying marginal property, then:

(a) You are entitled to a credit for the royalty you overpaid;

(b) You are entitled to a credit for the overpaid amount only for the period beginning January 1 of the calendar year following the calendar year for which you used the marginal property exception until the earlier of:

(1) The date you report the negative adjustment for the overpaid amount under § 1205.307; or

(2) June 30 of the calendar year immediately following the calendar year for which you used the marginal property exception; and

(c) ONRR will pay interest on the overpayment after you take the credit.

**§ 1205.311 What must I do if I erroneously report using the marginal property exception?**

If you erroneously report using the marginal property exception on a property that is not a qualified marginal property, you:

(a) Must amend all erroneously submitted Form MMS–2014s to report your entitled volume for each calendar month;

(b) Will owe any associated interest calculated under part 1218 of this title; and

(c) May be subject to civil penalties under part 1241 of this title.

**§ 1205.312 What must I do if my property no longer qualifies as a marginal property under this subpart?**

(a) Your property must qualify for the marginal property exception under this subpart for each calendar year based on production during the base period.

(b) If you find that your property is no longer eligible for the marginal property exception in the most recent base period, you must stop using the exception as of December 31 of the year in which the most recent base period ends.

(c) If you do not stop using the marginal property exception as required under paragraph (b) of this section, then you:

(1) Will owe late payment interest determined under part 1218 of this title from the date you were required to stop using the exception under paragraph (b).

(2) May be subject to civil penalties under part 1241 of this title.

## PART 1210—FORMS AND REPORTS

■ 7. The authority for part 1210 continues to read as follows:

**Authority:** 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.;* and 44 U.S.C. 3506(a).

### Subpart A—General Provisions

**§ 1210.10 What are the OMB-approved information collections?**

■ 8. Amend § 1210.10 by adding a new OMB control number as the last entry to the table as follows:

* * * * *

| OMB control number and short title | Form or information collected |
|---|---|
| * * * * * * * | |
| 1012–XXXX, 30 CFR Part 1205, Takes vs. Entitlements | No forms for the following collections:<br>• Request to use an alternative method of royalty reporting and payment.<br>• Request to stop using the approved alternative method of royalty reporting and payment. |

[FR Doc. 2013–19165 Filed 8–7–13; 8:45 am]

BILLING CODE 4310–T2–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 199

**[DOD–2011–HA–0136]**

**RIN 0720–AB56**

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Uniform Health Maintenance Organization (HMO) Benefit—Prime Enrollment Fee Exemption for Survivors of Active Duty Deceased Sponsors and Medically Retired Uniformed Services Members and Their Dependents

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish an exception to the usual rule that TRICARE Prime enrollment fees are uniform for the group of retirees and their dependents. Survivors and medically retired members are part of the retiree group under TRICARE rules. This exception would allow Survivors of Active Duty Deceased Sponsors and Medically Retired Uniformed Services Members and their Dependents enrolled in Prime to be exempt from future increases in TRICARE Prime enrollment fees. The Prime beneficiaries in these categories prior to 10/1/2013 would have their annual enrollment fee frozen at their current annual rate (FY 2011 rate $230 per single or $460 per family, FY 2012 rate $260 or $520, or the FY 2013 rate $269.38 or $538.56). The beneficiaries added to these categories on or after 10/1/2013 would have their fee frozen at the rate in effect at the time they are classified in either category and enroll in Prime or, if not enrolling, at the rate in effect at the time of enrollment. The fee remains frozen as long as at least one family member remains enrolled in Prime and there is not a break in enrollment. The fee charged for the dependent(s) of a Medically Retired Uniformed Services Member would not change if the dependent(s) was later re-classified a Survivor.

**DATES:** Written comments received at the address indicated below by October 7, 2013 will be considered and addressed in the final rule.

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

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

**FOR FURTHER INFORMATION CONTACT:** Ralph (Doug) McBroom, (703) 681–0039, TRICARE Management Activity, TRICARE Policy and Operations Directorate. Questions regarding payment of specific claims under the TRICARE allowable charge method should be addressed to the appropriate TRICARE contractor.

**SUPPLEMENTARY INFORMATION:** With respect to TRICARE Prime enrollment fees, the regulation (32 CFR 199.18(c)) currently includes the following provision: ''The specific enrollment fee requirements shall be published annually by the Assistant Secretary of Defense (Health Affairs), and shall be uniform within the following groups: dependents of active duty members in

pay grades of E–4 and below; active duty dependents of sponsors in pay grades E–5 and above; and retirees and their dependents.'' There is no enrollment fee for active duty dependents. The annual enrollment fee for retirees and their dependents since the program began was $230 per person or $460 per family until FY 2012. In FY 2012, the Department of Defense implemented a modest increase ($2.50 per person or $5.00 per family per month) in the enrollment fees for retirees and their dependents to $260 per person or $520 per family, followed by annual indexing. For FY 2013, the fee was increased per the National Defense Authorization Act for FY 2012 using the same Cost of Living Adjustment (COLA) percentage (3.6%) used to increase military retired pay. This increased the fees for FY 2013 to $269.38 per person or $538.56 per family.

Although the increases have been modest, TRICARE intends to exempt from this increase Survivors of Active Duty Deceased Sponsors and Medically Retired Uniformed Services Members and their Dependents enrolled in Prime. The enrollment fees for the current beneficiaries in these categories would remain at their current rate. The beneficiaries added to these categories on or after 10/1/2013 would have their fee frozen at the rate in effect at the time they are classified in either category and enroll in Prime or, if not enrolling, at the rate in effect at the time of enrollment. The fee remains frozen as long as at least one family member remains enrolled in TRICARE Prime and there is not a break in enrollment. To allow this exemption to be implemented, a change to the regulation is needed to authorize an exception to the general rule that the enrollment fees ''shall be uniform'' for the group of retirees and their dependents. (Survivors and medically retired members are part of the retiree group under TRICARE rules.) This proposed rule articulates that change. It provides that as an exception to the requirement for uniformity within the group of retirees and their dependents, the Assistant Secretary of Defense (Health Affairs) may exempt Survivors of Active Duty Deceased Sponsors and Medically Retired Uniformed Services Members and their dependents from increases in enrollment fees that occur on or after October 1, 2013.

It is the Department's intent that the exemption will apply only to the beneficiaries in the two categories specified above and only if they enroll in TRICARE Prime. If a beneficiary in one of the categories does not enroll in Prime, but later elects to enroll, their rate would be frozen at the rate in effect at the time of enrollment. If a beneficiary dis-enrolls from Prime and later re-enrolls, their rate would be frozen at the rate in effect at re-enrollment. The fee charged for a dependent of a Medically Retired Uniformed Services Member would not change if the dependent was later re-classified a Survivor and remained enrolled in Prime.

**Regulatory Procedures**

Executive Orders 12866 and 13563 require certain regulatory assessments for any significant regulatory action that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Congressional Review Act establishes certain procedures for major rules, defined as those with similar major impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation that would have significant impact on a substantial number of small entities. This proposed rule will have none of those effects. Nor does it establish information collection requirements under the Paperwork Reduction Act. Nor for purposes of Executive Order 13132 does it have federalism implications affecting States.

**List of Subjects in 32 CFR Part 199**

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR part 199 is to be amended as follows:

## PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.18 is amended by adding at the end of paragraph (c)(1) a new sentence, as follows:

**§ 199.18 Uniform HMO Benefit.**

* * * * *

(c) * * * . (1) * * * As an exception to the requirement for uniformity within the group of retirees and their dependents, the Assistant Secretary of Defense (Health Affairs) may exempt Survivors of Active Duty Deceased Sponsors and Medically Retired Uniformed Services Members and their Dependents from increases in enrollment fees that occur on or after October 1, 2013.

Dated: July 29, 2013.

**Patricia L. Toppings,**

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

[FR Doc. 2013–19152 Filed 8–7–13; 8:45 am]

BILLING CODE 5001–06–P

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 199

**[DOD–2013–HA–0053]**

**RIN 0720–AB59**

## TRICARE Program; Clarification of Benefit Coverage of Durable Equipment and Ordering or Prescribing Durable Equipment; Clarification of Benefit Coverage of Assistive Technology Devices under the Extended Care Health Option Program

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense (DoD) proposes several amendments to the TRICARE regulation. Specifically, the proposed rule revises the definitions of durable equipment (DE) and durable medical equipment (DME) to better conform the language in the regulation to the statute and implementing the statutory requirements will not change current policies. This rule also adds a definition of assistive technology (AT) devices for purposes of benefit coverage under the TRICARE Extended Care Health Option (ECHO) Program and removes the restriction under the TRICARE Basic Program that limits ordering or prescribing of DME to only a physician, to allow certain other authorized individual professional providers acting within the scope of their licensure to order or prescribe DME.

Finally, the proposed rule incorporates a policy clarification relating to luxury, deluxe, or immaterial features of equipment or devices. Namely, TRICARE cannot reimburse for the luxury, deluxe, or immaterial features of equipment or devices. However, the TRICARE Management Activity (TMA) can reimburse for the base or basic equipment or device that meet the beneficiary's needs. Beneficiaries may pay the provider for the luxury, deluxe, or immaterial features themselves, if they desire their equipment or device to have these ''extra features.''

**DATES:** Comments must be received on or before October 7, 2013. Do not submit

comments directly to the point of contact or mail your comments to any address other than what is shown below. Doing so will delay the posting of the submission.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

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

**FOR FURTHER INFORMATION CONTACT:** Gail L. Jones (303) 676–3401.

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary

### *1. Purpose of Regulatory Actions*

a. Need for Regulatory Actions

*(1) Benefit Coverage for DE, DME and Assistive Technology (AT) Devices.* The National Defense Authorization Act for Fiscal Year 2002 revised the coverage of DE under TRICARE. Those revisions resulted in final amendments to the TRICARE regulation regarding the TRICARE Basic Program, effective December 13, 2004, as published in the **Federal Register** on October 12, 2004 (69 FR 60547), and regarding the TRICARE Extended Health Care Option (ECHO) Program, effective September 20, 2004, as published in the **Federal Register** on August 20, 2004 (69 FR 51559). The original implementing regulations made a potentially confusing technical distinction between ''DE'' and ''DME''; that is, ''DE'' was defined as an item that did not qualify as ''DME'' that otherwise might be available under the TRICARE ECHO Program. This proposed rule provides clarification by correcting the definitions and adding a definition of assistive technology (AT) devices, which conforms to existing policy covering devices not otherwise qualifying as durable equipment.

*(2) Ordering and Prescribing DE and DME.* The current regulation in § 199.4 (d)(3)(ii)(A)(1) does not allow coverage of DME ordered by a TRICARE-authorized individual professional provider of care, with the exception of a doctor of medicine (MD) or a doctor of osteopathy (DO), even though it is permitted by his or her licensure. Specifically, paragraph (d)(3)(ii)(A)(1) states, ''Subject to the exceptions in paragraph (d)(3)(ii)(C) of this same section, only DME which is ordered by a physician for the specific use of the beneficiary shall be covered.'' Paragraph (d)(1) also states that only a physician can order DME. This restriction causes two problems:

- Certain other TRICARE authorized individual professional providers such as doctors of podiatric medicine (DPMs), doctors of optometry (ODs), doctors of dental surgery (DDSs) and doctors of dental medicine (DMDs), certified nurse midwives (CNMs), certified nurse practitioners (CNPs), certified registered nurse anesthetists (CRNAs), and clinical nurse specialists (CNSs) cannot prescribe DME, even when acting within the scope of their licensure.
- Beneficiaries cannot fill a prescription for DME prescribed by other non-physician professional providers, even when they act as a primary care provider, such as a certified nurse practitioner.

State governments generally regulate the licensure and practice of specific types of health care professionals, and DoD limits TRICARE benefit coverage to services and supplies furnished by otherwise authorized TRICARE individual professional providers performing within the scope of their state licenses or certifications. State scope of practice laws vary with regard to the range of services, and some include the authority to prescribe DME. After assessing the information available, DoD has determined that it is unnecessarily restrictive not to cover DE (including DME) merely because it is ordered by a non-physician. Therefore, the regulation is being amended to allow TRICARE coverage of DE, except for cardiorespiratory monitors, when ordered by a physician or when ordered by any otherwise authorized non-physician allied health care professional, namely, CNMs, CNPs, CRNAs, and CNSs, and certain other authorized individual professional providers, namely DPMs, ODs, DDSs, and DMDs, when acting within the scope of their state license or certificate.

b. Legal Authority for the Regulatory Action

This regulation is proposed under the authorities of 10 U.S.C. 1073, which authorizes the Secretary of Defense to administer the medical and dental benefits provided in chapter 55 of title 10, United States Code.

The DoD is authorized to provide DE under 10 U.S.C. 1077(a)(12), which benefit is further defined in 10 U.S.C 1077(f)(1) and (2). Although section 1077 defines benefits to be provided in the military treatment facilities (MTFs), these benefits are incorporated by reference for the benefits provided by healthcare providers in the private sector to active duty family members and retirees and their dependents through sections 1079 and 1086 respectively. DoD is also authorized to provide a program, generally referred to as ECHO, for dependents of active duty members, who have a qualifying condition under section 1079(d) through (f). The ECHO Program may include DE not otherwise available under the TRICARE Basic Program and AT devices to assist in the reduction of the disabling effects of a qualifying condition.

The DoD is also authorized to cost share, under section 1079 (a)(13) and the 32 CFR part 199, any service or supply that is medically or psychologically necessary to prevent, diagnose or treat a mental or physical illness, injury, or bodily malfunction. The statute identifies specific categories of individual professional providers who may make the diagnosis and recommend the treatment. Section 199.6 (c)(1)(iii) requires TRICARE-authorized individual professional providers to provide medical service and care within the scope of their licensure and training consistent with the state practice act, or within the scope of the test, which was the basis for the individual's certification by the state where the individual renders the service. Paragraph (2)(i) of this same section specifies that an individual must be currently licensed to render professional health care services in each state in which the individual renders services to CHAMPUS beneficiaries. Such license is required when a specific state provides, but does not require, license for a specific category of individual professional providers. Under section 199.2(b) of this part, other allied health professionals are also defined as ''individual professional providers of care other than physicians, dentists, or extramedical individual providers.''

Section 199.2(b) requires, as part of the definition of ''appropriate medical care'' that a TRICARE authorized individual professional provider rendering medical care be qualified to perform such medical services because of his or her training and education and is licensed or certified by the state

where the service is rendered or by an appropriate national organization, or otherwise meets CHAMPUS standards.

*2. Summary of Major Provisions of the Regulatory Action*

In this rule, the proposed regulatory language more appropriately conforms to that of the statutory language, which identifies ''DME'' as a subset of ''DE'' for purposes of the TRICARE Basic Program. Further, the proposed rule amends the TRICARE regulation on DE to better conform the language in the regulation to the TRICARE statute and clarifies that the policies applicable to DME (e.g., exclusion of luxury features and pricing methods) have been and are applicable to DE.

DoD's interpretation of the statute and regulation has been, and continues to be, that all DE authorized under the TRICARE Basic Program must be determined to be medically necessary in the treatment of an illness, injury or bodily malfunction before the equipment can be cost shared by TRICARE. Therefore, this technical revision does not change current policies for coverage of DE.

To clarify that the TRICARE ECHO Program includes coverage of AT devices, which do not otherwise qualify as DE, this proposed rule contains a definition and specific criteria for coverage of AT devices for individuals qualified to receive benefits under the ECHO Program.

The proposed rule provides that if a beneficiary wishes to obtain an item of DE that has deluxe, luxury, or immaterial features, the beneficiary shall be responsible for the difference between the price of the item and the TRICARE allowable cost for an otherwise authorized item of DE without such features.

Finally, this proposed rule emphasizes that certain other authorized individual professional providers who are listed in this rule, who are legally authorized to practice by a state, and when they are practicing within the scope of the license permitted by the state licensing authorities, may prescribe or order DE under the TRICARE Program.

*3. Summary of Costs and Benefits*

This proposed rule is not anticipated to have an annual effect on the economy of $100 million or more, making it a substantive, non-significant rule under the Executive Order and the Congressional Review Act.

The technical revisions for coverage of DE do not change current policies. DoD's interpretation of the statute and regulation has been, and will continue to be, that all equipment authorized under the TRICARE Basic Program must be determined to be medically necessary in the treatment of an illness, injury or bodily malfunction before the equipment can be cost shared by TRICARE. The proposed amendment to remove the restriction that limits ordering or prescribing of DME to only a MD or DO is not expected to increase the amount of DE and DME prescribed because other providers are currently writing prescriptions—it only changes who prescribes it. However, DoD anticipates that there may be a marginal increase in administrative cost to accommodate changes to definitions. More importantly, this change will have no impact on beneficiaries eligible for DE.

## II. Explanation for Proposed Provisions

*Overview*

DoD is amending 32 CFR part 199 to specify the following:

*§ 199.2 (Definitions)*

- ''*Duplicate Equipment.*'' AT devices are subject to the definition of duplicate equipment.
- ''*Durable Equipment (DE).*'' To clarify that DE may be a covered benefit under the TRICARE Basic Program, consistent with 10 U.S.C. 1079 (a) (5) and 10 U.S.C. 1077(a)(12) and (f), DoD is revising the definition of DE as ''(1) a medically necessary item, which can withstand repeated use; (2) is primarily and customarily used to serve a medical purpose; and, (3) is generally not useful to an individual in the absence of an illness or injury.'' It includes DME, wheelchairs, iron lungs, and hospital beds.
- ''*Durable Medical Equipment (DME).*'' Consistent with 10 U.S.C. 1079(a)(5) and 10 U.S.C. 1077 (a)(12) and (f), DoD is revising the definition of DME as ''DE, which is medically appropriate to (1) improve, restore, or maintain the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the beneficiary's function or condition; or, (2) maximize the beneficiary's function consistent with the beneficiary's physiological or medical needs.''
- ''*Assistive Technology (AT) Devices.*'' AT devices do not treat an underlying injury, illness or disease, or their symptoms. However, to clarify that the TRICARE ECHO Program includes coverage of AT devices, which do not otherwise qualify as DE, DoD is adding a definition of AT devices as ''equipment that generally helps overcome or remove a disability and is used to increase, maintain, or improve the functional capabilities of an individual. AT devices may include non-medical devices but do not include any structural alterations (e.g., wheelchair ramps or alterations to street curbs) or service animals (e.g., Seeing Eye dogs, hearing/handicapped assistance animals, etc.). AT devices are authorized only under coverage criteria to assist in the reduction of the disabling effects of a qualifying condition for individuals eligible to receive benefits under the ECHO program as provided in Section 199.5.''

*§ 199.4 (Basic Program Benefits)*

DoD clarifies the following for purposes of benefit coverage of DE under the TRICARE Basic Program:

- DE is an authorized benefit when medically necessary for the treatment of a covered illness or injury.
- Authorized DE is a benefit when ordered by certain authorized individual professional providers listed in 199.6(c) of this Part for the specific use of the beneficiary and the equipment provides the medically appropriate level of performance and quality for the beneficiary's condition.
- Unless otherwise excluded under the regulation, items authorized coverage as DE include (1) DME (including a cardiorespiratory monitor under certain conditions), (2) wheelchairs when medically appropriate to provide basic mobility, (3) iron lungs, and (4) hospital beds. An electric wheelchair or a TRICARE-approved alternative to an electric wheelchair may be used in lieu of a manual wheelchair when it is medically indicated and appropriate for the individual patient.
- An item that provides a medically appropriate level of performance or quality for the beneficiary's condition does not include luxury, deluxe, or immaterial items. Only the base or basic model of equipment shall be covered, unless any customization of the equipment owned by the beneficiary, or an accessory or item of supply for any DE is essential for (1) Achieving therapeutic benefit for the beneficiary; (2) making the equipment serviceable; or (3) otherwise assuring the proper functioning of the equipment. If a beneficiary wishes to obtain an item of DE that has deluxe, luxury, or immaterial features, the beneficiary shall be responsible for the difference between the price of the item and the TRICARE allowable cost for an otherwise authorized item of DE without such features.
- DE, which otherwise qualifies as a benefit, is excluded from coverage if (1)

the beneficiary is a patient in a type of facility that ordinarily provides the same type of DE item to its patients at no additional charge in the usual course of providing its services; or (2) DE is available to the beneficiary from a Uniformed Services Medical Treatment Facility.

• DE may be provided on a rental or purchase basis and coverage will be based on the price most advantageous to the government under established procedures.

• Repairs of DE damaged while using the equipment in a manner inconsistent with its common use, and replacement of lost or stolen DE, are excluded from Basic Program benefits.

• Repairs of deluxe, luxury or immaterial features of DE are excluded from Basic Program benefits.

*§ 199.5 (TRICARE Extended Care Health Option (ECHO)).*

DoD clarifies the following for purposes of benefit coverage of DE and AT devices under the ECHO Program:

• An AT device is authorized under certain coverage criteria when necessary to assist in the reduction of the disabling effects of a qualifying condition of the ECHO eligible beneficiary. For beneficiaries eligible for an individual education plan (IEP), AT devices that are recommended as part of the IEP may be covered.

• For those beneficiaries who cease to meet the eligibility requirements for an IEP, AT devices under TRICARE ECHO Program must:

—Be preauthorized;
—Be prescribed by a TRICARE authorized provider;
—Assist in the reduction of the disabling effects of the qualifying ECHO condition; and
—Be an item or educational learning device normally included in an IEP.

Further, the item must not be otherwise covered as a prosthetic, augmentative communication device, or a benefit under the TRICARE Basic Program. The implementing instructions for this provision will be outlined in the TRICARE Policy Manual. As with all aspects of this proposed rule, DoD invites the public's comments on our approach regarding AT devices for those beneficiaries who cease to be eligible for an IEP.

• Repairs of DE or AT devices damaged while using the equipment in a manner inconsistent with its common use, and replacement of lost or stolen DE or AT devices, are excluded from ECHO coverage.

• Repairs of deluxe, luxury or immaterial features of DE or AT devices are excluded from ECHO coverage.

• Wheelchairs may exceed the basic mobility limitation when needed to mitigate the effects of the ECHO qualifying condition of the beneficiary.

• DE may be provided on a rental or purchase basis and coverage will be based on the price most advantageous to the government under the same procedures established for pricing DE under the TRICARE Basic Program.

This amendment is published for proposed rulemaking at the same time it is coordinated within the DoD, with the Department of Health and Human Services, and with other interested agencies so consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

## III. Response to Comments

Because of the large number of public comments generally received 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** specified section of this preamble, and when we proceed with a subsequent document, we will respond to the major comments in the preamble to that document. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

## IV. Regulatory Procedure

*Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''*

It has been determined that this proposed rule is not a significant regulatory action. This rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

*Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)*

It has been certified that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

*Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)*

It has been certified that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Set forth in the proposed rule are minor revisions to the existing regulation. The DoD does not anticipate a significant impact on the Program.

*Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)*

It has been certified that this proposed rule does not impose reporting or recordkeeping requirements under the Paperwork Act of 1995.

*Executive Order 13132, Federalism*

It has been certified that this proposed rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

**List of Subjects in 32 CFR Part 199**

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, and Military personnel.

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

## PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.2, paragraph (b) is amended by adding the definition of ''Assistive Technology Devices'' and revising the definitions of ''Duplicate Equipment,'' ''Durable Equipment,'' and ''Durable Medical Equipment'' to read as follows:

**§ 199.2 Definitions.**

* * * * *

(b) * * *

*Assistive technology devices.* Equipment that generally does not treat

an underlying injury, illness, disease or their symptoms. Assistive technology devices are authorized only under the Extended Care Health Option (ECHO). Assistive technology devices help an ECHO beneficiary overcome or remove a disability and are used to increase, maintain, or improve the functional capabilities of an individual. Assistive technology devices may include non-medical devices but do not include any structural alterations (e.g., permanent structure of wheelchair ramps or alterations to street curbs) service animals (e.g., Seeing Eye dogs, hearing/handicapped assistance animals, etc.) or specialized equipment and devices whose primary purpose is to enable the individual to engage in sports or recreational events. Assistive technology devices are authorized only under coverage criteria determined by the Director, TRICARE Management Activity to assist in the reduction of the disabling effects of a qualifying condition for individuals eligible to receive benefits under the ECHO program, as provided in section 199.5.

* * * * *

*Duplicate equipment.* An item of durable equipment, durable medical equipment, or assistive technology items, as defined in this section that serves the same purpose that is served by an item of durable equipment, durable medical equipment, or assistive technology item previously cost-shared by TRICARE. For example, various models of stationary oxygen concentrators with no essential functional differences are considered duplicate equipment, whereas stationary and portable oxygen concentrators are not considered duplicates of each other because the latter is intended to provide the user with mobility not afforded by the former. Also, a manual wheelchair and an electric wheelchair, both of which otherwise meet the definition of durable equipment or durable medical equipment, would not be considered duplicates of each other if each is found to provide an appropriate level of mobility. For the purpose of this Part, durable equipment, durable medical equipment, or assistive technology items that are essential to provide a fail-safe in-home life support system or that replaces in like kind an item of equipment that is not serviceable due to normal wear, accidental damage, a change in the beneficiary's condition, or has been declared adulterated by the U.S. FDA, or is being or has been recalled by the manufacturer is not considered duplicate equipment.

*Durable equipment.* Equipment that—

(1) Is a medically necessary item, which can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose; and

(3) Is generally not useful to an individual in the absence of an illness or injury.

It includes durable medical equipment as defined in 199.2 of this part, wheelchairs, iron lungs, and hospital beds. It does not include equipment (including wheel chairs) used or designed primarily for use in sports or recreational activities.

*Durable medical equipment.* Durable equipment that is medically appropriate to—

(1) Improve, restore, or maintain the function of a malformed, diseased, or injured body part or can otherwise minimize or prevent the deterioration of the beneficiary's function or condition; or

(2) Maximize the beneficiary's function consistent with the beneficiary's physiological or medical needs.

* * * * *

■ 3. Section 199.4 is amended by revising paragraphs (a)(1)(i), (d)(1), (d)(3)(ii), and (g)(43) to read as follows:

**§ 199.4 Basic program benefits.**

(a) * * *

(1)(i) *Scope of benefits.* Subject to all applicable definitions, conditions, limitations, or exclusions specified in this part, the CHAMPUS Basic Program will cost share medically necessary services and supplies required in the diagnosis and treatment of illness or injury, including maternity care and well-baby care. Benefits include specified medical services and supplies provided to eligible beneficiaries from authorized civilian sources such as hospitals, other authorized institutional providers, physicians, other authorized individual professional providers, and professional ambulance services, prescription drugs, authorized medical supplies, and rental or purchase of durable equipment.

* * * * *

(d) Other benefits—(1) General. Benefits may be extended for the allowable charge of those other covered services and supplies described in paragraph (d) of this section, which are provided in accordance with good medical practice and established standards of quality by those other authorized providers described in Sec. 199.6 of this Regulation. Such benefits are subject to all applicable definitions, conditions, limitations, or exclusions as otherwise may be set forth in this or other chapters of this Regulation. To be considered for benefits under paragraph (d) of this section, the described services or supplies must be prescribed and ordered by a physician. Other authorized individual professional providers acting within their scope of licensure may also prescribe and order these services and supplies unless otherwise specified in paragraph (d) of this section.

* * * * *

(3) * * *

(ii) *Durable equipment*—(A) Scope of benefit. (*1*) Durable equipment, which is for the specific use of the beneficiary and is ordered by an authorized individual professional provider listed in 199.6 (c) of this Part, acting within his or her scope of licensure shall be covered if the durable equipment meets the definition in section 199.2 and—

(*i*) Provides the medically appropriate level of performance and quality for the medical condition present and

(*ii*) Is not otherwise excluded by this Regulation.

(*2*) Items that may be provided to a beneficiary as durable equipment include:

(*i*) Durable medical equipment as defined in section 199.2;

(*ii*) Wheelchairs. A wheelchair, which is medically appropriate to provide basic mobility, including reasonable additional costs for medically appropriate modifications to accommodate a particular physiological or medical need, may be covered as durable equipment. An electric wheelchair, or TRICARE approved alternative to an electric wheelchair (e.g., scooter) may be provided in lieu of a manual wheelchair when it is medically indicated and appropriate to provide basic mobility. Luxury or deluxe wheelchairs, as described in paragraph (3) below, include features beyond those required for basic mobility of a particular beneficiary are not authorized.

(*iii*) Iron lungs.

(*iv*) Hospital beds.

(*v*) Cardiorespiratory monitors under conditions specified in paragraph (d)(3)(ii)(B) of this section.

(*3*) Whether a prescribed item of durable equipment provides the medically appropriate level of performance and quality for the beneficiary's condition must be supported by adequate documentation. Luxury, deluxe, immaterial, or non-essential features, which increase the cost of the item relative to a similar item without those features, based on industry standards for a particular item at the time the equipment is prescribed or replaced for a beneficiary, are not

authorized. Only the ''base'' or ''basic'' model of equipment (or more cost-effective alternative equipment) shall be covered, unless customization of the equipment, or any accessory or item of supply for any durable equipment, is essential, as determined by the Director (or designee), for—

(*i*) Achieving therapeutic benefit for the patient;

(*ii*) Making the equipment serviceable; or

(*iii*) Otherwise assuring the proper functioning of the equipment.

* * * * *

(B) * * *

(C) Exclusions. Durable equipment, which is otherwise qualified as a benefit is excluded from coverage under the following circumstances:

(*1*) Durable equipment for a beneficiary who is a patient in a type of facility that ordinarily provides the same type of durable equipment item to its patients at no additional charge in the usual course of providing its services.

(*2*) Durable equipment, which is available to the beneficiary from a Uniformed Services Medical Treatment Facility.

(D) Basis for Reimbursement. (*1*) Durable equipment may be provided on a rental or purchase basis. Coverage of durable equipment will be based on the price most advantageous to the government taking into consideration the anticipated duration of the medically necessary need for the equipment and current price information for the type of item. The cost analysis must include comparison of the total price of the item as a monthly rental charge, a lease-purchase price, and a lump-sum purchase price and a provision for the time value of money at the rate determined by the U.S. Department of Treasury. If a beneficiary wishes to obtain an item of durable equipment with deluxe, luxury, immaterial or non-essential features, the beneficiary may agree to accept TRICARE coverage limited to the allowable amount that would have otherwise been authorized for a similar item without those features. In that case, the TRICARE coverage is based upon the allowable amount for the kind of durable equipment normally used to meet the intended purpose (i.e., the standard item least costly). The provider shall not hold the beneficiary liable for deluxe, luxury, immaterial, or non-essential features that cannot be considered in determining the TRICARE allowable costs. However, the beneficiary shall be held liable if the provider has a specific agreement in writing from the beneficiary (or his or her representative) accepting liability for the itemized difference in costs of the durable equipment with deluxe, luxury, or immaterial features and the TRICARE allowable costs for an otherwise authorized item without such features.

(*2*) In general, repairs of beneficiary owned durable equipment are covered when necessary to make the equipment serviceable and replacement of durable equipment is allowed when the durable equipment is not serviceable because of normal wear, accidental damage or when necessitated by a change in the beneficiary's condition. However, repairs of durable equipment damaged while using the equipment in a manner inconsistent with its common use, and replacement of lost or stolen durable equipment, are excluded from coverage. In addition, repairs of deluxe, luxury, or immaterial features of durable equipment are excluded from coverage.

* * * * *

(g) * * *

(43) Exercise/relaxation/comfort/sporting items or sporting devices. Exercise equipment, to include items primarily and customarily designed for use in sports or recreational activities, spas, whirlpools, hot tubs, swimming pools health club memberships or other such charges or items.

* * * * *

■ 4. Section 199.5 is amended by revising paragraphs (c)(2), (c)(3), (c)(8)(ii), and (c)(8)(iii), (d)(3), (d)(7), (d)(7)(i), (d)(7)(iv), and (d)(8), (g)(2)(i), (g)(2)(ii), and adding new paragraphs (d)(7)(v) and (h)(4) to read as follows:

**§ 199.5 TRICARE extended care health option (ECHO).**

* * * * *

(c) * * *

(2) Medical, habilitative, rehabilitative services and supplies, durable equipment and assistive technology (AT) devices that assist in the reduction of the disabling effects of a qualifying condition. Benefits shall be provided in the beneficiary's home or other environment, as appropriate. An AT device may be covered only if it is recommended in a beneficiary's Individual Educational Program (IEP) or, if the beneficiary is not eligible for an IEP, the AT device is an item or educational learning device normally included in an IEP and is preauthorized under ECHO as an integral component of the beneficiary's individual comprehensive health care services plan (including rehabilitation) as prescribed by a TRICARE authorized provider.

(i) An AT device may be covered under ECHO only if it is not otherwise covered by TRICARE as durable equipment, a prosthetic, augmentation communication device, or other benefit under section 199.4 of this title.

(ii) An AT device may include an educational learning device directly related to the beneficiary's qualifying condition when recommended by an IEP and not otherwise provided by State or local government programs. If an individual is not eligible for an IEP, an educational learning device normally included in an IEP may be authorized as if directly related to the beneficiary's qualifying condition and prescribed by a TRICARE authorized provider as part of the beneficiary's individual comprehensive health care services plan.

(iii) Electronic learning devices may include the hardware and software as appropriate. The Director, TMA shall determine the types and (or) platforms of electronic devices and the replacement lifecycle of the hardware and its supporting software. All upgrades or replacements shall require a recommendation from the individual's IEP or the individual's comprehensive health care services plan.

(iv) Duplicative or redundant hardware platforms are not authorized.

**Note:** When one or more electronic platforms such as a desktop computer, laptop, notebook or tablet can perform the same functions in relation to the teaching or educational objective directly related to the qualifying condition, it is the intent of this provision to allow only one electronic platform that may be chosen by the beneficiary. Duplicative or redundant platforms are not allowed; however, a second platform may be obtained, if the individual's IEP recommends one platform such as a computer for the majority of the learning objectives, but there exists another objective, which cannot be performed on that platform. In these limited circumstances, the beneficiary may submit a request with the above justification to the Director, TMA, who may authorize a second device.

(v) AT devices damaged through improper use of the device as well as lost or stolen devices may not be replaced until the device would next be eligible for a lifecycle replacement.

(vi) AT devices do not include equipment or devices whose primary purpose is to assist the individual to engage in sports or recreational activities.

* * * * *

(8) * * *

(ii) *Equipment adaptation.* The allowable equipment and an AT device purchase shall include such services and modifications to the equipment as necessary to make the equipment useable for a particular ECHO beneficiary.

(iii) *Equipment maintenance.* Reasonable repairs and maintenance of beneficiary owned or rented DE or AT devices provided by this section shall be allowed while a beneficiary is registered in the ECHO Program. Repairs of DE and/or AT devices damaged while using the item in a manner inconsistent with its common use, and replacement of lost or stolen DE and/or AT devices, are not authorized coverage as an ECHO benefit. In addition, repairs and maintenance of deluxe, luxury, or immaterial features of DE or AT devices are not authorized coverage as an ECHO benefit.

(d) * * *

(3) *Structural alterations.* Alterations to living space and permanent fixtures attached thereto, including alterations necessary to accommodate installation of equipment or AT devices to facilitate entrance or exit, are excluded.

* * * * *

(7) *Equipment.* Purchase or rental of DE and AT devices otherwise allowed by this section is excluded when:

(i) The beneficiary is a patient in an institution or facility that ordinarily provides the same type of equipment or AT devices to its patients at no additional charge in the usual course of providing services; or

(ii) * * *

(iii) * * *

(iv) The item is a duplicate DE or an AT device, as defined in section 199.2 of this title.

(v) The item (or charge for access to such item through health club membership or other activity) is exercise equipment including an item primarily and customarily designed for use in sports or recreational activities, spa, whirlpool, hot tub, swimming pool, an electronic device used to locate or monitor the location of a beneficiary, or other similar item or charge.

(8) *Maintenance agreements.* Maintenance agreements for beneficiary owned or rented equipment or AT device are excluded.

* * * * *

(g) * * *

(2) *Equipment.* (i) The TRICARE allowable amount for DE or AT devices shall be calculated in the same manner as DME allowable through section 199.4 of this title, and accrues to the fiscal year benefit limit specified in paragraph (f)(3) of this section.

(ii) *Cost-share.* A cost-share, as provided by paragraph (f)(2) of this section, is required for each month in which equipment or an AT device is purchased under this section. However, in no month shall a sponsor be required to pay more than one cost-share regardless of the number of benefits the sponsor's dependents received under this section.

* * * * *

(h) * * *

(4) Repair or maintenance of DE owned by the beneficiary or an AT device is exempt from the public facility-use certification requirements.

* * * * *

Dated: July 29, 2013.

**Patricia L. Toppings,**

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

[FR Doc. 2013–19153 Filed 8–7–13; 8:45 am]

BILLING CODE 5001–06–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2007–0356; FRL–9842–5]**

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Victoria County; 1997 8-Hour Ozone Section 110 (a)(1) Maintenance Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP). The revision consists of a maintenance plan for Victoria County developed to ensure continued attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) for 10 years after the effective designation date of June 15, 2004. The Maintenance Plan meets the requirements of Section 110(a)(1) of the Federal Clean Air Act (CAA), EPA's rules, and is consistent with EPA's guidance. EPA is approving the revisions pursuant to section 110 of the CAA.

**DATES:** Written comments should be received on or before September 9, 2013.

**ADDRESSES:** Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Kenneth W. Boyce, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7259; fax number 214–665–7263; email address *boyce.kenneth@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: July 19, 2013.

**Ron Curry,**

*Regional Administrator, Region 6.*

[FR Doc. 2013–18883 Filed 8–7–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2013–0058; FRL–9841–7]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Update of the Motor Vehicle Emissions Budgets for the Lancaster 1997 8-Hour Ozone Maintenance Area

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Commonwealth of Pennsylvania's (Pennsylvania) State Implementation Plan (SIP). One revision consists of an update to the SIP-approved Motor Vehicle Emissions Budgets (MVEBs) for nitrogen oxides ($NO_X$) and volatile organic compounds (VOCs) for the 1997 8-Hour Ozone National Ambient Air Quality Standard

(NAAQS) SIP for Lancaster County (also referred to as the ''Lancaster Maintenance Area''). The other SIP revision updates the point source inventory for $NO_X$ and VOCs. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by September 9, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0058 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0058, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2013–0058. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: July 18, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2013–18877 Filed 8–7–13; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 46 CFR Part 401

**[USCG–2013–0534]**

**1625–AC07**

## Great Lakes Pilotage Rates—2014 Annual Review and Adjustment

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes rate adjustments for pilotage services on the Great Lakes, which were last amended in February 2013. The proposed adjustments would establish new base rates and are made in accordance with a full ratemaking procedure. The proposed update reflects the Coast Guard exercising the discretion provided by Step 7 of the Appendix A methodology. The result is an upward adjustment to match the rate increase of the Canadian Great Lakes Pilotage Authority. We also propose adjusting weighting factors used to determine rates for vessels of different size, providing a procedure for temporary surcharges, and including dues paid to the American Pilots Association. This notice of proposed rulemaking promotes the Coast Guard's strategic goal of maritime safety.

**DATES:** Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before October 7, 2013 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG–2013–0534 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 Mr. Todd Haviland, Director, Great Lakes Pilotage, Commandant (CG–WWM–2), Coast Guard; telephone 202–372–2037, email *Todd.A.Haviland@uscg.mil*, or fax 202–372–1914. If you have questions on viewing or submitting material to the docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

## Table of Contents for Preamble

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
D. Public Meeting
II. Abbreviations
III. Basis and Purpose
IV. Background
V. Discussion of Proposed Rule
A. Summary
B. Discussion of Methodology
VI. Regulatory Analyses
A. Regulatory Planning and Review
B. Small Entities
C. Assistance for Small Entities
D. Collection of Information
E. Federalism
F. Unfunded Mandates Reform Act
G. Taking of Private Property
H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

## 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–2013–0534), 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, an email address, or a phone 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* and insert ''USCG–2013–0534'' in the ''Search'' box. Click on ''Submit a Comment'' in the ''Actions'' column. 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 notice of proposed rulemaking (NPRM) 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*, insert ''USCG–2013–0534'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. 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 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 Meeting*

We do not now plan to hold a public meeting, but you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, 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**.

## II. Abbreviations

AMOU American Maritime Officers Union
APA American Pilots Association
CFR Code of Federal Regulations
CPA Certified public accountant
CPI Consumer Price Index
E.O. Executive Order
FR Federal Register
GLPAC Great Lakes Pilotage Advisory Committee
MISLE Marine Information for Safety and Law Enforcement
MOA Memorandum of Arrangements
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
ROI Return on investment
§ Section symbol
U.S.C. United States Code

## III. Basis and Purpose

The basis of this NPRM is the Great Lakes Pilotage Act of 1960 (''the Act'') (46 U.S.C. Chapter 93), which requires U.S. vessels operating ''on register'' [1] and foreign vessels to use U.S. or Canadian registered pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system. 46 U.S.C. 9302(a)(1). The Act requires the Secretary to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' 46 U.S.C. 9303(f). Rates must be established or reviewed and adjusted each year, not later than March 1. Base rates must be established by a full ratemaking at least once every 5 years, and in years when base rates are not established, they must be reviewed and, if necessary, adjusted. 46 U.S.C. 9303(f). The Secretary's duties and authority under the Act have been delegated to the Coast Guard. Department of Homeland Security Delegation No. 0170.1, paragraph (92)(f). Coast Guard regulations implementing the Act appear in parts 401 through 404 of Title 46, Code of Federal Regulations (CFR). Procedures for use in establishing base rates appear in 46 CFR part 404, Appendix A, and procedures for annual review and adjustment of existing base rates appear in 46 CFR part 404, Appendix C.

The purpose of this NPRM is to establish new base pilotage rates, using the methodology found in 46 CFR part 404, Appendix A.

## IV. Background

The vessels affected by this NPRM are those engaged in foreign trade upon the U.S. waters of the Great Lakes. United

[1] ''On register'' means that the vessel's certificate of documentation has been endorsed with a registry endorsement, and therefore, may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef. 46 U.S.C. 12105, 46 CFR 67.17.

States and Canadian ''lakers,'' [2] which account for most commercial shipping on the Great Lakes, are not affected. 46 U.S.C. 9302.

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Coast Guard Director of Great Lakes Pilotage to operate a pilotage pool. It is important to note that, while we set rates, we do not control the actual number of pilots an association maintains, so long as the association is able to provide safe, efficient, and reliable pilotage service. Also, we do not control the actual compensation that pilots receive. The actual compensation is determined by each of the three district associations, which use different compensation practices.

District One, consisting of Areas 1 and 2, includes all U.S. waters of the St. Lawrence River and Lake Ontario. District Two, consisting of Areas 4 and 5, includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. District Three, consisting of Areas 6, 7, and 8, includes all U.S. waters of the St. Mary's River, Sault Ste. Marie Locks, and Lakes Michigan, Huron, and Superior. Area 3 is the Welland Canal, which is serviced exclusively by the Canadian Great Lakes Pilotage Authority and, accordingly, is not included in the United States rate structure. Areas 1, 5, and 7 have been designated by Presidential Proclamation, pursuant to the Act, to be waters in which pilots must, at all times, be fully engaged in the navigation of vessels in their charge. Areas 2, 4, 6, and 8 have not been so designated because they are open bodies of water. While working in those undesignated areas, pilots must only ''be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master.'' 46 U.S.C. 9302(a)(1)(B).

This NPRM is a full ratemaking to establish new base pilotage rates, using the methodology found in 46 CFR part 404, Appendix A. The last full ratemaking established the current base rates in 2013 (78 FR 13521; Feb. 28, 2013). Among other things, the Appendix A methodology requires us to review detailed pilot association financial information, and we contract with independent accountants to assist in that review. We have now completed our review of the independent accountants' 2011 financial reports. The comments by the pilot associations on those reports and the independent accountants' final findings are discussed in our document entitled ''Summary—Independent Accountant's Report on Pilot Association Expenses, with Pilot Association Comments and Accountant's Responses,'' which appears in the docket.

## V. Discussion of Proposed Rule

### *A. Summary*

We propose establishing new base pilotage rates in accordance with the methodology outlined in Appendix A to 46 CFR part 404. The proposed new rates would be established by March 1, 2014, and effective August 1, 2014. Our arithmetical calculations under Steps 1 through 6 of Appendix A would result in an average 10.74 percent rate decrease. This rate decrease is not the result of increased efficiencies in providing pilotage services but rather is a result of recent downward changes to American Maritime Officers Union (AMOU) contracts. Therefore, we will exercise the discretion outlined in Step 7 and increase rates by 2.5 percent to match the Canadian Great Lakes Pilotage Authority's rate adjustment. We will provide additional discussion when we explain our Step 7 adjustment of pilot rates. Table 1 shows the proposed percent change for the new rates for each area.

Secondly, we propose to adjust United States weighting factors in this NPRM to match Canadian weighting factors. At its February 2013 meeting, the Great Lakes Pilotage Advisory Committee (GLPAC) unanimously recommended (Resolution 13–01, which can be viewed at *www.faca.gov* [3]) that the Coast Guard align United States weighting factors with those adopted by Canada in 2008. Weighting factors are multipliers based on the size of a ship and are used in determining actual charges for pilotage service. Matching the Canadian weighting factors would provide greater parity between the United States and Canada and reduce billing confusion between the two countries, both of which are important Federal Government concerns, as emphasized by recent Executive Order (E.O.) 13609, ''Promoting International Regulatory Cooperation'' (77 FR 26413; May 4, 2012). These weighting factors are applied to the charges for pilotage service; they are not used in the ratemaking methodology nor are they related to the annual changes in benchmark union contracts that determine target pilot compensation. Because this adjustment would in no way be connected with the benchmark contract changes that take effect on August 1, 2014, we propose making the adjustment effective March 1, 2014, to eliminate the disparity between U.S. and Canadian pilotage systems that has existed since 2008. Based on historic traffic levels, we believe this weighting factor adjustment will increase U.S. pilot association revenues by approximately 6 to 7.5 percent.

Next, we propose to include dues paid to the American Pilots Association (APA) by the three districts as an allowable expense that is necessary and reasonable for the safe conduct of pilotage on the Great Lakes. We are committed to a safe and efficient pilotage system on the Great Lakes and the APA, as the trade association for all pilotage groups across the United States, has worked diligently with the Coast Guard and the associations to share best practices and facilitate the development of training plans for the U.S. Great Lakes Registered Pilots. Fifteen percent of the APA dues are used for lobbying and will be excluded, because lobbying expenses are prohibited. Previously, APA dues were excluded from the ratemaking process because they were deemed unnecessary for pilot licensure. While it remains true APA membership is not needed for licensure, we now believe that the APA's commitment to safety, professional development, and the sharing of best practices warrants the inclusion of APA dues as a necessary and reasonable expense.

Finally, we propose adding a new regulation that would allow the Coast Guard to authorize temporary surcharges under the authority of 46 U.S.C. 9303(f) and in the interest of safe, efficient, and reliable pilotage. 46 U.S.C. 9303(f) allows the Secretary to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' Temporary surcharges would be imposed when the surcharges serve the public interest by enabling the pilot associations to take on expenses in the interest of providing safe and reliable pilotage. Among the situations we think might warrant the imposition of a surcharge would be an association's need to acquire new capital assets or new technology, and the need to train pilots in the proper use of new assets or technology. Under our proposal, a given surcharge will not exceed 1 year in length and must be proposed for public comment prior to application. We propose using this new procedure to impose a temporary 3 percent surcharge

[2] A ''laker'' is a commercial cargo vessel especially designed for and generally limited to use on the Great Lakes.

[3] Resolution 13–01, a summary, and a transcript of the GLPAC meeting are available at this Web site.

to traffic in District One to compensate pilots for $48,995 that the District One pilots' association spent on training in 2012. Normally, this expense would not be recognized and reflected in pilotage rates until the 2015 annual ratemaking. By authorizing a surcharge now, we would accelerate the reimbursement for necessary and reasonable training expenses. This procedure will allow the associations to recover these expenses the year after they are incurred instead of waiting three years. We conducted several meetings with the pilot association presidents to discuss training and they would be more willing to participate in training if the expenses were fully recognized the following year. The surcharge would be authorized for the duration of the 2014 shipping season, which begins in March 2014. This merely accelerates the payment for these improvements, which fall within historically-approved reimbursable items. At the end of the 2014 shipping season, we will account for the monies the surcharge generate and make adjustments (debits/credits) to the operating expenses for the following year. We will also ensure that these accelerated training expenses are removed from the expenses of future rulemakings.

We encourage all Great Lakes pilots to renew training on a 5–10 year basis that includes these topics, which are essential for providing safe, efficient, and reliable pilotage service:

- Radar observer certification;
- Bridge resource management;
- Requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended;
- Legal aspects of pilotage;
- Fatigue training as recommended by the National Transportation Safety Board; and
- Basic and emergency ship handling simulator/manned models training. The Coast Guard is pleased that District One pilots sought portions of this training. We encourage District Two and District Three pilots to seek similar training, which we are willing to review for inclusion in the rate on a case-by-case basis.

All figures in the tables that follow are based on calculations performed either by an independent accountant or by the Director's [4] staff. In both cases, those calculations were performed using common commercial computer programs. Decimalization and rounding of the audited and calculated data affects the display in these tables but does not affect the calculations. The calculations are based on the actual figure that rounds values for presentation in the tables.

TABLE 1—SUMMARY OF RATE ADJUSTMENTS BASED ON STEP 7 DISCRETION

| If pilotage service is required in: | Then the percent change over the current rate is: |
|---|---|
| Area 1 (Designated waters) ..... | 2.50 |
| Area 2 (Undesignated waters) | 2.50 |
| Area 4 (Undesignated waters) | 2.50 |
| Area 5 (Designated waters) ..... | 2.50 |
| Area 6 (Undesignated waters) | 2.50 |
| Area 7 (Designated waters) ..... | 2.50 |
| Area 8 (Undesignated waters) | 2.50 |

*B. Discussion of Methodology*

The Appendix A methodology provides seven steps, with sub-steps, for calculating rate adjustments. The following discussion describes those steps and sub-steps, and includes tables showing how we have applied them to the 2011 financial information supplied by the pilots association.

*Step 1: Projection of Operating Expenses.* In this step, we project the amount of vessel traffic annually. Based on that projection, we forecast the amount of necessary and reasonable operating expenses that pilotage rates should recover.

*Step 1.A: Submission of Financial Information.* This sub-step requires each pilot association to provide us with detailed financial information in accordance with 46 CFR part 403. The associations complied with this requirement, supplying 2011 financial information in 2012. This is the most current and complete data set we have available.

*Step 1.B: Determination of Recognizable Expenses.* This sub-step requires us to determine which reported association expenses will be recognized for ratemaking purposes, using the guidelines shown in 46 CFR 404.5. We contracted with an independent accountant to review the reported expenses and submit findings recommending which reported expenses should be recognized. The accountant also reviewed which reported expenses should be adjusted prior to recognition or disallowed for ratemaking purposes. The accountant's preliminary findings were sent to the pilot associations, they reviewed and commented on those findings, and the accountant then finalized the findings. The Director reviewed and accepted the final findings, resulting in the determination of recognizable expenses. The preliminary findings, the associations' comments on those findings, and the final findings are all discussed in the ''Summary—Independent Accountant's Report on Pilot Association Expenses, with Pilot Association Comments and Accountant's Responses,'' which appears in the docket. Tables 2 through 4 show each association's recognized expenses.

TABLE 2—RECOGNIZED EXPENSES FOR DISTRICT ONE

| Reported expenses for 2011 | Area 1 | Area 2 | Total |
|---|---|---|---|
| | St. Lawrence River | Lake Ontario | |
| Operating Expenses: | | | |
| *Other Pilotage Costs:* | | | |
| Pilot subsistence/Travel ..... | $234,724 | $156,246 | $390,970 |
| License insurance ..... | 0 | 0 | 0 |
| Payroll taxes ..... | 61,483 | 47,611 | 109,094 |
| Other ..... | 837 | 588 | 1,425 |
| Total Other Pilotage Costs ..... | 297,044 | 204,445 | 501,489 |
| *Pilot Boat and Dispatch Costs:* | | | |

[4] ''Director'' is the Coast Guard Director, Great Lakes Pilotage, which is used throughout this NPRM.

TABLE 2—RECOGNIZED EXPENSES FOR DISTRICT ONE—Continued

| Reported expenses for 2011 | Area 1 | Area 2 | Total |
|---|---|---|---|
| | St. Lawrence River | Lake Ontario | |
| Pilot boat expense | 111,772 | 76,904 | 188,676 |
| Dispatch expense | 0 | 0 | 0 |
| Payroll taxes | 8,611 | 5,925 | 14,536 |
| Total Pilot and Dispatch Costs | 120,383 | 82,829 | 203,212 |
| *Administrative Expenses:* | | | |
| Legal | 10,592 | 6,922 | 17,514 |
| Insurance | 23,780 | 16,492 | 40,272 |
| Employee benefits | 21,282 | 14,645 | 35,927 |
| Payroll taxes | 5,032 | 3,463 | 8,495 |
| Other taxes | 5,042 | 3,470 | 8,512 |
| Travel | 756 | 520 | 1,276 |
| Depreciation/Auto leasing/Other | 38,252 | 26,319 | 64,571 |
| Interest | 18,484 | 12,718 | 31,202 |
| Dues and subscriptions | 9,180 | 9,180 | 18,360 |
| Utilities | 4,314 | 2,941 | 7,255 |
| Salaries | 50,718 | 34,897 | 85,615 |
| Accounting/Professional fees | 5,752 | 3,428 | 9,180 |
| Pilot Training | 4,200 | 2,277 | 6,477 |
| Other | 9,959 | 6,880 | 16,839 |
| Total Administrative Expenses | 207,343 | 144,152 | 351,495 |
| Total Operating Expenses | 624,770 | 431,426 | 1,056,196 |
| Proposed Adjustments (Independent certified public accountant (CPA): | | | |
| Operating Expenses: | | | |
| *Other Pilot Costs:* | | | |
| Pilotage subsistence/Travel | (2,492) | (1,714) | (4,206) |
| Payroll taxes | 12,883 | 8,864 | 21,747 |
| Total Other Pilotage Costs | 10,391 | 7,150 | 17,541 |
| TOTAL CPA ADJUSTMENTS | 10,391 | 7,150 | 17,541 |
| Total Operating Expenses | 635,161 | 438,576 | 1,073,737 |

**Note:** Numbers may not total due to rounding.

TABLE 3—RECOGNIZED EXPENSES FOR DISTRICT TWO

| Reported expenses for 2011 | Area 4 | Area 5 | Total |
|---|---|---|---|
| | Lake Erie | Southeast Shoal to Port Huron, MI | |
| Operating Expenses: | | | |
| *Other Pilotage Costs:* | | | |
| Pilot subsistence/Travel | $79,250 | $118,874 | $198,124 |
| License insurance | 6,168 | 9,252 | 15,420 |
| Payroll taxes | 36,676 | 55,013 | 91,689 |
| Other | 23,560 | 35,341 | 58,901 |
| Total Other Pilotage Costs | 145,654 | 218,480 | 364,134 |
| *Pilot Boat and Dispatch Costs:* | | | |
| Pilot boat expense | 104,955 | 157,432 | 262,387 |
| Dispatch expense | 6,060 | 9,090 | 15,150 |
| Employee Benefits | 40,419 | 60,628 | 101,047 |
| Payroll taxes | 7,135 | 10,703 | 17,838 |
| Total Pilot and Dispatch Costs | 158,569 | 237,853 | 396,422 |
| *Administrative Expenses:* | | | |
| Legal | 37,520 | 56,281 | 93,801 |
| Office rent | 26,275 | 39,413 | 65,688 |
| Insurance | 10,672 | 16,009 | 26,681 |
| Employee benefits | 16,365 | 24,548 | 40,913 |
| Payroll taxes | 4,446 | 6,668 | 11,114 |
| Other taxes | 14,273 | 21,409 | 35,682 |
| Depreciation/Auto leasing/Other | 15,604 | 23,407 | 39,011 |
| Interest | 2,772 | 4,159 | 6,931 |
| Dues and subscriptions | 7,069 | 10,603 | 17,672 |

TABLE 3—RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

| Reported expenses for 2011 | Area 4 | Area 5 | Total |
|---|---|---|---|
| | Lake Erie | Southeast Shoal to Port Huron, MI | |
| Utilities | 15,410 | 23,115 | 38,525 |
| Salaries | 39,874 | 59,810 | 99,684 |
| Accounting/Professional fees | 12,110 | 18,164 | 30,274 |
| Pilot Training | 0 | 0 | 0 |
| Other | 8,860 | 13,291 | 22,151 |
| Total Administrative Expenses | 211,250 | 316,877 | 528,127 |
| Total Operating Expenses: | 515,473 | 773,210 | 1,288,683 |
| Proposed Adjustments (Independent CPA): | | | |
| Operating Expenses: | | | |
| *Other Pilotage Costs:* | | | |
| Pilot subsistence/Travel | (2,598) | (3,896) | (6,494) |
| Other | (566) | (850) | (1,416) |
| Total Other Pilotage Costs | (3,164) | (4,746) | (7,910) |
| *Pilot Boat and Dispatch Costs:* | | | |
| Employee benefits | (100) | (150) | (249) |
| Total Pilot Boat and Dispatch Costs | (100) | (150) | (249) |
| *Administrative Expenses:* | | | |
| Employee benefits | (25) | (38) | (63) |
| Total Administrative Expenses | (25) | (38) | (63) |
| TOTAL CPA ADJUSTMENTS | (3,289) | (4,933) | (8,222) |
| Total Operating Expenses | 512,184 | 768,277 | 1,280,461 |

**Note:** Numbers may not total due to rounding.

TABLE 4—RECOGNIZED EXPENSES FOR DISTRICT THREE

| Reported expenses for 2011 | Area 6 | Area 7 | Area 8 | Total |
|---|---|---|---|---|
| | Lakes Huron and Michigan | St. Mary's River | Lake Superior | |
| Operating Expenses: | | | | |
| *Other Pilotage Costs:* | | | | |
| Pilot subsistence/Travel | 196,529 | 72,789 | 94,625 | 363,943 |
| License insurance | 10,157 | 3,762 | 4,891 | 18,810 |
| Payroll taxes | 63,803 | 23,631 | 30,720 | 118,153 |
| Other | 2,184 | 809 | 1,052 | 4,045 |
| Total Other Pilotage Costs | 272,673 | 100,991 | 131,288 | 504,951 |
| *Pilot Boat and Dispatch Costs:* | | | | |
| Pilot boat expense | 243,077 | 90,028 | 117,037 | 450,142 |
| Dispatch expense | 87,059 | 32,244 | 41,917 | 161,221 |
| Payroll taxes | 9,607 | 3,558 | 4,626 | 17,791 |
| Total Pilot Boat and Dispatch Costs | 339,743 | 125,830 | 163,580 | 629,154 |
| *Administrative Expenses:* | | | | |
| Legal | 12,138 | 4,495 | 5,844 | 22,477 |
| Office rent | 5,346 | 1,980 | 2,574 | 9,900 |
| Insurance | 7,451 | 2,760 | 3,587 | 13,798 |
| Employee benefits | 73,230 | 27,122 | 35,259 | 135,611 |
| Payroll taxes | 6,154 | 2,279 | 2,963 | 11,396 |
| Other taxes | 19,339 | 7,163 | 9,311 | 35,813 |
| Depreciation/Auto leasing | 34,341 | 12,719 | 16,534 | 63,594 |
| Interest | 2,682 | 993 | 1,291 | 4,966 |
| Dues and subscriptions | 11,016 | 5,508 | 7,344 | 23,868 |
| Utilities | 19,723 | 7,305 | 9,496 | 36,524 |
| Salaries | 55,772 | 20,656 | 26,853 | 103,281 |
| Accounting/Professional fees | 13,419 | 4,970 | 6,461 | 24,850 |
| Pilot Training | 516 | 191 | 248 | 955 |
| Other | 5,394 | 1,998 | 2,597 | 9,989 |
| Total Administrative Expenses | 266,521 | 100,139 | 130,362 | 497,022 |

TABLE 4—RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

| Reported expenses for 2011 | Area 6 | Area 7 | Area 8 | Total |
|---|---|---|---|---|
| | Lakes Huron and Michigan | St. Mary's River | Lake Superior | |
| Total Operating Expenses | 878,937 | 326,960 | 425,230 | 1,631,127 |
| Proposed Adjustments (Independent CPA): | | | | |
| Operating Expenses: | | | | |
| *Other Pilotage Costs:* | | | | |
| Payroll taxes | 22,446 | 8,313 | 10,807 | 41,566 |
| Total Other Pilotage Costs | 22,446 | 8,313 | 10,807 | 41,566 |
| *Administrative Expenses:* | | | | |
| Other Taxes | (1,613) | (598) | (777) | (2,988) |
| Depreciation/Auto leasing | (7,707) | (2,854) | (3,711) | (14,272) |
| Other | (610) | (226) | (294) | (1,130) |
| Total Administrative Expenses | (9,930) | (3,678) | (4,782) | (18,390) |
| TOTAL CPA ADJUSTMENTS | 12,516 | 4,635 | 6,025 | 23,176 |
| Total Operating Expenses | 891,453 | 331,595 | 431,255 | 1,654,303 |

**Note:** Numbers may not total due to rounding.

*Step 1.C: Adjustment for Inflation or Deflation.* In this sub-step, we project rates of inflation or deflation for the succeeding navigation season. Because we used 2011 financial information, the ''succeeding navigation season'' for this ratemaking is 2012. We based our inflation adjustment of 2 percent on the 2012 change in the Consumer Price Index (CPI) for the Midwest Region of the United States, which can be found at: *http://www.bls.gov/xg_shells/ro5xg01.htm.* This adjustment appears in Tables 5 through 7.

TABLE 5—INFLATION ADJUSTMENT, DISTRICT ONE

| Reported expenses for 2011 | | Area 1 | | Area 2 | | Total |
|---|---|---|---|---|---|---|
| | | St. Lawrence River | | Lake Ontario | | |
| Total Operating Expenses: | | $635,161 | | $438,576 | | $1,073,737 |
| 2012 change in the CPI for the Midwest Region of the United States | × | .02 | × | .02 | × | .02 |
| Inflation Adjustment | = | $12,703 | = | $8,772 | = | $21,475 |

TABLE 6—INFLATION ADJUSTMENT, DISTRICT TWO

| Reported expenses for 2011 | | Area 4 | | Area 5 | | Total |
|---|---|---|---|---|---|---|
| | | Lake Erie | | Southeast Shoal to Port Huron, MI | | |
| Total Operating Expenses: | | $512,184 | | $768,277 | | $1,280,461 |
| 2012 change in the CPI for the Midwest Region of the United States | × | .02 | × | .02 | × | .02 |
| Inflation Adjustment | = | $10,244 | = | $15,366 | = | $25,609 |

TABLE 7—INFLATION ADJUSTMENT, DISTRICT THREE

| Reported expenses for 2011 | | Area 6 | | Area 7 | | Area 8 | | Total |
|---|---|---|---|---|---|---|---|---|
| | | Lakes Huron and Michigan | | St. Mary's River | | Lake Superior | | |
| Total Operating Expenses: | | $891,453 | | $331,595 | | $431,255 | | $1,654,303 |
| 2012 change in the CPI for the Midwest Region of the United States | × | .02 | × | .02 | × | .02 | × | .02 |
| Inflation Adjustment | = | $17,829 | = | $6,632 | = | $8,625 | = | $33,086 |

*Step 1.D: Projection of Operating Expenses.* In this final sub-step of Step 1, we project the operating expenses for each pilotage area on the basis of the preceding sub-steps and any other foreseeable circumstances that could affect the accuracy of the projection. We are not aware of any such foreseeable circumstances that now exist in District One.

For District One, the projected operating expenses are based on the calculations from Steps 1.A through 1.C. Table 8 shows these projections.

TABLE 8—PROJECTED OPERATING EXPENSES, DISTRICT ONE

| Reported expenses for 2011 | | Area 1 | | Area 2 | | Total |
|---|---|---|---|---|---|---|
| | | St. Lawrence River | | Lake Ontario | | |
| Total operating expenses | | $635,161 | | $438,576 | | $1,073,737 |
| Inflation adjustment 2.0% | + | $12,703 | + | $8,772 | + | $21,475 |
| Total projected expenses for 2014 pilotage season | = | $647,864 | = | $447,348 | = | $1,095,212 |

**Note:** Numbers may not total due to rounding.

In District Two, Federal taxes of $12,000 are accounted for in Step 6 (Federal Tax Allowance). The projected operating expenses are based on the calculations from Steps 1.A through 1.C and Federal taxes. Table 9 shows these projections.

TABLE 9—PROJECTED OPERATING EXPENSES, DISTRICT TWO

| Reported expenses for 2011 | | Area 4 | | Area 5 | | Total |
|---|---|---|---|---|---|---|
| | | Lake Erie | | Southeast Shoal to Port Huron, MI | | |
| Total Operating Expenses | | $512,184 | | $768,277 | | $1,280,461 |
| Inflation adjustment 2.0% | + | $10,244 | + | $15,366 | + | $25,609 |
| Director's adjustment and foreseeable circumstances | | | | | | |
| Federal taxes (accounted for in Step 6) | + | ($4,800) | + | ($7,200) | + | ($12,000) |
| Total projected expenses for 2014 pilotage season | = | $517,627 | = | $776,442 | = | $1,294,070 |

Currently, we are not aware of any foreseeable circumstances for District Three. Its projected operating expenses are based on the calculations from Steps 1.A through 1.C. Table 10 shows these projections.

TABLE 10—PROJECTED OPERATING EXPENSES, DISTRICT THREE

| Reported expenses for 2011 | | Area 6 | | Area 7 | | Area 8 | | Total |
|---|---|---|---|---|---|---|---|---|
| | | Lakes Huron and Michigan | | St. Mary's River | | Lake Superior | | |
| Total expenses | | $891,453 | | $331,595 | | $431,255 | | $1,654,303 |
| Inflation adjustment 2.0% | + | $17,829 | + | $6,632 | + | $8,625 | + | $33,086 |
| Total projected expenses for 2014 pilotage season | = | $909,282 | = | $338,227 | = | $439,880 | = | $1,687,389 |

*Step 2: Projection of Target Pilot Compensation.* In Step 2, we project the annual amount of target pilot compensation that pilotage rates should provide in each area. These projections are based on our latest information on the conditions that will prevail in 2014.

*Step 2.A: Determination of Target Rate of Compensation.* Target pilot compensation for pilots in undesignated waters approximates the average annual compensation for first mates on U.S. Great Lakes vessels. Compensation is determined based on the most current union contracts and includes wages and benefits received by first mates. We calculate target pilot compensation for pilots on designated waters by multiplying the average first mates' wages by 150 percent and then adding the average first mates' benefits.

The most current union contracts available to us are AMOU contracts with three U.S. companies engaged in Great Lakes shipping. There are two separate AMOU contracts available—we refer to them as Agreements A and B, and apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement. Agreement A applies to vessels operated by Key Lakes, Inc., and Agreement B applies to all vessels operated by American Steamship Co. and Mittal Steel USA, Inc.

Agreements A and B both expire on July 31, 2016. The AMOU has set the daily aggregate rate—including the daily wage rate, vacation pay, pension plan contributions, and medical plan contributions effective August 1, 2014 as follows: (1) In undesignated waters, $612.20 for Agreement A and $604.64 for Agreement B; and (2) In designated waters, $842.63 for Agreement A and $829.40 for Agreement B.

Because we are interested in annual compensation, we must convert these daily rates. We use a 270-day multiplier which reflects an average 30-day month, over the 9 months of the average shipping season. Table 11 shows our calculations using the 270-day multiplier.

TABLE 11—PROJECTED ANNUAL AGGREGATE RATE COMPONENTS

| Aggregate Rate—Wages and Vacation, Pension, and Medical Benefits Pilots on undesignated waters | |
|---|---|
| Agreement A: | |
| $612.20 daily rate × 270 days | 165,294.00 |
| Agreement B: | |
| $604.64 daily rate × 270 days | 163,252.80 |
| **Pilots on designated waters** | |
| Agreement A: | |
| $842.63 daily rate × 270 days | 227,510.10 |
| Agreement B: | |
| $829.40 daily rate × 270 days | 223,938.00 |

We apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement. Agreement A applies to vessels operated by Key Lakes, Inc., representing approximately 30 percent of tonnage, and Agreement B applies to all vessels operated by American Steamship Co. and Mittal Steel USA, Inc., representing approximately 70 percent of tonnage. Table 12 provides details.

TABLE 12—SHIPPING TONNAGE APPORTIONED BY CONTRACT

| Company | Agreement A | Agreement B |
|---|---|---|
| American Steamship Company | | 815,600 |
| Mittal Steel USA, Inc. | | 38,826 |
| Key Lakes, Inc. | 361,385 | |
| Total tonnage, each agreement | 361,385 | 854,426 |
| Percent tonnage, each agreement | 361,385 ÷ 1,215,811 = 29.7238% | 854,426 ÷ 1,215,811 = 70.2762% |

We use the percentages from Table 12 to apportion the projected compensation from Table 11. This gives us a single tonnage-weighted set of figures. Table 13 shows our calculations.

TABLE 13—TONNAGE-WEIGHTED WAGE AND BENEFIT COMPONENTS

| | | Undesignated waters | | Designated waters |
|---|---|---|---|---|
| Agreement A: | | | | |
| Total wages and benefits | | $165,294.00 | | $227,510.10 |
| Percent tonnage | × | 29.7238% | × | 29.7238% |
| Total | = | $49,132 | = | $67,625 |
| Agreement B: | | | | |
| Total wages and benefits | | $163,252.80 | | $223,938.00 |
| Percent tonnage | × | 70.2762% | × | 70.2762% |
| Total | = | $114,728 | = | $157,375 |
| Projected Target Rate of Compensation: | | | | |
| Agreement A total weighted average wages and benefits | | $49,132 | | $67,625 |
| Agreement B total weighted average wages and benefits | + | $114,728 | + | $157,375 |
| Total | = | $163,860 | = | $225,000 |

*Step 2.B: Determination of the Number of Pilots Needed.* Subject to adjustment by the Director to ensure uninterrupted service or for other reasonable circumstances, we determine the number of pilots needed for ratemaking purposes in each area by dividing projected bridge hours for each area, by either 1,000 (designated waters) or 1,800 (undesignated waters) bridge hours. We round the mathematical results and express our determination as whole pilots.

''Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service.'' (46 CFR part 404, Appendix A, Step 2.B(1)). For that reason, and as we explained most recently in the 2011 ratemaking's final rule (76 FR 6351 at 6352 col. 3 (Feb. 4, 2011)), we do not include, and never have included, pilot delay, detention, or cancellation in calculating bridge hours. Projected bridge hours are based on the vessel traffic that pilots are expected to serve. We use historical data, input from the pilots and industry, periodicals and trade magazines, and information from conferences to project demand for pilotage services for the coming year.

In our 2013 final rule, we determined that 38 pilots would be needed for ratemaking purposes. We have

determined that District 3 has two excess billets that remain unfilled and that current and projected traffic levels do not support the retention of these unfilled billets. For 2014, we project 36 pilots is the proper number to use for ratemaking purposes. We are removing one pilot from each of the undesignated waters of District Three (one each from Area 6 and Area 8). The total pilot authorization strength includes five pilots in Area 2, where rounding up alone would result in only four pilots. For the same reasons we explained at length in the 2008 ratemaking final rule (74 FR 220 at 221–22 (Jan. 5, 2009)) we have determined that this adjustment is essential for ensuring uninterrupted pilotage service in Area 2. Table 14 shows the bridge hours we project will be needed for each area and our calculations to determine the number of whole pilots needed for ratemaking purposes.

TABLE 14—NUMBER OF PILOTS NEEDED

| Pilotage area | Projected 2014 bridge hours | | Divided by 1,000 (designated waters) or 1,800 (undesignated waters) | | Calculated value of pilot demand | Pilots needed (total = 36) |
|---|---|---|---|---|---|---|
| Area 1 (Designated waters) | 5,116 | ÷ | 1,000 | = | 5.116 | 6 |
| Area 2 (Undesignated waters) | 5,429 | ÷ | 1,800 | = | 3.016 | 5 |
| Area 4 (Undesignated waters) | 5,814 | ÷ | 1,800 | = | 3.230 | 4 |
| Area 5 (Designated waters) | 5,052 | ÷ | 1,000 | = | 5.052 | 6 |
| Area 6 (Undesignated waters) | 9,611 | ÷ | 1,800 | = | 5.339 | 6 |
| Area 7 (Designated waters) | 3,023 | ÷ | 1,000 | = | 3.023 | 4 |
| Area 8 (Undesignated waters) | 7,540 | ÷ | 1,800 | = | 4.189 | 5 |

*Step 2.C: Projection of Target Pilot Compensation.* In Table 15, we project total target pilot compensation separately for each area by multiplying the number of pilots needed in each area, as shown in Table 14, by the target pilot compensation shown in Table 13.

TABLE 15—PROJECTION OF TARGET PILOT COMPENSATION BY AREA

| Pilotage area | Pilots needed (total= 36) | | Target rate of pilot compensation | | Projected target pilot compensation |
|---|---|---|---|---|---|
| Area 1 (Designated waters) | 6 | × | $225,000 | = | $1,349,999 |
| Area 2 (Undesignated waters) | 5 | × | $163,860 | = | $819,298 |
| Area 4 (Undesignated waters) | 4 | × | $163,860 | = | $655,438 |
| Area 5 (Designated waters) | 6 | × | $225,000 | = | $1,349,999 |
| Area 6 (Undesignated waters) | 6 | × | $163,860 | = | $983,157 |
| Area 7 (Designated waters) | 4 | × | $225,000 | = | $899,999 |
| Area 8 (Undesignated waters) | 5 | × | $163,860 | = | $819,298 |

**Note:** Numbers may not total due to rounding.

*Steps 3 and 3.A: Projection of Revenue.* In Steps 3 and 3.A., we project the revenue that would be received in 2014 if demand for pilotage services matches the bridge hours we projected in Table 14, and if 2012 pilotage rates are left unchanged. Table 16 shows this calculation.

TABLE 16—PROJECTION OF REVENUE BY AREA

| Pilotage area | Projected 2014 bridge hours | | 2013 Pilotage rates | | Revenue projection for 2013 |
|---|---|---|---|---|---|
| Area 1 (Designated waters) | 5,116 | × | $460.97 | = | $2,358,327 |
| Area 2 (Undesignated waters) | 5,429 | × | $284.84 | = | $1,546,373 |
| Area 4 (Undesignated waters) | 5,814 | × | $205.27 | = | $1,193,426 |
| Area 5 (Designated waters) | 5,052 | × | $508.91 | = | $2,571,038 |
| Area 6 (Undesignated waters) | 9,611 | × | $199.95 | = | $1,921,756 |
| Area 7 (Designated waters) | 3,023 | × | $482.94 | = | $1,459,929 |
| Area 8 (Undesignated waters) | 7,540 | × | $186.67 | = | $1,407,490 |
| Total | | | | | $12,458,339 |

**Note:** Numbers may not total due to rounding.

*Step 4: Calculation of Investment Base.* In this step, we calculate each association's investment base, which is the recognized capital investment in the assets employed by the association required to support pilotage operations. This step uses a formula set out in 46 CFR Part 404, Appendix B. The first part of the formula identifies each association's total sources of funds. Tables 17 through 19 follow the formula up to that point.

TABLE 17—TOTAL SOURCES OF FUNDS, DISTRICT ONE

| | | Area 1 | | Area 2 |
|---|---|---|---|---|
| Recognized Assets: | | | | |
| Total Current Assets | | $669,895 | | $460,921 |
| Total Current Liabilities | – | $54,169 | – | $37,271 |
| Current Notes Payable | + | $24,746 | + | $17,026 |
| Total Property and Equipment (NET) | + | $369,024 | + | $253,907 |
| Land | – | $13,054 | – | $8,981 |
| Total Other Assets | + | $0 | + | $0 |
| Total Recognized Assets: | = | $996,442 | = | $685,602 |
| *Non-Recognized Assets* | | | | |
| Total Investments and Special Funds | + | $6,243 | + | $4,295 |
| *Total Non-Recognized Assets:* | = | $6,243 | = | $4,295 |
| *Total Assets* | | | | |
| Total Recognized Assets | | $996,442 | | $685,602 |
| Total Non-Recognized Assets | + | $6,243 | + | $4,295 |
| Total Assets: | = | $1,002,685 | = | $689,897 |
| *Recognized Sources of Funds* | | | | |
| Total Stockholder Equity | | $647,677 | | $445,633 |
| Long-Term Debt | + | $318,571 | + | $219,193 |
| Current Notes Payable | + | $24,746 | + | $17,026 |
| Advances from Affiliated Companies | + | $0 | + | $0 |
| Long-Term Obligations—Capital Leases | + | $0 | + | $0 |
| Total Recognized Sources: | = | $990,994 | = | $681,852 |
| *Non-Recognized Sources of Funds* | | | | |
| Pension Liability | | $0 | | $0 |
| Other Non-Current Liabilities | + | $0 | + | $0 |
| Deferred Federal Income Taxes | + | $0 | + | $0 |
| Other Deferred Credits | + | $0 | + | $0 |
| Total Non-Recognized Sources: | = | $0 | = | $0 |
| *Total Sources of Funds* | | | | |
| Total Recognized Sources | | $990,994 | | $681,852 |
| Total Non-Recognized Sources | + | $0 | + | $0 |
| Total Sources of Funds: | = | $990,994 | = | $681,852 |

TABLE 18—TOTAL SOURCES OF FUNDS, DISTRICT TWO

| | | Area 4 | | Area 5 |
|---|---|---|---|---|
| *Recognized Assets:* | | | | |
| Total Current Assets | | $454,465 | | $681,697 |
| Total Current Liabilities | – | $409,366 | – | $614,048 |
| Current Notes Payable | + | $25,822 | + | $38,734 |
| Total Property and Equipment (NET) | + | $420,422 | + | $630,632 |
| Land | – | $0 | – | $0 |
| Total Other Assets | + | $60,195 | + | $90,293 |
| Total Recognized Assets | = | $551,538 | = | $827,308 |
| *Non-Recognized Assets:* | | | | |
| Total Investments and Special Funds | + | $0 | + | $0 |
| Total Non-Recognized Assets | = | $0 | = | $0 |
| *Total Assets:* | | | | |
| Total Recognized Assets | | $551,538 | | $827,308 |
| Total Non-Recognized Assets | + | $0 | + | $0 |
| Total Assets | = | $551,538 | = | $827,308 |
| *Recognized Sources of Funds:* | | | | |
| Total Stockholder Equity | | $89,537 | | $134,305 |
| Long-Term Debt | + | $410,357 | + | $615,535 |
| Current Notes Payable | + | $25,822 | + | $38,734 |
| Advances from Affiliated Companies | + | $0 | + | $0 |
| Long-Term Obligations—Capital Leases | + | $0 | + | $0 |
| Total Recognized Sources | = | $525,716 | = | $788,574 |
| *Non-Recognized Sources of Funds:* | | | | |
| Pension Liability | | $0 | | $0 |
| Other Non-Current Liabilities | + | $0 | + | $0 |
| Deferred Federal Income Taxes | + | $0 | + | $0 |

TABLE 18—TOTAL SOURCES OF FUNDS, DISTRICT TWO—Continued

| | | Area 4 | | Area 5 |
|---|---|---|---|---|
| Other Deferred Credits | + | $0 | + | $0 |
| Total Non-Recognized Sources | = | $0 | = | $0 |
| *Total Sources of Funds:* | | | | |
| Total Recognized Sources | | $525,716 | | $788,574 |
| Total Non-Recognized Sources | + | $0 | + | $0 |
| Total Sources of Funds | = | $525,716 | = | $788,574 |

TABLE 19—TOTAL SOURCES OF FUNDS, DISTRICT THREE

| | | Area 6 | | Area 7 | | Area 8 |
|---|---|---|---|---|---|---|
| *Recognized Assets:* | | | | | | |
| Total Current Assets | | $658,934 | | $244,050 | | $317,265 |
| Total Current Liabilities | – | $64,869 | – | $24,025 | – | $31,233 |
| Current Notes Payable | + | $3,869 | + | $1,433 | + | $1,863 |
| Total Property and Equipment (NET) | + | $21,905 | + | $8,113 | + | $10,547 |
| Land | – | $0 | – | $0 | – | $0 |
| Total Other Assets | + | $540 | + | $200 | + | $260 |
| Total Recognized Assets | = | $620,379 | = | $229,771 | = | $298,702 |
| *Non-Recognized Assets:* | | | | | | |
| Total Investments and Special Funds | + | $0 | + | $0 | + | $0 |
| Total Non-Recognized Assets | = | $0 | = | $0 | = | $0 |
| *Total Assets:* | | | | | | |
| Total Recognized Assets | | $620,379 | | $229,771 | | $298,702 |
| Total Non-Recognized Assets | + | $0 | + | $0 | + | $0 |
| Total Assets | = | $620,379 | = | $229,771 | = | $298,702 |
| *Recognized Sources of Funds:* | | | | | | |
| Total Stockholder Equity | | $606,164 | | $224,505 | | $291,857 |
| Long-Term Debt | + | $6,478 | + | $2,399 | + | $3,119 |
| Current Notes Payable | + | $3,869 | + | $1,433 | + | $1,863 |
| Advances from Affiliated Companies | + | $0 | + | $0 | + | $0 |
| Long-Term Obligations—Capital Leases | + | $0 | + | $0 | + | $0 |
| Total Recognized Sources | = | $616,511 | = | $228,337 | = | $296,839 |
| *Non-Recognized Sources of Funds:* | | | | | | |
| Pension Liability | | $0 | | $0 | | $0 |
| Other Non-Current Liabilities | + | $0 | + | $0 | + | $0 |
| Deferred Federal Income Taxes | + | $0 | + | $0 | + | $0 |
| Other Deferred Credits | + | $0 | + | $0 | + | $0 |
| Total Non-Recognized Sources | = | $0 | = | $0 | = | $0 |
| *Total Sources of Funds:* | | | | | | |
| Total Recognized Sources | | $616,511 | | $228,337 | | $296,839 |
| Total Non-Recognized Sources | + | $0 | + | $0 | + | $0 |
| Total Sources of Funds | = | $616,511 | = | $228,337 | = | $296,839 |

Tables 17 through 19 also relate to the second part of the formula for calculating the investment base. The second part establishes a ratio between recognized sources of funds and total sources of funds. Since no non-recognized sources of funds (sources we do not recognize as required to support pilotage operations) exist for any of the pilot associations for this year's rulemaking, the ratio between recognized sources of funds and total sources of funds is 1:1 (or a multiplier of 1) in all cases. Table 20 applies the multiplier of 1 and shows that the investment base for each association equals its total recognized assets. Table 20 also expresses these results by area, because area results will be needed in subsequent steps.

TABLE 20—INVESTMENT BASE BY AREA AND DISTRICT

| District | Area | Total recognized assets ($) | Recognized sources of funds ($) | Total sources of funds ($) | Multiplier (ratio of recognized to total sources) | Investment base ($) [1] |
|---|---|---|---|---|---|---|
| One | 1 | 996,442 | 990,994 | 990,994 | 1 | 996,442 |
| | 2 | 685,602 | 681,852 | 681,852 | 1 | 685,602 |
| TOTAL | | | | | | 1,682,044 |
| Two [2] | 4 | 551,538 | 525,716 | 525,716 | 1 | 551,538 |
| | 5 | 827,308 | 788,574 | 788,574 | 1 | 827,308 |
| TOTAL | | | | | | 1,378,846 |
| Three | 6 | 620,379 | 616,511 | 616,511 | 1 | 620,379 |
| | 7 | 229,771 | 228,337 | 228,337 | 1 | 229,771 |
| | 8 | 298,702 | 296,839 | 296,839 | 1 | 298,702 |
| TOTAL | | | | | | 1,148,852 |

[1] "Investment base" = "Total recognized assets" × "Multiplier (ratio of recognized to total sources)".
[2] The pilot associations that provide pilotage services in Districts One and Three operate as partnerships. The pilot association that provides pilotage service for District Two operates as a corporation.

*Step 5: Determination of Target Rate of Return.* We determine a market-equivalent return on investment (ROI) that will be allowed for the recognized net capital invested in each association by its members. We do not recognize capital that is unnecessary or unreasonable for providing pilotage services. There are no non-recognized investments in this year's calculations. The allowed ROI is based on the preceding year's average annual rate of return for new issues of high-grade corporate securities. For 2012, the preceding year, the allowed ROI was 3.67 percent, based on the average rate of return for that year on Moody's AAA corporate bonds, which can be found at: *http://research.stlouisfed.org/fred2/series/AAA/downloaddata?cid=119.*

*Step 6: Adjustment Determination.* The first part of the adjustment determination requires an initial calculation, applying a formula described in Appendix A. The formula uses the results from Steps 1, 2, 3, and 4 to project the ROI that can be expected in each area if no further adjustments are made. This calculation is shown in Tables 21 through 23.

TABLE 21—PROJECTED ROI, AREAS IN DISTRICT ONE

| | | Area 1 | | Area 2 |
|---|---|---|---|---|
| Revenue (from Step 3) | | $2,358,327 | | $1,546,373 |
| Operating Expenses (from Step 1) | – | $647,864 | – | $447,348 |
| Pilot Compensation (from Step 2) | – | $1,349,999 | – | $819,298 |
| Operating Profit/(Loss) | = | $360,464 | = | $279,728 |
| Interest Expense (from audits) | – | $18,484 | – | $12,718 |
| Earnings Before Tax | = | $341,980 | = | $267,010 |
| Federal Tax Allowance | – | $0 | – | $0 |
| Net Income | = | $341,980 | = | $267,010 |
| Return Element (Net Income + Interest) | | $360,464 | | $279,728 |
| Investment Base (from Step 4) | ÷ | $996,442 | ÷ | $685,602 |
| Projected Return on Investment | = | 0.3618 | = | 0.4080 |

TABLE 22—PROJECTED ROI, AREAS IN DISTRICT TWO

| | | Area 4 | | Area 5 |
|---|---|---|---|---|
| Revenue (from Step 3) | | $1,193,426 | | $2,571,038 |
| Operating Expenses (from Step 1) | – | $517,627 | – | $776,442 |
| Pilot Compensation (from Step 2) | – | $655,438 | – | $1,349,999 |
| Operating Profit/(Loss) | = | $20,361 | = | $444,597 |
| Interest Expense (from audits) | – | $2,772 | – | $4,159 |
| Earnings Before Tax | = | $17,589 | = | $440,438 |
| Federal Tax Allowance | – | $4,800 | – | $7,200 |
| Net Income | = | $12,789 | = | $433,238 |
| Return Element (Net Income + Interest) | | $15,561 | | $437,397 |
| Investment Base (from Step 4) | ÷ | $551,538 | ÷ | $827,308 |
| Projected Return on Investment | = | 0.0282 | = | 0.5287 |

TABLE 23—PROJECTED ROI, AREAS IN DISTRICT THREE

| | Area 6 | Area 7 | Area 8 |
|---|---|---|---|
| Revenue (from Step 3) | $1,921,756 | $1,459,929 | $1,407,490 |

TABLE 23—PROJECTED ROI, AREAS IN DISTRICT THREE—Continued

| | | Area 6 | | Area 7 | | Area 8 |
|---|---|---|---|---|---|---|
| Operating Expenses (from Step 1) | – | $909,282 | – | $338,227 | – | $439,880 |
| Pilot Compensation (from Step 2) | – | $983,157 | – | $899,999 | – | $819,298 |
| Operating Profit/(Loss) | = | $29,317 | = | $221,703 | = | $148,312 |
| Interest Expense (from audits) | – | $2,682 | – | $993 | – | $1,291 |
| Earnings Before Tax | = | $26,635 | = | $220,710 | = | $147,021 |
| Federal Tax Allowance | – | $0 | – | $0 | – | $0 |
| Net Income | = | $26,635 | = | $220,710 | = | $147,021 |
| Return Element (Net Income + Interest) | | $29,317 | | $221,703 | | $148,312 |
| Investment Base (from Step 4) | ÷ | 620,379 | ÷ | $229,771 | ÷ | $298,702 |
| Projected Return on Investment | = | 0.0473 | = | 0.9649 | = | 0.4965 |

The second part required for Step 6 compares the results of Tables 21 through 23 with the target ROI (3.67 percent) we obtained in Step 5 to determine if an adjustment to the base pilotage rate is necessary. Table 24 shows this comparison for each area.

TABLE 24—COMPARISON OF PROJECTED ROI AND TARGET ROI, BY AREA [1]

| | Area 1 | Area 2 | Area 4 | Area 5 | Area 6 | Area 7 | Area 8 |
|---|---|---|---|---|---|---|---|
| | St. Lawrence River | Lake Ontario | Lake Erie | Southeast Shoal to Port Huron, MI | Lakes Huron and Michigan | St. Mary's River | Lake Superior |
| Projected return on investment | 0.3618 | 0.4080 | 0.0282 | 0.5287 | 0.0473 | 0.9649 | 0.4965 |
| Target return on investment | 0.0367 | 0.0367 | 0.0367 | 0.0367 | 0.0367 | 0.0367 | 0.0367 |
| Difference in return on investment | 0.3251 | 0.3713 | (0.0085) | 0.4920 | 0.0106 | 0.9282 | 0.4598 |

[1] **Note:** Decimalization and rounding of the target ROI affects the display in this table but does not affect our calculations, which are based on the actual figure.

Because Table 24 shows a significant difference between the projected and target ROIs, an adjustment to the base pilotage rates is necessary. Step 6 now requires us to determine the pilotage revenues that are needed to make the target return on investment equal to the projected return on investment. This calculation is shown in Table 25. It adjusts the investment base we used in Step 4, multiplying it by the target ROI from Step 5, and applies the result to the operating expenses and target pilot compensation determined in Steps 1 and 2.

TABLE 25—REVENUE NEEDED TO RECOVER TARGET ROI, BY AREA

| Pilotage area | Operating expenses (Step 1) | | Target pilot compensation (Step 2) | | Investment base (Step 4) × 3.67% (Target ROI Step 5) | | Federal tax allowance | | Revenue needed |
|---|---|---|---|---|---|---|---|---|---|
| Area 1 (Designated waters) | $647,864 | + | $1,349,999 | + | $36,569 | + | $0 | = | $2,034,432 |
| Area 2 (Undesignated waters) | 447,348 | + | 819,298 | + | 25,162 | + | 0 | = | 1,291,807 |
| Area 4 (Undesignated waters) | 517,627 | + | 655,438 | + | 20,241 | + | 4,800 | = | 1,198,107 |
| Area 5 (Designated waters) | 776,442 | + | 1,349,999 | + | 30,362 | + | 7,200 | = | 2,164,003 |
| Area 6 (Undesignated waters) | 909,282 | + | 983,157 | + | 22,768 | + | 0 | = | 1,915,207 |
| Area 7 (Designated waters) | 338,227 | + | 899,999 | + | 8,433 | + | 0 | = | 1,246,659 |
| Area 8 (Undesignated waters) | 439,880 | + | 819,298 | + | 10,962 | + | 0 | = | 1,270,140 |
| Total | 4,076,671 | + | 6,877,187 | + | 154,498 | + | 12,000 | = | 11,120,355 |

The ''Revenue Needed'' column of Table 25 is more than the revenue we projected in Table 16. For purposes of transparency, we verify the calculations in Table 25 by rerunning the formula in the first part of Step 6, using the revenue needed from Table 25 instead of the Table 16 revenue projections we used in Tables 21 through 23. Tables 26 through 28 show that attaining the Table 25 revenue needed is sufficient to recover target ROI.

TABLE 26—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT ONE

| | | Area 1 | | Area 2 |
|---|---|---|---|---|
| Revenue Needed | | $2,034,432 | | $1,291,807 |
| Operating Expenses (from Step 1) | – | 647,864 | – | 447,348 |
| Pilot Compensation (from Step 2) | – | 1,349,999 | – | 819,298 |
| Operating Profit/(Loss) | = | 36,569 | = | 25,162 |
| Interest Expense (from audits) | – | 18,484 | – | 12,718 |
| Earnings Before Tax | = | 18,085 | = | 12,444 |
| Federal Tax Allowance | – | 0 | – | 0 |
| Net Income | = | 18,085 | = | 12,444 |
| Return Element (Net Income + Interest) | | 36,569 | | 25,162 |
| Investment Base (from Step 4) | ÷ | 996,442 | ÷ | 685,602 |
| Return on Investment | = | 0.0367 | = | 0.0367 |

TABLE 27—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT TWO

| | | Area 4 | | Area 5 |
|---|---|---|---|---|
| Revenue Needed | + | $1,198,107 | + | $2,164,003 |
| Operating Expenses (from Step 1) | – | 517,627 | – | 776,442 |
| Pilot Compensation (from Step 2) | – | 655,438 | – | 1,349,999 |
| Operating Profit/(Loss) | = | 25,041 | = | 37,562 |
| Interest Expense (from audits) | – | 2,772 | – | 4,159 |
| Earnings Before Tax | = | 22,269 | = | 33,403 |
| Federal Tax Allowance | – | 4,800 | – | 7,200 |
| Net Income | = | 17,469 | = | 26,203 |
| Return Element (Net Income + Interest) | | 20,241 | | 30,362 |
| Investment Base (from Step 4) | ÷ | 551,538 | ÷ | 827,308 |
| Return on Investment | = | 0.0367 | = | 0.0367 |

TABLE 28—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT THREE

| | | Area 6 | | Area 7 | | Area 8 |
|---|---|---|---|---|---|---|
| Revenue Needed | + | $1,915,207 | + | $1,246,659 | + | $1,270,140 |
| Operating Expenses (from Step 1) | – | $909,282 | – | $338,227 | – | $439,880 |
| Pilot Compensation (from Step 2) | – | $983,157 | – | $899,999 | – | $819,298 |
| Operating Profit/(Loss) | = | $22,768 | = | $8,433 | = | $10,962 |
| Interest Expense (from audits) | – | $2,682 | – | $993 | – | $1,291 |
| Earnings Before Tax | = | $20,086 | = | $7,440 | = | $9,671 |
| Federal Tax Allowance | – | $0 | – | $0 | – | $0 |
| Net Income | = | $20,086 | = | $7,440 | = | $9,671 |
| Return Element (Net Income + Interest) | | $22,768 | | $8,433 | | $10,962 |
| Investment Base (from Step 4) | ÷ | $620,379 | ÷ | $229,771 | ÷ | $298,702 |
| Return on Investment | = | 0.0367 | = | 0.0367 | = | 0.0367 |

*Step 7: Adjustment of Pilotage Rates.* Finally, and subject to negotiation with Canada or adjustment for other supportable circumstances, we calculate rate adjustments by dividing the Step 6 revenue needed (Table 25) by the Step 3 revenue projection (Table 16), to give us a rate multiplier for each area. Tables 29 through 31 show these calculations.

TABLE 29—RATE MULTIPLIER, AREAS IN DISTRICT ONE

| Ratemaking projections | | Area 1 | | Area 2 |
|---|---|---|---|---|
| | | St. Lawrence River | | Lake Ontario |
| Revenue Needed (from Step 6) | | $2,034,432 | | $1,291,807 |
| Revenue (from Step 3) | ÷ | $2,358,327 | ÷ | $1,546,373 |
| Rate Multiplier | = | 0.8627 | = | 0.8354 |

TABLE 30—RATE MULTIPLIER, AREAS IN DISTRICT TWO

| Ratemaking projections | Area 4 | Area 5 |
|---|---|---|
| | Lake Erie | Southeast Shoal to Port Huron, MI |
| Revenue Needed (from Step 6) | $1,198,107 | $2,164,003 |

TABLE 30—RATE MULTIPLIER, AREAS IN DISTRICT TWO—Continued

| Ratemaking projections | | Area 4 | | Area 5 |
|---|---|---|---|---|
| | | Lake Erie | | Southeast Shoal to Port Huron, MI |
| Revenue (from Step 3) | ÷ | $1,193,426 | ÷ | $2,571,038 |
| Rate Multiplier | = | 1.0039 | = | 0.8417 |

TABLE 31—RATE MULTIPLIER, AREAS IN DISTRICT THREE

| Ratemaking projections | | Area 6 | | Area 7 | | Area 8 |
|---|---|---|---|---|---|---|
| | | Lakes Huron and Michigan | | St. Mary's River | | Lake Superior |
| Revenue Needed (from Step 6) | | $1,915,207 | | $1,246,659 | | $1,270,140 |
| Revenue (from Step 3) | ÷ | $1,921,756 | ÷ | $1,459,929 | ÷ | $1,407,490 |
| Rate Multiplier | = | 0.9966 | = | 0.8539 | = | 0.9024 |

We calculate a rate multiplier for adjusting the basic rates and charges described in 46 CFR 401.420 and 401.428, and it is applicable in all areas. We divide total revenue needed (Step 6, Table 25) by total projected revenue (Steps 3 and 3.A, Table 16). Table 32 shows this calculation.

TABLE 32—RATE MULTIPLIER FOR BASIC RATES AND CHARGES IN 46 CFR 401.420 AND 401.428

| Ratemaking projections | | |
|---|---|---|
| Total Revenue Needed (from Step 6) | | $11,120,355 |
| Total revenue (from Step 3) | ÷ | $12,458,339 |
| Rate Multiplier | = | 0.8926 |

This table shows that rates for cancellation, delay, or interruption in rendering services (46 CFR 401.420) and basic rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (46 CFR 401.428), would decrease by 10.74 percent in all areas.

Without further action, the existing rates we established in our 2013 final rule would then be multiplied by the rate multipliers from Tables 29 through 31 to calculate the area by area rate changes for 2014. The resulting 2014 rates, on average, would then be decreased approximately 11 percent from the 2013 rates. This decrease is not due to increased efficiencies in pilotage services but rather a result of recent significant downward adjustments to AMOU contracts. We declined to impose this decrease because financial data from one of the associations indicates that such a rate decrease would make it difficult for it to continue funding operations and may even cause it to fold. Further, the decrease would have an adverse effect on providing safe, efficient, and reliable pilotage in the other two pilotage districts as well. Finally, our Memorandum of Arrangements (MOA) with Canada calls for comparable pilotage rates between the two countries and we have proposed matching our rates to the Canadian rate, which has actually increased by 2.5 percent this year. Our discretionary authority under Step 7 must be ''based on requirements of the Memorandum of Arrangements between the United States and Canada, and other supportable circumstances that may be appropriate.'' The MOA call for comparable United States and Canadian rates, and the rates would not be comparable if United States rates for 2014 decrease by approximately 11 percent, while Canadian rates for 2014 increase by 2.5 percent. ''Other supportable circumstances'' we have for exercising our discretion include recent E.O. 13609, ''Promoting International Regulatory Cooperation,'' which calls on Federal agencies to eliminate ''unnecessary differences'' between U.S. and foreign regulations (77 FR 26413; May 4, 2012; sec. 1), and the risk that a substantial rate decrease would jeopardize the ability of the three pilotage associations to provide safe, efficient, and reliable pilotage service.

Therefore, we propose relying on the discretionary authority we have under Step 7 to further adjust rates so that they match those adopted by the Canadian Great Lakes Pilotage Authority for 2014. Table 33 compares the impact, area by area, that an average decrease of 11 percent would have, relative to the impact each area would experience if United States rates match those of the Canadian GLPA.

A Coast Guard contractor is currently preparing a comprehensive study of our Great Lakes Pilotage ratemaking methodology, which is scheduled to be completed later in 2013. The study will address possible alternatives to the use of AMOU contracts as benchmarks for pilot compensation. We welcome any recommendations from GLPAC or the public on that issue.

TABLE 33—IMPACT OF EXERCISING STEP 7 DISCRETION

| Area | Percent change in rate without exercising Step 7 discretion | Percent change in rate with exercise of Step 7 discretion |
|---|---|---|
| Area 1 (Designated waters) | −13.73 | 2.50 |
| Area 2 (Undesignated waters) | −16.46 | 2.50 |
| Area 4 (Undesignated waters) | 0.39 | 2.50 |
| Area 5 (Designated waters) | −15.83 | 2.50 |
| Area 6 (Undesignated waters) | −0.34 | 2.50 |
| Area 7 (Designated waters) | −14.61 | 2.50 |

TABLE 33—IMPACT OF EXERCISING STEP 7 DISCRETION—Continued

| Area | Percent change in rate without exercising Step 7 discretion | Percent change in rate with exercise of Step 7 discretion |
|---|---|---|
| Area 8 (Undesignated waters) | −9.76 | 2.50 |

The following tables reflect our proposed rate adjustments of 2.5 percent across all areas.

Tables 34 through 36 show these calculations.

TABLE 34—PROPOSED ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT ONE

| | 2013 Rate | | Rate multiplier | | Adjusted rate for 2014 |
|---|---|---|---|---|---|
| **Area 1—St. Lawrence River** | | | | | |
| Basic Pilotage | $18.75/km, $33.19/mi | × | 1.025 | = | $19.22/km, $34.02/mi |
| Each lock transited | $416 | × | 1.025 | = | $426 |
| Harbor movage | $1,361 | × | 1.025 | = | $1,395 |
| Minimum basic rate, St. Lawrence River | $908 | × | 1.025 | = | $931 |
| Maximum rate, through trip | $3,984 | × | 1.025 | = | $4,084 |
| **Area 2—Lake Ontario** | | | | | |
| 6-hour period | $851 | × | 1.025 | = | $872 |
| Docking or undocking | $812 | × | 1.025 | = | $832 |

**Note:** Numbers may not total due to rounding.

In addition to the proposed rate charges in Table 34, and for the reasons we discussed in the Summary section of Part V of this preamble, we propose adding the authority to impose surcharges in the governing regulations and, under that new regulation, we propose authorizing District One to implement a temporary supplemental 3 percent charge on each source form (the ''bill'' for pilotage service) for the duration of the 2014 shipping season, which begins in March 2014. The Canadian Great Lakes Pilotage Authority (GLPA) has used an 18 percent surcharge without disrupting traffic. As a result, we have concluded that a 3 percent surcharge will not disrupt traffic. District One must provide us with monthly status reports once this surcharge becomes effective for the duration of the 2014 shipping season, which begins in March 2014. We will exclude these training expenses from future rates.

TABLE 35—PROPOSED ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT TWO

| | *2013 Rate* | | *Rate multiplier* | | *Adjusted rate for 2014* |
|---|---|---|---|---|---|
| **Area 4—Lake Erie** | | | | | |
| 6-hour period | 828 | × | 1.025 | = | 849 |
| Docking or undocking | 637 | × | 1.025 | = | 653 |
| Any point on Niagara River below Black Rock Lock | 1,626 | × | 1.025 | = | 1,667 |
| **Area 5—Southeast Shoal to Port Huron, MI between any point on or in** | | | | | |
| Toledo or any point on Lake Erie W. of Southeast Shoal | 1,382 | × | 1.025 | = | 1,417 |
| Toledo or any point on Lake Erie W. of Southeast Shoal & Southeast Shoal | 2,339 | × | 1.025 | = | 2,397 |
| Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit River | 3,037 | × | 1.025 | = | 3,113 |
| Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit Pilot Boat | 2,339 | × | 1.025 | = | 2,397 |
| Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat) | 4,074 | × | 1.025 | = | 4,176 |
| Port Huron Change Point & Toledo or any point on Lake Erie W. of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat) | 4,719 | × | 1.025 | = | 4,837 |
| Port Huron Change Point & Detroit River | 3,060 | × | 1.025 | = | 3,137 |
| Port Huron Change Point & Detroit Pilot Boat | 2,381 | × | 1.025 | = | 2,441 |
| Port Huron Change Point & St. Clair River | 1,693 | × | 1.025 | = | 1,735 |
| St. Clair River | 1,382 | × | 1.025 | = | 1,417 |
| St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat) | 4,074 | × | 1.025 | = | 4,176 |
| St. Clair River & Detroit River/Detroit Pilot Boat | 3,060 | × | 1.025 | = | 3,137 |
| Detroit, Windsor, or Detroit River | 1,382 | × | 1.025 | = | 1,417 |
| Detroit, Windsor, or Detroit River & Southeast Shoal | 2,339 | × | 1.025 | = | 2,397 |

TABLE 35—PROPOSED ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT TWO—Continued

| | *2013 Rate* | | *Rate multiplier* | | *Adjusted rate for 2014* |
|---|---|---|---|---|---|
| Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie W. of Southeast Shoal | 3,037 | × | 1.025 | = | 3,113 |
| Detroit, Windsor, or Detroit River & St. Clair River | 3,060 | × | 1.025 | = | 3,137 |
| Detroit Pilot Boat & Southeast Shoal | 1,693 | × | 1.025 | = | 1,735 |
| Detroit Pilot Boat & Toledo or any point on Lake Erie W. of Southeast Shoal | 2,339 | × | 1.025 | = | 2,397 |
| Detroit Pilot Boat & St. Clair River | 3,060 | × | 1.025 | = | 3,137 |

**Note:** Numbers may not total due to rounding.

TABLE 36—PROPOSED ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT THREE

| | 2013 Rate | | Rate multiplier | | Adjusted rate for 2014 |
|---|---|---|---|---|---|
| **Area 6—Lakes Huron and Michigan** | | | | | |
| 6-hour Period | $691 | × | 1.025 | = | $708 |
| Docking or undocking | $656 | × | 1.025 | = | $672 |
| **Area 7—St. Mary's River between any point on or in** | | | | | |
| Gros Cap & De Tour | $2,583 | × | 1.025 | = | $2,648 |
| Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour | $2,583 | × | 1.025 | = | $2,648 |
| Algoma Steel Corp. Wharf, Sault. Ste. Marie, Ont. & Gros Cap | $973 | × | 1.025 | = | $997 |
| Any point in Sault St. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour | $2,165 | × | 1.025 | = | $2,219 |
| Any point in Sault St. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap | $973 | × | 1.025 | = | $997 |
| Sault Ste. Marie, MI & De Tour | $2,165 | × | 1.025 | = | $2,219 |
| Sault Ste. Marie, MI & Gros Cap | $973 | × | 1.025 | = | $997 |
| Harbor movage | $973 | × | 1.025 | = | $997 |
| **Area 8—Lake Superior** | | | | | |
| 6-hour period | $586 | × | 1.025 | = | $601 |
| Docking or undocking | $557 | × | 1.025 | = | $571 |

**Note:** Numbers may not total due to rounding.

## VI. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule is not a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See Parts III and IV of this preamble for detailed discussions of the Coast Guard's legal basis and purpose for this rulemaking and for background information on Great Lakes pilotage ratemaking. Based on our annual review for this proposed rulemaking, we are adjusting the pilotage rates for the 2014 shipping season to generate sufficient revenue to cover allowable expenses, and to target pilot compensation and returns on pilot associations' investments. The rate adjustments in this proposed rule would, if codified, lead to a cost in District One and cost savings in Districts Two and Three. The cost savings that would accrue to Districts Two and Three would outweigh the cost to District One, which would result in an estimated annual cost savings to shippers of approximately $817,983 across all three districts.[5]

In addition to the overall cost savings that would accrue to all three districts as a result of the rate adjustments, we propose authorizing District One to implement a temporary supplemental 3 percent surcharge to traffic in District One in order to recover training expenses from 2012. This temporary surcharge would be authorized for the duration of the 2014 shipping season, which begins in March. We estimate that this would generate $120,070. At the end of the 2014 shipping season, we will account for the monies the surcharge generates and make adjustments (debits/credits) to the operating expenses for the following year.[6]

[5] Despite increasing Great Lakes pilotage rates, on average, by approximately 2.5 percent from the current rates set in the 2013 final rule, we estimate a net cost savings across all three districts as a result of an expected decrease in the demand for pilotage services from the previous year.

[6] Assuming our estimate is correct, we would credit District One shippers $71,075 in order to

Continued

Therefore, this proposed rule is expected to result in a cost savings to shippers of approximately $697,914 across all three districts.[7]

A regulatory assessment follows.

The proposed rule would apply the 46 CFR part 404, Appendix A, full ratemaking methodology, including the exercise of our discretion to increase Great Lakes pilotage rates, on average, approximately 2.5 percent overall from the current rates set in the 2013 final rule. The Appendix A methodology is discussed and applied in detail in Part V of this preamble. Among other factors described in Part V, it reflects audited 2011 financial data from the pilotage associations (the most recent year available for auditing), projected association expenses, and regional inflation or deflation. The last full Appendix A ratemaking was concluded in 2013 and used financial data from the 2010 base accounting year. The last annual rate review, conducted under 46 CFR part 404, Appendix C, was completed early in 2011.

The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The Coast Guard's interpretation is that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this proposed rule, such as recreational boats and vessels operating only within the Great Lakes system, may elect to purchase pilotage services. However, this election is voluntary and does not affect our calculation of the rate and is not a part of our estimated national cost to shippers. Our sampling of pilot data suggests that there are very few U.S. domestic vessels that do not have registry and operate only in the Great Lakes that voluntarily purchase pilotage services.

We used 2010–2012 vessel arrival data from the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) system to estimate the average annual number of vessels affected by the rate adjustment. Using that period, we found that approximately 128 vessels journeyed into the Great Lakes system annually. These vessels entered the Great Lakes by transiting at least one of the three pilotage districts before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips for the 128 vessels, there were approximately 353 annual U.S. port arrivals before the vessels left the Great Lakes system, based on 2010–2012 vessel data from MISLE.

The impact of the rate adjustment to shippers is estimated from the District pilotage revenues. These revenues represent the direct and indirect costs (''economic costs'') that shippers must pay for pilotage services. The Coast Guard sets rates so that revenues equal the estimated cost of pilotage for these services.

We estimate the additional impact (costs or savings) of the rate adjustment in this proposed rule to be the difference between the total projected revenue needed to cover costs in 2014, based on the 2013 rate adjustment, and the total projected revenue needed to cover costs in 2014, as set forth in this proposed rule, plus any temporary surcharges authorized by the Coast Guard. Table 37 details projected revenue needed to cover costs in 2014 after making the discretionary adjustment to pilotage rates as discussed in Step 7 of Part VI of this preamble. Table 38 summarizes the derivation for calculating the 3 percent surcharge on District One traffic as discussed in Step 7 of Part VI of this preamble. Table 39 details the additional costs or savings by area and district as a result of the rate adjustments and the temporary surcharge to District One traffic.

TABLE 37—RATE ADJUSTMENT BY AREA AND DISTRICT

[$U.S.; Non-discounted]

| | *2013 Pilotage rates*[8] | *Rate change*[9] | *2014 Pilotage rates*[10] | *Projected 2014 bridge hours*[11] | *Projected revenue needed in 2014*[12] |
|---|---|---|---|---|---|
| Area 1 | $460.97 | 1.0250 | $472.50 | 5,116 | $2,417,285 |
| Area 2 | 284.84 | 1.0250 | 291.96 | 5,429 | 1,585,032 |
| *Total, District One* | | | | | 4,002,318 |
| Area 4 | 205.27 | 1.0250 | 210.40 | 5,814 | 1,223,262 |
| Area 5 | 508.91 | 1.0250 | 521.64 | 5,052 | 2,635,314 |
| *Total, District Two* | | | | | 3,858,576 |
| Area 6 | 199.95 | 1.0250 | 204.95 | 9,611 | 1,969,800 |
| Area 7 | 482.94 | 1.0250 | 495.01 | 3,023 | 1,496,427 |
| Area 8 | 186.67 | 1.0250 | 191.34 | 7,540 | 1,442,677 |
| *Total, District Three* | | | | | 4,908,904 |

* Some values may not total due to rounding.

[8] These 2013 estimates are described in Table 16 of this NPRM.

[9] The estimated rate changes are described in Table 33 of this NPRM.

[10] 2014 Pilotage Rates = *2013 Pilotage Rates x Rate Change.*

[11] These 2014 estimates are detailed in Table 14 of this NPRM.

[12] Projected Revenue needed in 2014 = *2014 Pilotage Rates* × *Projected 2014 Bridge Hours.*

account for the difference between the total surcharges collected ($120,070) and the actual training expenses incurred ($48,995).

[7] Total cost savings across all three districts is equal to the cost savings from rate changes plus a temporary surcharge to traffic in District One.

TABLE 38—DERIVATION OF TEMPORARY SURCHARGE

| | Area 1 | Area 2 |
|---|---|---|
| Projected Revenue Needed in 2014 [13] | $2,417,285 | $1,585,032 |
| Surcharge Rate | 3% | 3% |
| Surcharge Raised | $72,519 | $47,551 |
| Total Surcharge | | $120,070 |

[13] These estimates are described in Table 37 of this NPRM.

TABLE 39—IMPACT OF THE PROPOSED RULE BY AREA AND DISTRICT

[$U.S: Non-discounted]

| | *Projected revenue needed in 2013* [14] | *Projected revenue needed in 2014* | *Temporary surcharge* [15] | *Additional costs or savings of this proposed rule* |
|---|---|---|---|---|
| Area 1 | $2,404,424 | $2,417,285 | $72,519 | $85,380 |
| Area 2 | 1,569,160 | 1,585,032 | 47,551 | 63,423 |
| *Total, District One* | 3,973,584 | 4,002,318 | 120,070 | 148,803 |
| Area 4 | 1,398,694 | 1,223,262 | | (175,432) |
| Area 5 | 2,596,484 | 2,635,314 | | 38,830 |
| *Total, District Two* | 3,995,178 | 3,858,576 | | (136,602) |
| Area 6 | 2,281,673 | 1,969,800 | | (311,873) |
| Area 7 | 1,556,517 | 1,496,427 | | (60,090) |
| Area 8 | 1,780,829 | 1,442,677 | | (338,152) |
| *Total, District Three* | 5,619,019 | 4,908,904 | | (710,115) |

* Some values may not total due to rounding.
[14] These 2013 estimates are described in Table 27 of the 2013 NPRM.
[15] These estimates are described in Table 38 of this NPRM.

After applying the discretionary rate change in this NPRM, the resulting difference between the projected revenue in 2013 and the projected revenue in 2014 is the annual impact to shippers from this proposed rule. This figure is equivalent to the total additional payments or savings that shippers would incur for pilotage services from this proposed rule. As discussed earlier, we consider a reduction in payments to be a cost savings.

The impact of the discretionary rate adjustment in this proposed rule to shippers varies by area and district. The discretionary rate adjustments would lead to affected shippers operating in District One experiencing total cost increases of $28,733.56, and affected shippers operating in District Two and District Three experiencing total cost savings of $136,601.82 and $710,115.00, respectively. The savings that accrue to shippers operating in District Two and District Three are the result of an expected decrease in the demand for pilotage services.

In addition to the rate adjustments, District One would also incur a temporary surcharge of 3 percent to traffic for the duration of the 2014 season in order to recover training expenses incurred from 2012. We estimate that this surcharge would generate $120,070. At the end of the 2014 shipping season, we will account for the monies the surcharge generates and make adjustments (debits/credits) to the operating expenses for the following year.[16]

To calculate an exact cost or savings per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators would pay more and some would pay less, depending on the distance and the number of port arrivals of their vessels' trips. However, the additional savings reported earlier in this NPRM does capture the adjustment the shippers would experience as a result of the proposed rate adjustment. The overall impact of this NPRM would be a cost savings to shippers of approximately $697,914 across all three districts.

This proposed rule would allow the Coast Guard to meet the statutory requirements to review the rates for pilotage services on the Great Lakes, thus ensuring proper pilot compensation.

Alternatively, if we imposed the new rates based on the new contract data from AMOU, there would be an approximately 11 percent decrease in rates across the system. This would have a larger effect on industry, moving from a proposed cost savings of approximately $697,914 to a cost savings of approximately $2,367,640. Table 40 details projected revenue needed to cover costs in 2014 if the discretionary adjustment to pilotage rates as discussed in Step 7 of Part VI of this preamble is not made. Table 41 details the additional costs or savings by area and district as a result of this alternative proposal.

[16] Assuming our estimate is correct, we would credit District One shippers $71,075 at the end of the 2014 season in order to account for the difference between the total surcharges collected ($120,070) and the actual training expenses incurred by District One pilots ($48,995).

[17] These 2014 estimates are detailed in Table 14 of this NPRM.

TABLE 40—ALTERNATIVE RATE ADJUSTMENT BY AREA AND DISTRICT

[$U.S.; Non-discounted]

| | 2013 Pilotage rates | Rate change | 2014 Pilotage rates | Projected 2014 bridge hours[17] | Projected revenue needed in 2014 |
|---|---|---|---|---|---|
| Area 1 | $460.97 | 0.8627 | $397.66 | 5,116 | $2,034,432 |
| Area 2 | 284.84 | 0.8354 | 237.95 | 5,429 | 1,291,807 |
| *Total, District One* | | | | | 3,326,239 |
| Area 4 | 205.27 | 1.0039 | 206.07 | 5,814 | 1,198,107 |
| Area 5 | 508.91 | 0.8417 | 428.35 | 5,052 | 2,164,002 |
| *Total, District Two* | | | | | 3,362,109 |
| Area 6 | 199.95 | 0.9966 | 199.27 | 9,611 | 1,915,207 |
| Area 7 | 482.94 | 0.8539 | 412.39 | 3,023 | 1,246,659 |
| Area 8 | 186.67 | 0.9024 | 168.45 | 7,540 | 1,270,140 |
| *Total, District Three* | | | | | 4,432,006 |

* Some values may not total due to rounding.

TABLE 41—ALTERNATIVE IMPACT OF THE RULE BY AREA AND DISTRICT

[$U.S.; Non-discounted]

| | Projected revenue needed in 2013 (A) | Projected revenue needed in 2014 (B) | Temporary surcharge[18] (C) | Additional costs or savings of this proposed rule (B − A) + C |
|---|---|---|---|---|
| Area 1 | $2,404,424 | $2,034,432 | $61,033 | ($308,959) |
| Area 2 | 1,569,160 | 1,291,807 | 38,754 | (238,599) |
| *Total, District One* | 3,973,584 | 3,326,239 | 99,787 | (547,558) |
| Area 4 | 1,398,694 | 1,198,107 | | (200,587) |
| Area 5 | 2,596,484 | 2,164,002 | | (432,482) |
| *Total, District Two* | 3,995,178 | 3,362,109 | | (633,069) |
| Area 6 | 2,281,673 | 1,915,207 | | (366,466) |
| Area 7 | 1,556,517 | 1,246,659 | | (309,858) |
| Area 8 | 1,780,829 | 1,270,140 | | (510,689) |
| *Total, District Three* | 5,619,019 | 4,432,006 | | (1,187,013) |

* Some values may not total due to rounding.

We reject this alternative because a substantial rate decrease would jeopardize the ability of the three pilotage associations to provide safe, efficient, and reliable pilotage service as well as violate the Memorandum of Arrangements, which calls for the United States' and Canada's pilotage rates to be comparable. See our discussion of Step 7 in Part VI of this preamble for further explanation.

*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 less than 50,000 people.

We expect that entities affected by the proposed rule would be classified under the North American Industry Classification System (NAICS) code subsector 483—Water Transportation, which includes the following 6-digit NAICS codes for freight transportation: 483111–Deep Sea Freight Transportation, 483113–Coastal and Great Lakes Freight Transportation, and 483211–Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

For the proposed rule, we reviewed recent company size and ownership data from 2010–2012 Coast Guard MISLE data and business revenue and size data provided by publicly available sources such as MANTA and Reference USA. We found that large, foreign-owned shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes. We assume that new industry entrants would be comparable in ownership and size to these shippers.

There are three U.S. entities affected by the proposed rule that receive revenue from pilotage services. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships and one operates as a corporation. These associations are designated with the same NAICS industry classification and small-entity size standards described above, but they have fewer than 500 employees; combined, they have approximately 65 total employees. We expect no adverse impact to these entities from this proposed rule because all associations receive enough revenue to balance the projected expenses associated with the projected number of bridge hours and pilots.

Therefore, 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. 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

[18] The temporary surcharge generated under this alternative is expected to be less than under the proposed alternative. This is a result of a substantial decrease in projected revenue due to the lower Projected Pilotage Rates for 2014 under this alternative.

qualifies, as well as 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 (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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Todd Haviland, Director, Great Lakes Pilotage, Commandant (CG–WWM–2), Coast Guard; telephone 202–372–2037, email *Todd.A.Haviland@uscg.mil,* or fax 202–372–1914. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

*D. Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This proposed rule would not change the burden in the collection currently approved by the OMB under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

*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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis is explained below.

Congress directed the Coast Guard to establish ''rates and charges for pilotage services.'' 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of state law as outlined in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a ''State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.'' As a result, States or local governments are prohibited from regulating within this category. Therefore, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process.

Therefore, the Coast Guard invites 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 NPRM. 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 who submit comments 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. We will also report to the Office of Management and Budget any written communications with the States.

*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 expenditure, we 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 E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*I. Protection of Children*

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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.

*J. Indian Tribal Governments*

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

*L. Technical Standards*

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

systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*M. 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 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This proposed rule is categorically excluded under section 2.B.2, figure 2–1, paragraph 34(a) of the Instruction. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This proposed rule adjusts rates in accordance with applicable statutory and regulatory mandates. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 46 CFR Part 401**

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 401 as follows:

## PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

**Authority:** 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.400, revise paragraph (b) to read as follows:

**§ 401.400 Calculation of pilotage units and determination of weighting factor.**

* * * * *

(b) Weighting Factor Table:

| *Range of pilotage units* | *Weighting factor* |
|---|---|
| 0–49 | 1.0 |
| 50–159 | 1.15 |
| 160–189 | 1.30 |
| 190–and over | 1.45 |

* * * * *

■ 3. Add new § 401.401 to read as follows:

**§ 401.401 Surcharges.**

To facilitate safe, efficient, and reliable pilotage, and for good cause, the Director may authorize surcharges on any rate or charge authorized by this subpart. Surcharges must be proposed for prior public comment and may not be authorized for more than one year.

■ 4. In § 401.405, revise paragraphs (a) and (b), including the footnote to Table (a), to read as follows:

**§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.**

* * * * *

(a) Area 1 (Designated Waters):

| *Service* | *St. Lawrence River* |
|---|---|
| Basic Pilotage | $19.22 per kilometer or $34.02 per mile [1]. |
| Each Lock Transited | 426 [1]. |
| Harbor Movage | 1,395 [1]. |

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $931, and the maximum basic rate for a through trip is $4,084.

(b) Area 2 (Undesignated Waters):

| *Service* | *Lake Ontario* |
|---|---|
| 6-hour Period | $872 |
| Docking or Undocking | 832 |

■ 5. In § 401.407, revise paragraphs (a) and (b), including the footnote to Table (b), to read as follows:

**§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.**

* * * * *

(a) Area 4 (Undesignated Waters):

| *Service* | *Lake Erie (east of Southeast Shoal)* | *Buffalo* |
|---|---|---|
| 6-hour Period | $849 | $849 |
| Docking or Undocking | 653 | 653 |
| Any point on the Niagara River below the Black Rock Lock | N/A | 1,667 |

(b) Area 5 (Designated Waters):

| *Any point on or in* | *Southeast Shoal* | *Toledo or any point on Lake Erie west of Southeast Shoal* | *Detroit River* | *Detroit Pilot Boat* | *St. Clair River* |
|---|---|---|---|---|---|
| Toledo or any port on Lake Erie west of Southeast Shoal | $2,397 | $1,417 | $3,113 | $2,397 | N/A |
| Port Huron Change Point | [1] 4,176 | [1] 4,837 | 3,137 | 2,441 | 1,735 |
| St. Clair River | [1] 4,176 | N/A | 3,137 | 3,137 | 1,417 |
| Detroit or Windsor or the Detroit River | 2,397 | 3,113 | 1,417 | N/A | 3,137 |
| Detroit Pilot Boat | 1,735 | 2,397 | N/A | N/A | 3,137 |

[1] When pilots are not changed at the Detroit Pilot Boat.

■ 6. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

**§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior; and the St. Mary's River.**

* * * * *

(a) Area 6 (Undesignated Waters):

| *Service* | *Lakes Huron and Michigan* |
|---|---|
| 6-hour Period | $708 |
| Docking or Undocking | 672 |

(b) Area 7 (Designated Waters):

| Area | De Tour | Gros Cap | Any harbor |
|---|---|---|---|
| Gros Cap | $2,648 | N/A | N/A |
| Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario | 2,648 | 997 | N/A |
| Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf | 2,219 | 997 | N/A |
| Sault Ste. Marie, MI | 2,219 | 997 | N/A |
| Harbor Movage | N/A | N/A | $997 |

(c) Area 8 (Undesignated Waters):

| Service | Lake Superior |
|---|---|
| 6-hour Period | $601 |
| Docking or Undocking | 571 |

**§ 401.420 [Amended]**

■ 7. Amend § 401.420 as follows:

■ a. In paragraph (a), remove the text ''$126'' and add, in its place, the text ''$129''; and remove the text ''$1,972'' and add, in its place, the text ''$2,021'';

■ b. In paragraph (b), remove the text ''$126'' and add, in its place, the text ''$129''; and remove the text ''$1,972'' and add, in its place, the text ''$2,021''; and

■ c. In paragraph (c)(1), remove the text ''$744'' and add, in its place, the text ''$763''; and in paragraph (c)(3), remove the text ''$126'' and add, in its place, the text ''$129'', and remove the text ''$1,972'' and add, in its place, the text ''$2,021''.

**§ 401.428 [Amended]**

■ 8. In § 401.428, remove the text ''$744'' and add, in its place, the text ''$763''.

Dated: July 31, 2013.

**Rajiv Khandpur,**

*Acting Director, Marine Transportation Systems Management, U.S. Coast Guard.*

[FR Doc. 2013–19209 Filed 8–7–13; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 212, 216, 247, and 252

**RIN 0750–AH90**

### Defense Federal Acquisition Regulation Supplement: Clauses With Alternates—Transportation (DFARS Case 2012–D057)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create an overarching prescription for each set of transportation-related provisions/clauses with one or more alternates. The rule also proposes to add a separate prescription for the basic clause as well as each alternate. In addition, the proposed rule would include the full text of each provision and/or clause alternate.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before October 7, 2013, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2012–D057, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2012–D057'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2012–D057.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2012–D057'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2012–D057 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6098; facsimile 571–372–6101.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to amend the DFARS to create an overarching prescription for each set of transportation-related provisions/clauses with one or more alternates. The rule also proposes to add a separate prescription for the basic clause as well as each alternate. In addition, the proposed rule would include the full text of each provision/clause alternate. For clarity, the preface of the alternate will continue to explain what portions of that alternate are different from the basic provision/clause.

Separate prescriptions for the basic and alternates of DFARS provisions and clauses will facilitate the use of automated contract writing systems. The proposed rule will not revise the prescriptions in any substantive way or change the applicability of the provisions/clauses or their alternates.

The inclusion of the full text of each provision/clause alternate aims to make the terms of a provision/clause alternate clearer to offerors and to DoD contracting officers. The current convention for alternates is to show only the changed paragraphs from the basic provision or clause. This proposed rule would include the full text of each provision/clause and each alternate, which will assist in making solicitation and contract terms and conditions easier to read and understand. By placing alternates in full text, all paragraph substitutions from the basic provision/clause will have already been made. Inapplicable paragraphs from the basic provision/clause that are superseded by the alternate will not be included in the solicitation or contract in order to prevent confusion.

Although this rule proposes to include each alternate in full, it retains the language that precedes the provision/clause or alternate, which includes the location of the alternate's prescription and a statement that identifies which paragraphs were changed from the basic provision/clause. Further, alternates are proposed to have individual titles that tie them to the basic clause, *e.g.,* ''Requirements—Alternate I'' in lieu of ''Alternate I.''

This rule proposes to revise the naming convention for provisions/clauses with alternates to indicate that

there is at least one alternate by revising the title of the basic clause to read ''Title—Basic.'' Thus, if adopted as final, the naming convention will differentiate at the provision/clause title whether there are any alternates associated with that provision/clause.

## II. Discussion

This proposed rule addresses only the solicitation provisions and clauses in DFARS part 247 that have, or are, alternates. The remaining prescriptions in DFARS part 247 are not proposed to be changed in any way by this proposed rule.

There are three DFARS transportation-related provisions/clauses that would be affected by this rule, as follows:

- 252.247–7008, Evaluation of Bids, with one alternate.
- 252.247–7023, Transportation of Supplies by Sea, with three alternates.
- 252.247–7015, which is an alternate to FAR 52.216–21.

The clause currently at DFARS 252.247–7015, Requirements, presents a unique situation. Although it is located with transportation clauses, it is an alternate to be used with the basic FAR clause at 52.216–21, also entitled ''Requirements,'' and with Alternate III to the FAR clause. This rule proposes to create a stand-alone DFARS clause and one alternate and to relocate them to DFARS 252.216 because they apply principally to requirement contracts rather than transportation. The rule proposes to create the corresponding prescriptions at 216.506(d).

The other two clauses addressed in this proposed rule are proposed to remain in DFARS 252.247. DFARS 252.247–7008, Evaluation of Bids, and its Alternate I are prescribed at DFARS 247.271–3(a). The introductory text in DFARS 247.271–3 provides the overarching prescription for 15 provisions/clauses. This rule proposes to revise paragraph (a) of DFARS 247.271–3 to provide the prescriptions for DFARS 252.247–7008, Evaluation of Bids. ''Alternate I'' to DFARS 252.247–7008 would be prescribed to apply when adding ''additional services'' items to the schedule. The text of the current DFARS 252.247–7008 Alternate I would no longer consist solely of paragraph (e); it would be renamed 252.247–7008, Evaluation of Bids—Alternate I, and its text would include the entire text of DFARS 252.247–7008 with the addition of paragraph (e).

The clause at DFARS 252.247–7023, Transportation of Supplies by Sea, currently has three alternates and is prescribed at DFARS 247.574(b). The rule proposes to add a prescription for the basic clause at DFARS 247.574(b)(1). The rule also proposes to eliminate Alternate III, because it proposes to revise the basic clause and Alternates I and II to add the phrase ''If this contract exceeds the simplified acquisition threshold'' as a condition precedent to the applicability of paragraphs (f) and (g). This change would eliminate the need for Alternate III, which applies only when the anticipated value of the procurement is at or below the simplified acquisition threshold.

## III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it merely revises the format, not the substance, of prescriptions for provisions and clauses with alternates, as well as includes the full text of each provision or clause in each alternate.

However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of this case is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create an overarching prescription for each set of provisions/clauses with one or more alternates. The overarching prescription is intended to include the common requirements for the use of that provision/clause set.

The use of automated contract writing systems will be facilitated by revising the prescription format for DFARS provisions/clauses that have one or more alternates. This rule proposes to revise the prescription format so that there is an overarching prescription that covers the elements that the basic provision/clause and all its alternates have in common. Then, there will be a separate prescription for use of the basic prescription/clause and each alternate. In addition, each alternate provision/clause will be presented in total, not just the paragraph or section that is different from the basic provision/clause. This will make the terms of a provision or clause alternate clearer to offerors, as well as to DoD contracting officers, because all paragraph substitutions will have already been made. Inapplicable paragraphs from the basic provision/clause that are superseded by the alternate will not be included in the solicitation or contract to prevent confusion.

Potential offerors, including small businesses, initially may be affected by this rule by seeing an unfamiliar format for provision/clause alternates in solicitations and contracts issued by DoD contracting activities. An average of 12,618,521 new contracts was awarded in Fiscal Years 2011 and 2012, and an average of 1,557,852 of these actions (12.35%) was awarded to small businesses. It is unknown how many of these contracts were awarded that included an alternate to a DFARS provision or clause. Nothing substantive will change in solicitations or contracts for potential offerors, and only the appearance of how provision/clause alternates are presented in solicitations and contracts will be changed. This rule may result in potential offerors, including small businesses, expending more time to become familiar with and to understand the new format of provision/clause alternates in full text contained in contracts issued by any DoD contracting activity. The rule also anticipates saving contractors time by making all paragraph substitutions from the basic clause, and by not requiring offerors to read inapplicable paragraphs contained in the basic provisions/clauses where alternates are also included in the solicitations and contracts. The overall burden caused by this rule is expected to be negligible and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were determined that will accomplish the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5

U.S.C. 610 (DFARS Case 2012–D057), in correspondence.

**V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 212, 216, 247, and 252**

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CRF parts 212, 216, 247, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 212, 216, 247, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR Chapter 1.

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Section 212.301 is amended by revising paragraph (f)(lvii) to read as follows:

### 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(lvii) Use the clause at *252.247–7023,* Transportation of Supplies by Sea, as prescribed in *247.574*(b)(1), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)).

(A) Use the clause Transportation of Supplies by Sea—Basic, as prescribed in 247.574(b)(1).

(B) Use the clause Transportation of Supplies by Sea—Alternate I, as prescribed in 247.574(b)(2).

(C) Use the clause Transportation of Supplies by Sea—Alternate II, as prescribed in *247.574*(b)(3).

* * * * *

## PART 216—TYPES OF CONTRACTS

■ 3. Amend section 216.506 by revising paragraph (d) to read as follows:

### 216.506 Solicitation provisions and contract clauses.

* * * * *

(d) Use the basic or the alternate of the clause at 252.216–70XX, Requirements, in lieu of the clause at FAR 52.216–21, Requirements, in solicitations and contracts when a requirement for the preparation of personal property for shipment or storage, or for the performance of intra-city or intra-area movement, is contemplated.

(1) Use the clause Requirements—Basic if the acquisition does not involve a partial small business set-aside.

(2) Use the clause Requirements—Alternate I if the acquisition involves a partial small business set-aside.

* * * * *

## PART 247—TRANSPORTATION

■ 4. Revise section 247.271–3 to read as follows:

### 247.271–3 Solicitation provisions, schedule formats, and contract clauses.

When acquiring services for the preparation of personal property for movement or storage, or for performance of intra-city or intra-area movement, use the following provisions, clauses, and schedules. Revise solicitation provisions and schedules, as appropriate, if using negotiation rather than sealed bidding. Overseas commands, except those in Alaska and Hawaii, may modify these clauses to conform to local practices, laws, and regulations.

(a) The basic or the alternate of the provision at 252.247–7008, Evaluation of Bids.

(1) Use the provision Evaluation of Bids—Basic when there are no ''additional services'' items being added to the schedule.

(2) Use the provision Evaluation of Bids—Alternate I when adding ''additional services'' items to the schedule.

(b) The provision at *252.247–7009,* Award.

(c) In solicitations and resulting contracts, the schedules provided by the installation personal property shipping office. Follow the procedures at *PGI 247.271–3*(c) for use of schedules.

(d) The clause at *252.247–7010,* Scope of Contract.

(e) The clause at *252.247–7011,* Period of Contract. When the period of performance is less than a calendar year, modify the clause to indicate the beginning and ending dates. However, the contract period must not end later than December 31 of the year in which the contract is awarded.

(f) In addition to designating each ordering activity, as required by the clause at FAR 52.216–18, Ordering, identify by name or position title the individuals authorized to place orders for each activity. When provisions are made for placing oral orders in accordance with FAR 16.504(a)(4)(vii)), document the oral orders in accordance with department or agency instructions.

(g) The clause at *252.247–7012,* Ordering Limitation.

(h) The clause at *252.247–7013,* Contract Areas of Performance.

(i) The clause at *252.247–7014,* Demurrage. See additional information at *PGI 247.271–3(c)(1)* for demurrage and detention charges.

(j) The clause at *252.247–7016,* Contractor Liability for Loss and Damage.

(k) The clause at *252.247–7017,* Erroneous Shipments.

(l) The clause at *252.247–7018,* Subcontracting.

(m) The clause at *252.247–7019,* Drayage.

(n) The clause at *252.247–7020,* Additional Services.

(o) The clauses at FAR 52.247–8, Estimated Weight or Quantities Not Guaranteed, and FAR 52.247–13, Accessorial Services—Moving Contracts.

(p) See the prescription at 216.506(d) requiring the use of 252.216–70XX, Requirements.

■ 5. Amend section 247.574 by revising paragraph (b) to read as follows:

### 247.574 Solicitation provisions and contract clauses.

* * * * *

(b) Use the basic or one of the alternates at 252.247–7023, Transportation of Supplies by Sea, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, except those for direct purchase of ocean transportation services.

(1) Use the clause Transportation of Supplies by Sea—Basic, unless any of the supplies to be transported are commercial items that are—

(i) Shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract; or

(ii) Commissary or exchange cargoes transported outside of the Defense Transportation System when the contract is not a construction contract.

(2) Use the clause Transportation of Supplies by Sea—Alternate I, if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations, exercises, or forces deployed in humanitarian or peacekeeping operations, when the contract is not a construction contract.

(3) Use the clause Transportation of Supplies by Sea—Alternate II, if any of the supplies to be transported are commercial items that are commissary

or exchange cargoes transported outside of the Defense Transportation System (10 U.S.C. 2643), when the contract is not a construction contract.

* * * * *

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Add section 252.247–70XX to read as follows:

### 252.216–70XX Requirements.

As prescribed in *216.506*(d), use the following clause or its alternate.

(a) *Requirements—Basic.* For the specific prescription for use of the basic clause, see 216.506(d)(1).

**REQUIREMENTS—BASIC (DATE)**

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as ''estimated'' or ''maximum'' in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractor and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

(End of clause)

(b) *Requirements—Alternate I.* For the specific prescription for use of Alternate I, see 216.506(d)(2). Alternate I uses a different paragraph (c) than the basic clause.

**REQUIREMENTS—ALTERNATE I (DATE)**

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as ''estimated'' or ''maximum'' in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractor and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

(End of clause)

■ 7. Revise section 252.247–7008 to read as follows:

### 252.247–7008 Evaluation of bids.

As prescribed in *247.271–3*(a), use the basic provision or its alternate:

(a) *Evaluation of Bids—Basic.* For the specific prescription for use of the basic provision, see 247.271–3(a)(1).

**EVALUATION OF BIDS—BASIC (DATE)**

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as ''No Charge,'' or the letters ''N/C'' or ''0,'' must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be $500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(End of provision)

(b) *Evaluation of Bids—Alternate.* For the specific prescription for use of Alternate I, see 247.271–3(a)(2). Alternate I adds a paragraph (e).

**EVALUATION OF BIDS—ALTERNATE I (DATE)**

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as ''No Charge,'' or the letters ''N/C'' or ''0,''

must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be $500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(e) Notwithstanding paragraph (a), when ''additional services'' are added to any schedule, such ''additional services'' items will not be considered in the evaluation of bids.

(End of provision)

**252.247–7015 [Removed and Reserved]**

■ 8. Remove and reserve section 252.247–7015.

■ 9. Revise section 252.247–7023 to read as follows:

**252.247–7023 Transportation of supplies by sea.**

As prescribed in 247.574(b)(1), use the following clause or one of its alternates.

(a) *Transportation of Supplies by Sea—Basic.* For the specific prescription for use of the basic clause, see 247.574(b)(1).

TRANSPORTATION OF SUPPLIES BY SEA—BASIC (DATE)

(a) *Definitions.* As used in this clause—

(1) ''Components'' means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) ''Department of Defense'' (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) ''Foreign flag vessel'' means any vessel that is not a U.S.-flag vessel.

(4) ''Ocean transportation'' means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) ''Subcontractor'' means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) ''Supplies'' means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) ''Supplies'' includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) ''U.S.-flag vessel'' means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(i) This contract is a construction contract; or

(ii) The supplies being transported are—

(A) Noncommercial items; or

(B) Commercial items that—

*(1)* The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

*(2)* Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

*(3)* Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

(1) Prime contract number.

(2) Name of vessel.

(3) Vessel flag of registry.

(4) Date of loading.

(5) Port of loading.

(6) Port of final discharge.

(7) Description of commodity.

(8) Gross weight in pounds and cubic feet if available.

(9) Total ocean freight in U.S. dollars.

(10) Name of steamship company.

(f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

| | Item description | Contract line items | Quantity |
|---|---|---|---|
| Total | | | |

(g) If this contract exceeds the simplified acquisition threshold and if the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts, for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

(b) *Transportation of Supplies by Sea—Alternate I.* For the specific prescription for use of Alternate I, see 247.574(b)(2). Alternate I uses a different paragraph (b) for paragraph (b) of [than] the basic clause.

TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE I (DATE)

(a) *Definitions.* As used in this clause—

(1) ''Components'' means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) ''Department of Defense'' (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) ''Foreign flag vessel'' means any vessel that is not a U.S.-flag vessel.

(4) ''Ocean transportation'' means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) ''Subcontractor'' means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) ''Supplies'' means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) ''Supplies'' includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) ''U.S.-flag vessel'' means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

[(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of steamship company.

(f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

| | Item description | Contract line items | Quantity |
|---|---|---|---|
| Total | | | |

(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(End of clause)]

(c) *Transportation of Supplies by Sea—Alternate II.* For the specific prescription for use of Alternate II, see 247.574(b)(3). Alternate II uses a different paragraph (b) than the basic clause.

TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE II (DATE)

(a) *Definitions.* As used in this clause—

(1) ''Components'' means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) ''Department of Defense'' (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) ''Foreign flag vessel'' means any vessel that is not a U.S.-flag vessel.

(4) ''Ocean transportation'' means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) ''Subcontractor'' means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) ''Supplies'' means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) ''Supplies'' includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) ''U.S.-flag vessel'' means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of steamship company.

(f) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

| | Item description | Contract line items | Quantity |
|---|---|---|---|
| Total | | | |

(g) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(End of clause)

[FR Doc. 2013–18972 Filed 8–7–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 232 and 252

**RIN 0750–AI02**

### Defense Federal Acquisition Regulation Supplement: Clauses With Alternates—Contract Financing (DFARS Case 2013–D014)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create an overarching prescription for the set of contract financing related clauses with one or more alternates. The rule also proposes to add a separate prescription for the basic clause as well as the alternate. In addition, the proposed rule would include the full text of the clause alternate.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before October 7, 2013, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2013–D014, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2013–D014'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2013–D014.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2013–D014'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2013–D014 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Annette Gray, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Annette Gray, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6093; facsimile 571–372–6101.

**SUPPLEMENTARY INFORMATION:**

## I. Background

DoD is proposing to amend the DFARS to create an overarching prescription for the contract financing clause with one alternate. The rule also proposes to add a separate prescription for the basic clause as well as the alternate. For clarity, the preface of the alternate will continue to explain what portions of the alternate are different from the basic clause.

Separate prescriptions for the basic and alternates of DFARS clauses will facilitate the use of automated contract writing systems. The proposed rule will not revise the prescriptions in any substantive way or change the applicability of the clause or its alternate.

The inclusion of the full text of each clause alternate aims to make the terms of a clause alternate clearer to offerors and to DoD contracting officers. The current convention for alternates is to show only the changed paragraphs from the basic provision or clause. This proposed rule would include the full text of each clause and each alternate, which will assist in making solicitation and contract terms and conditions easier to read and understand. By placing alternates in full text, all paragraph substitutions from the basic clause will have already been made. Inapplicable paragraphs from the basic clause that are superseded by the alternate will not be included in the solicitation or contract in order to prevent confusion.

Although this rule proposes to include the text of the alternate in full, it retains the language that precedes the clause or alternate, which includes the location of the alternate's prescription and a statement that identifies which paragraphs were changed from the basic clause. Further, alternates are proposed to have individual titles that tie them to the basic clause, *e.g.,* ''Limitation of Government's Obligation—Alternate I'' in lieu of ''Alternate I.''

## II. Discussion

This proposed rule addresses only the single DFARS part 232 clause that has an alternate. The remaining prescriptions in part 232 are not proposed to be changed in any way by this rule. The affected clause is 252.232–7007, Limitation of Government's Obligation, with one alternate. The naming convention results in proposed new clause titles, *e.g.,* Limitation of Government's Obligation—Basic and Limitation of Government's Obligation—Alternate I.

An umbrella prescription is proposed to be added for the elements common to the basic clause and alternate. The specific prescription for the basic clause and alternate would then address only the requirements for their use that enable the selection of the basic or the alternate. For example, the revised prescription for Limitation of Government's Obligation—Alternate I would read as follows: ''Use the clause

at *252.232–7007,* Limitation of Government's Obligation—Alternate I, if only one line item will be incrementally funded.'' The planned changes will increase the clarity and ease of use, but will not revise the applicability in any way. The text of the current DFARS 252.232–7007, Alternate I, would no longer consist solely of paragraph (a), but would include the entire text of DFARS 252.232–7007 (basic clause) with the revised paragraph (a) substituted for the corresponding paragraph of the basic clause. Inapplicable paragraphs from the basic version of the clause that are superseded by the alternate will not be included in the solicitation or contract in order to prevent confusion.

Further, this proposed rule would also revise the applicable preface, *i.e.,* the language in part 232 that precedes a provision, clause, or alternate. The proposed rule would replace the current preface language with a statement that identifies the specific changes from the basic version of the solicitations provision or clause.

## III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it merely revises the prescriptions for solicitation provisions and clauses with alternates to be unique, as well as includes the full text of each provision or clause in each alternate. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of this proposed rule is to amend the DFARS to create unique prescriptions for the basic version and each alternate of DFARS part 232 solicitation provisions and contract clauses, and to include the full text of each clause alternate.

The use of automated contract writing systems will be facilitated by having unique prescriptions for the basic version and each alternate of DFARS solicitations provisions and clauses. The current convention requires the prescription for the basic provision or clause to address all the possibilities covered by the alternates, and then the prescription for each alternate addresses only what is different for the use of that particular alternate. This rule will revise the prescriptions so that the basic solicitation provision or clause and each alternate is unique and stands on its own. The prescriptions will not be revised in any way to change when they are applicable to offerors, contractors, or subcontractors.

Additionally, the inclusion of the full text of each provision or clause alternate aims to make the terms of a provision or clause alternate clearer to offerors, as well as to DoD contracting officers. Instead of the current convention for alternates to show only paragraphs changed from the basic version of the provision or clause, this rule proposes to include the full text of each version of the clause. This will assist in making the terms of the clause clearer, because all paragraph substitutions will have already been made. Inapplicable paragraphs from the basic version of the clause that are superseded by the alternate are not included in the solicitation or contract to prevent confusion.

Potential offerors, including small businesses, may be affected by this rule by seeing an unfamiliar format for clause alternates in solicitations and contracts issued by DoD contracting activities. An average of 12,618,521 new contracts was awarded in Fiscal Years 2011 and 2012, and an average of 1,557,852 of these actions (12.35%) was awarded to small businesses. It is unknown how many of these contracts were awarded that included an alternate to a DFARS provision or clause. Nothing substantive will change in solicitations or contracts for potential offerors, and only the appearance of how clause alternates are presented in the solicitations and contracts will be changed.

This rule may result in potential offerors, including small businesses, expending more time to become familiar with and to understand the new format of the clause alternates in full text contained in contracts issued by any DoD contracting activity. The rule also anticipates saving contractors time by making all paragraph substitutions from the basic version of the clause, and not requiring the contractors to read inapplicable paragraphs contained in the basic version of the clause where alternates are also included in the solicitations and contracts. The overall burden caused by this rule is expected to be negligible and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were identified that will accomplish the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2013–D014), in correspondence.

## V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 232 and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 232 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR Chapter 1.

## PART 232—CONTRACT FINANCING

### 232.704–70 [Amended]

■ 2. Amend section 232.704–70 by—

■ a. In paragraph (a), removing ''Limitation of Government's Obligation, the contracting officer'' and adding ''Limitation of Government's Obligation—Basic or Limitation of Government's Obligation—Alternate I, the contracting officer'' in its place.

■ b. In paragraph (c), removing ''Limitation of Government's Obligation, sufficient funds'' and adding ''Limitation of Government's Obligation—Basic or Limitation of Government's Obligation—Alternate I, sufficient funds'' in its place.

■ 3. Revise section 232.705–70 to read as follows:

**232.705–70 Clause for limitation of Government's obligation.**

Use the basic or the alternate of the clause at 252.232–7007, Limitation of Government's Obligation, in solicitations and resultant incrementally funded fixed-price contracts. The contracting officer may revise the contractor's notification period, in paragraph (c) of the clause, from ''ninety'' to ''thirty'' or ''sixty'' days, as appropriate.

(a) Use the clause Limitation of Government's Obligation—Basic, if more than one line item will be incrementally funded.

(b) Use the clause Limitation of Government's Obligation—Alternate I, if only one line item will be incrementally funded.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Revise section 252.232–7007 to read as follows:

**252.232–7007 Limitation of Government's Obligation.**

As prescribed in *232.705–70*, use one of the following clauses:

(a) *Limitation of Government's Obligation—Basic.* For the specific prescription for the use of the basic clause, see 232.705–70(a).

LIMITATION OF GOVERNMENT'S OBLIGATION—BASIC (DATE)

(a) Contract line item(s) _____ through _____ are incrementally funded. For these item(s), the sum of $_____ of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (j) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled ''Termination for Convenience of the Government.'' As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled ''Termination for Convenience of the Government.''

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled ''Disputes.''

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled ''Default.'' The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled ''Termination for Convenience of the Government.''

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

| | |
|---|---|
| On execution of contract ..... | $_____ |
| (month) (day), (year) ..... | $_____ |
| (month) (day), (year) ..... | $_____ |
| (month) (day), (year) ..... | $_____ |

(End of clause)

(b) *Limitation of Government's Obligation—Alternate I.* For the specific prescription for the use of Alternate I, see 232.705–70(b). Alternate I uses a different paragraph (a) than the basic clause.

LIMITATION OF GOVERNMENT'S OBLIGATION—ALTERNATE I (DATE)

(a) Contract line item _____ is incrementally funded. The sum of $_____ is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (j) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled ''Termination for Convenience of the Government.'' As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state the estimated date when that point will be reached and an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the

estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled ''Termination for Convenience of the Government.''

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled ''Disputes.''

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled ''Default.'' The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled ''Termination for Convenience of the Government.''

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

| | |
|---|---|
| On execution of contract ..... | $_____ |
| (month) (day), (year) ..... | $_____ |
| (month) (day), (year) ..... | $_____ |
| (month) (day), (year) ..... | $_____ |

(End of clause)

* To be inserted after negotiation.

[FR Doc. 2013–18976 Filed 8–7–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 246 and 252

**RIN 0750–AH95**

### Defense Federal Acquisition Regulation Supplement: Clauses With Alternates—Quality Assurance (DFARS Case 2013–D004)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create an overarching prescription for each set of quality assurance-related provisions/clauses with one or more alternates. In addition, the proposed rule would include the full text of each provision and/or clause alternate.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before October 7, 2013, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2013–D004, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2013–D004'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2013–D004.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2013–D004'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2013–D004 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Susan Williams, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6092; facsimile 571–372–6101.

**SUPPLEMENTARY INFORMATION:**

## I. Background

DoD is proposing to revise the DFARS to create an overarching prescription for the quality assurance clause with two alternates. The rule also proposes to add a separate prescription for the basic clause as well as each alternate. For clarity, the preface of each alternate will continue to explain what portions of that alternate are different from the basic clause.

Separate prescriptions for the basic and alternates of DFARS clauses will facilitate the use of automated contract writing systems. The proposed rule will not revise the prescriptions in any substantive way or change the applicability of the clauses or their alternates.

The inclusion of the full text of each clause alternate aims to make the terms of a clause alternate clearer to offerors and to DoD contracting officers. The current convention for alternates is to show only the changed paragraphs from the basic provision or clause. This proposed rule would include the full text of each clause and each alternate, which will assist in making solicitation and contract terms and conditions easier to read and understand. By placing alternates in full text, all paragraph substitutions from the basic clause will have already been made. Inapplicable paragraphs from the basic clause that are superseded by the alternate will not be included in the solicitation or contract in order to prevent confusion.

Although this rule proposes to include each alternate in full, it retains the language that precedes the clause or alternate, which includes the location of the alternate's prescription and a statement that identifies which paragraphs were changed from the basic clause. Further, alternates are proposed to have individual titles that tie them to the basic clause, *e.g.,* ''Warranty of Data—Alternate I'' in lieu of ''Alternate I.''

## II. Discussion

This proposed rule addresses only the single DFARS part 246 clause that has alternates. The remaining prescriptions

in part 246 are not proposed to be changed in any way by this rule. The affected clause is 252.246–7001, Warranty of Data, with two alternates. The naming convention results in proposed new clause titles, *e.g.,* Warranty of Data—Basic and Warranty of Data—Alternate I.

An umbrella prescription is proposed to be added for the elements common to the basic clause and both alternates. The specific prescription for the basic clause and each alternate would then address only the requirements for their use that enable the selection of the basic or one of the alternates. For example, the revised prescription for Warranty of Data—Alternate I would read as follows: ''Use the clause at *252.246–7001,* Warranty of Data—Alternate I, in fixed-price incentive solicitations and contracts.'' The planned changes will increase the clarity and ease of use, but will not revise the applicability in any way. The text of the current DFARS 252.246–7001, Alternate I, would no longer consist solely of paragraph (d)(3), but would include the entire text of DFARS 252.246–7001 (basic clause) with the revised paragraph (d)(3) substituted for the corresponding paragraph of the basic clause. Inapplicable paragraphs from the basic version of the clause that are superseded by the alternate will not be included in the solicitation or contract in order to prevent confusion.

Further, this proposed rule would also revise the applicable preface, *i.e.,* the language in part 252 that precedes a provision, clause, or alternate. The proposed rule would replace the current preface language with a statement that identifies the specific changes from the basic version of the solicitations provision or clause.

## III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it merely revises the prescriptions for solicitation provisions and clauses with alternates to be unique, as well as includes the full text of each provision or clause in each alternate. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of this proposed rule is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to create unique prescriptions for the basic version and each alternate of DFARS part 246 solicitations provisions and clauses, and to include the full text of each clause alternate.

The use of automated contract writing systems will be facilitated by having unique prescriptions for the basic version and each alternate of DFARS solicitations provisions and clauses. The current convention requires the prescription for the basic provision or clause to address all the possibilities covered by the alternates, and then the prescription for each alternate addresses only what is different for the use of that particular alternate. This rule will revise the prescriptions, so that the basic solicitation provision or clause and each alternate is unique and stands on its own. The prescriptions will not be revised in any way to change when they are applicable to offerors, contractors, or subcontractors.

Additionally, the inclusion of the full text of each provision or clause alternate aims to make the terms of a provision or clause alternate clearer to offerors, as well as to DoD contracting officers. Instead of the current convention for alternates to show only paragraphs changed from the basic version of the provision or clause, this rule proposes to include the full text of each version of the clause. This will assist in making the terms of the clause clearer, because all paragraph substitutions will have already been made. Inapplicable paragraphs from the basic version of the clause that are superseded by the alternate are not included in the solicitation or contract to prevent confusion.

Potential offerors, including small businesses, may be affected by this rule by seeing an unfamiliar format for clause alternates in solicitations and contracts issued by DoD contracting activities. An average of 12,618,521 new contracts was awarded in Fiscal Years 2011 and 2012, and an average of 1,557,852 of these actions (12.35%) was awarded to small businesses. It is unknown how many of these contracts were awarded that included an alternate to a DFARS provision or clause. Nothing substantive will change in solicitations or contracts for potential offerors, and only the appearance of how clause alternates are presented in the solicitations and contracts will be changed. This rule may result in potential offerors, including small businesses, expending more time to become familiar with and to understand the new format of the clause alternates in full text contained in contracts issued by any DoD contracting activity. The rule also anticipates saving contractors time by making all paragraph substitutions from the basic version of the clause, and not requiring the contractors to read inapplicable paragraphs contained in the basic version of the clause where alternates are also included in the solicitations and contracts. The overall burden caused by this rule is expected to be negligible and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were identified that will accomplish the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2013–D004), in correspondence.

## V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## List of Subjects in 48 CFR Parts 246 and 252

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 246 and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 246 and 252 continue to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR Chapter 1.

## PART 246—QUALITY ASSURANCE

■ 2. Revise section 246.710 to read as follows:

### 246.710 Contract clauses.

(a) Use a clause substantially the same as the basic or one of the alternates of the clause at *252.246–7001,* Warranty of Data, in solicitations and contracts that include the clause at *252.227–7013,* Rights in Technical Data and Computer Software, when there is a need for greater protection or period of liability than provided by the inspection and warranty clauses prescribed in FAR part 46.

(1) Use the clause at *252.246–7001,* Warranty of Data—Basic, in solicitations and contracts that are not firm-fixed price or fixed-price incentive.

(2) Use the clause at *252.246–7001,* Warranty of Data—Alternate I, in fixed-price-incentive solicitations and contracts.

(3) Use the clause at *252.246–7001,* Warranty of Data—Alternate II, in firm-fixed-price solicitations and contracts.

(b) Use the clause at *252.246–7002,* Warranty of Construction (Germany), instead of the clause at FAR 52.246–21, Warranty of Construction, in solicitations and contracts for construction when a fixed-price contract will be awarded and contract performance will be in Germany.

(c)(1) In addition to *252.211–7003,* Item Identification and Valuation, which is prescribed in *211.274–6(a),* use the following provision and clause in solicitations and contracts when it is anticipated that the resulting contract will include a warranty for serialized items:

(i) *252.246–7005,* Notice of Warranty Tracking of Serialized Items (include only if offerors will be required to enter data with the offer); and

(ii) *252.246–7006,* Warranty Tracking of Serialized Items.

(2) If the Government specifies a warranty, include in the solicitation the appropriate warranty attachment from DFARS *246.710–70.* The contracting officer shall request the requiring activity to provide information to ensure that Attachment ____, Warranty Tracking Information, is populated with data specifying the Government's required warranty provision by contract line item number, subline item number, or exhibit line item number prior to solicitation. In such case do not include *252.246–7005* in the solicitation.

(3) If the Government does not specify a warranty, include *252.246–7005* in the solicitation, and the warranty attachment from DFARS *246.710–70.* The contractor may offer a warranty and shall then populate Attachment ____, Warranty Tracking Information, as appropriate, as part of its offer as required by *252.246–7005.*

(4) All warranty tracking information that is indicated with a single asterisk (*) in Attachment ____, Warranty Tracking Information, shall be completed prior to award. Data indicated with two asterisks (**) may be completed at the time of award. Data indicated with three asterisks (***) may be completed at or after the time of award.

(5) The contractor shall provide warranty repair source instructions (as prescribed in the attachment) no later than the time of delivery.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Revise section 252.246–7001 to read as follows:

### 252.246–7001 Warranty of Data.

As prescribed in 246.710(1), use one of the following clauses:

(a) *Warranty of Data—Basic.* For the specific prescription for use of the basic clause, see 246.710(1)(i).

WARRANTY OF DATA—BASIC (DATE)

(a) *Definition.* ''Technical data'' has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

(b) *Warranty of Data—Alternate I.* For the specific prescription for use of Alternate I, see *246.710*(1)(ii). Alternate I uses a different paragraph (d)(3) than the basic clause.

WARRANTY OF DATA—ALTERNATE I (DATE)

(a) *Definition.* ''Technical data'' has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a

requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 75 percent of the target profit.

(ii) if the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) Damages due the Government under the provisions of this warranty are not an allowable cost.

(iv) The additional liability in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL–T–31000, General Specification for Technical Data Packages, Amendment 1, or MIL–T–47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL–D–1000A, Engineering and Associated Data Drawings, or DoD–D–1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL–D–1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

(4) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

(c) *Warranty of Data—Alternate II.* For the specific prescription for use of Alternate II, see *246.710*(1)(iii). Alternate II uses a different paragraph (d)(3) than the basic clause.

WARRANTY OF DATA—ALTERNATE II (DATE)

(a) *Definition.* ''Technical data'' has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed ten percent of the total contract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL–T–31000, General Specification for Technical Data Packages, Amendment 1, or MIL–T–47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL–D–1000A, Engineering and Associated Data Drawings, or DoD–D–1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL–D–1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

(4) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

**252.246–7002 [Amended]**

■ 4. Amend introductory text of section 252.246–7002 by removing ''As prescribed in 246.710(4)'' and adding ''As prescribed in 246.710(2)'' in its place.

**252.246–7005 [Amended]**

■ 5. Amend introductory text of section 252.246–7005 by removing ''As prescribed in *246.710*(5)(i)(A)'' and adding ''As prescribed in *246.710*(3)(i)(A)'' in its place.

**252.246–7006 [Amended]**

■ 6. Amend introductory text of section 252.246–7006 by removing ''As prescribed in *246.710*(5)(i)(B)'' and adding ''As prescribed in *246.710*(3)(i)(B)'' in its place.

[FR Doc. 2013–19021 Filed 8–7–13; 8:45 am]

**BILLING CODE 5001–06–P**

# Notices

Federal Register

Vol. 78, No. 153

Thursday, August 8, 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

### Farm Service Agency

### Commodity Credit Corporation

### Information Collection; Noninsured Crop Disaster Assistance Program

**AGENCY:** Farm Service Agency and Commodity Credit Corporation and, USDA.

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency and the Commodity Credit Corporation are seeking comments from all interested individuals and organizations on an extension with a revision of a currently approved information collection in support of the Noninsured Crop Disaster Assistance Program (NAP). The information collected is needed from producers to determine eligibility for NAP assistance.

**DATES:** We will consider comments that we receive by October 7, 2013.

**ADDRESSES:** We invite you to submit comments on this notice. In your comments, include date, OMB control number, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Daniel McGlynn, Acting Division Director, Production, Emergencies, and Compliance Division, Farm Service Agency, USDA, Mail Stop 0517, 1400 Independence Avenue SW., Washington, DC 20250–0517.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Terry Hill, Section Head, Crop Disaster Section, Disaster Assistance Branch, (202) 720–3087.

**SUPPLEMENTARY INFORMATION:**

#### Description of Information Collection

*Title:* Noninsured Crop Disaster Assistance Program.

*OMB Control Number:* 0560–0175.

*Expiration Date:* January 31, 2014.

*Type of Request:* Extension with a revision

*Abstract:* NAP is authorized under 7 U.S.C. 7333 and implemented under regulations issued at 7 CFR Part 1437. NAP is administered under the general supervision of the Executive Vice-President of CCC (who also serves as Administrator, FSA), and is carried out by FSA State and County committees. The information collected allows CCC to provide assistance under NAP for losses of commercial crops or other agricultural commodities (except livestock) for which catastrophic risk protection under 7 U.S.C 1508(b) is not available, and that are produced for food or fiber.

Additionally, NAP provides assistance for losses of floriculture, ornamental nursery, Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), sea oats and sea grass, and industrial crops. The information collected is necessary to determine whether a producer and crop or commodity meet applicable conditions for assistance and to determine compliance with existing rules. Eligible producers must annually: (1) Request NAP coverage by completing an application for coverage and paying a service fee by the CCC-established application closing date; (2) file a report of acreage, inventory, or physical location of the operation, as applicable for the covered crop or commodity; and (3) certify harvested production of each covered crop or commodity. When damage to a covered crop or commodity occurs, producers must file a notice of loss with the local FSA administrative county office within 15 calendar days of occurrence or 15 calendar days of the date damage to the crop or commodity becomes apparent. Producers must also file an application for payment by the CCC established deadline, and complete a certification of average adjusted gross income and consent for disclosure of tax information with the local FSA County office.

Web modernization projects delivered in fiscal years 2012 and 2013 enabled NAP applications on the web. The NAP applications were enhanced to retrieve data from acreage reporting software to reduce manual data entry errors, and prohibit a payment from being issued without an acreage report on file. The NAP applications provide a timelier, more accurate, and more reliable delivery of benefits to producers. The Notice of Loss form was revised for more efficient data entry in the Web-enabled environment. Producers are no longer required to provide certain additional information with the form and are no longer required to file multiple Notices of Loss when multiple crops are affected by the same disaster event. Therefore, FSA expects a reduction in the annual total burden hours for collection of the information.

*Estimated Burden:* Public reporting burden for this information collection is estimated to average 1.33 hours per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

*Type of Respondents:* Producers of commercial crops or other agricultural commodities (except livestock).

*Estimated Annual Number of Respondents:* 291,500.

*Estimated Annual Number of Forms Filed per Respondent:* 3.

*Estimated Total Number of Responses:* 1,526,402.

*Estimated Total Annual Burden Hours:* 2,031,830.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(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.

All responses to this notice, including name and addresses when provided,

will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed on July 26, 2013.

**Juan M. Garcia,**

*Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.*

[FR Doc. 2013–19016 Filed 8–7–13; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* 2013 Company Organization Survey.

*OMB Control Number:* 0607–0444.

*Form Number(s):* NC–99001, NC–99007.

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

*Burden Hours:* 143,608.

*Number of Respondents:* 47,000.

*Average Hours per Response:* 3 hours and 3 minutes.

*Needs and Uses:* The Census Bureau requests an extension of the currently approved Company Organization Survey (COS) data collection for the 2013 survey year. We request an extension of the current expiration date to December 2014 to complete the data collection for the 2013 COS.

The Census Bureau conducts the annual COS to update and maintain a centralized, multipurpose Business Register (BR). In particular, the COS supplies critical information on the organizational structure, operating characteristics, and employment and payroll of multi-location enterprises.

Form NC–99001 is mailed to multi-location enterprises. We ask questions on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates; research and development; company activities such as—employees from a professional employer organization, operating revenue and net sales, royalties and license fees for the use of intellectual property and manufacturing activities. Establishment inquiries include questions on operational status, mid-March employment, first-quarter payroll, and annual payroll of establishments.

In 2011, we submitted a non-substantive change to the COS questionnaire. This revision added three new inquiries as part of the Enterprise Statistics Program (ESP). These three inquiries were: (1) Operating Revenues and Net Sales; (2) Royalties and Licenses Fees for the Use of Intellectual Property; and (3) Manufacturing Activities. In 2012 we continued to ask these questions on Form NC–99001 and it is our intention to continue to ask these additional questions for 2013 on Form NC–99001. We also ask questions on ownership or control by a foreign parent, and ownership of foreign affiliates; research and development; royalties and license fees for the use of intellectual property and manufacturing activities. In addition to the mailing of multi-location enterprises, the Census Bureau will collect data for single-location companies on Form NC–99007 to some large single-location enterprises that may have added some locations.

The 2013 COS will request company-level information from a selection of multi-establishment enterprises, which comprises roughly 42,000 parent companies and more than 1.4 million establishments. COS inquiries sent to each of the 42,000 multi-establishment enterprises will include inquiries on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates; research and development; company activities, such as—employees from a professional employer organization, operating revenue and net sales, royalties and license fees for the use of intellectual property, and manufacturing activities. Establishment inquiries include questions on operational status, mid-March employment, first-quarter payroll, and annual payroll of establishments.

In addition to the 42,000 multi-establishment enterprises, the 2013 COS will include approximately 5,000 single-location companies that may have added some locations. The NC–99007 Form will be used to collect data for the 5,000 single-location businesses.

The information collected by the COS is used to maintain and update the BR. The BR serves two fundamental purposes:

- First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the BR's ability to identify all known United States business establishments and their parent companies. Further, the BR must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industry and geographic classifications, measures of size and economic activity, ownership characteristics, and contact information (for example, name and address).
- Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, island areas, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

*Affected Public:* Business or other for-profit; not-for-profit institutions; Farms; State, local or tribal governments.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C., Sections 182, 195, 224, and 225.

*OMB Desk Officer:* Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: August 5, 2013.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–19168 Filed 8–7–13; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[S–87–2013]**

### Approval of Subzone Status Milwaukee Electric Tool Corporation Olive Branch, Greenwood and Jackson, Mississippi

On June 5, 2013, the Executive Secretary of the Foreign-Trade Zones

(FTZ) Board docketed an application submitted by the Northern Mississippi FTZ, Inc., grantee of FTZ 262, requesting subzone status subject to the existing activation limit of FTZ 262, on behalf of Milwaukee Electric Tool Corporation at its facilities in Olive Branch, Greenwood and Jackson, Mississippi.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (78 FR 34984, June 11, 2013). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 262A is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13 and further subject to FTZ 262's 680-acre activation limit.

Dated: August 2, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–19242 Filed 8–7–13; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–33–2013]**

### Foreign-Trade Zone 75—Phoenix, Arizona, Authorization of Production Activity, Orbital Sciences Corporation, (Satellites and Spacecraft Launch Vehicles); Gilbert, Arizona

On April 2, 2013, the City of Phoenix, grantee of FTZ 75, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Orbital Sciences Corporation, within Site 10, in Gilbert, Arizona.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 24158, February 24, 2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14, and further subject to a restriction requiring that all foreign inputs included in textile categories (classified within HTSUS 5601.21 and 5607.50) used in the production activity must be admitted to the zone in privileged foreign status (19 CFR 146.41) or domestic (duty-paid) status (19 CFR 146.43).

Dated: August 2, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–19241 Filed 8–7–13; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Proposed Information Collection; Comment Request; Voluntary Self-Disclosure of Violations of the Export Administration Regulations

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

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before October 7, 2013.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *Lawrence.Hall@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This collection of information is needed to detect violations of the Export Administration Act and Regulations, and determine if an investigation or prosecution is necessary and to reach a settlement with violators. Voluntary self-disclosure of EAR violations strengthens BIS's enforcement efforts by allowing BIS to conduct investigations of the disclosed incidents faster than would be the case if BIS had to detect the violations without such disclosures. BIS evaluates the seriousness of the violation and either (1) informs the person making the disclosure that no action is warranted; (2) issues a warning letter; (3) issues a proposed charging letter and attempts to settle the matter; (4) issues a charging letter if settlement is not reached; and/or (5) refers the matter to the U.S. Department of Justice for criminal prosecution.

#### II. Method of Collection

Submitted on paper.

#### III. Data

*OMB Control Number:* 0694–0058.

*Form Number(s):* N/A.

*Type of Review:* Regular submission (extension of a currently approved information collection).

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 488.

*Estimated Time Per Response:* 10 hours.

*Estimated Total Annual Burden Hours:* 4,880.

*Estimated Total Annual Cost to Public:* $0.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 2, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–19125 Filed 8–7–13; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Proposed Information Collection; Comment Request; Voluntary Self-Disclosure of Antiboycott Violations

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

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before October 7, 2013.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *Lawrence.Hall@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This collection of information supports enforcement of the Antiboycott provisions of the Export Administration Regulations by providing a method for industry to voluntarily self-disclose Antiboycott violations.

## II. Method of Collection

Submitted on paper or electronically.

## III. Data

*OMB Control Number:* 0694–0132.

*Form Number(s):* N/A.

*Type of Review:* Regular submission (extension of a currently approved information collection).

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 15.

*Estimated Time per Response:* 10 for medium-size companies; 600 hours for large-size companies.

*Estimated Total Annual Burden Hours:* 7,230.

*Estimated Total Annual Cost to Public:* $0.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 5, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–19204 Filed 8–7–13; 8:45 am]

**BILLING CODE 3510–33–P**

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# DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–900]**

## Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review

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

**SUMMARY:** On June 19, 2013, the Department of Commerce (the Department) published its preliminary results of a changed circumstances review of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China. The Department preliminarily determined that Husqvarna (Hebei) Co., Ltd. is the successor-in-interest to Hebei Husqvarna Jikai Diamond Tools Co., Ltd.[1] We invited parties to comment. No parties submitted comments, and for these final results we continue to find that Husqvarna (Hebei) Co., Ltd. is the successor-in-interest to Hebei Husqvarna Jikai Diamond Tools Co., Ltd.

**DATES:** *Effective Date:* August 8, 2013.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun 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) 482–5760.

**SUPPLEMENTARY INFORMATION:** On October 1, 2012, Husqvarna (Hebei) Co., Ltd. requested that the Department conduct a changed circumstances review to confirm that it is the successor-in-interest to Hebei Husqvarna Jikai Diamond Tools Co., Ltd. for purposes of determining antidumping duty cash deposits and liabilities. On June 19, 2013, the Department preliminarily determined that Husqvarna (Hebei) Co., Ltd. is the successor-in-interest to Hebei Husqvarna Jikai Diamond Tools Co., Ltd.[2] In the *Preliminary Results,* we provided all interested parties with an opportunity to comment or request a public hearing regarding this finding. We received a hearing request from Husqvarna (Hebei) Co., Ltd. but, because we received no comments from interested parties within the time period set forth in the *Preliminary Results,* we did not hold a hearing.[3]

### Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order.

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[1] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Changed Circumstances Review,* 78 FR 36744 (June 19, 2013) (*Preliminary Results*).

[2] *See Preliminary Results.*

[3] *See* the Memorandum to the File entitled ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Telephone Conversation with Husqvarna (Hebei) Co., Ltd.'s Counsel'' dated July 11, 2013.

Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, the Department included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by U.S. Customs and Border Protection (CBP).[4]

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

## Final Results of Changed Circumstances Review

Because no parties have submitted comments opposing the Department's *Preliminary Results,* and because there is no other information or evidence on the record that calls into question the *Preliminary Results,* the Department determines that Husqvarna (Hebei) Co., Ltd. is the successor-in-interest to Hebei Husqvarna Jikai Diamond Tools Co., Ltd. for the purpose of determining antidumping duty liability.

## Instructions to U.S. Customs and Border Protection

As a result of this determination, we find that Husqvarna (Hebei) Co., Ltd. should receive the cash deposit rate previously assigned to Hebei Husqvarna Jikai Diamond Tools Co., Ltd. in the most recently completed review of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China. Consequently, the Department will instruct CBP to collect estimated antidumping duties for all shipments of subject merchandise exported by Husqvarna (Hebei) Co., Ltd. and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at the current cash deposit rate for Hebei Husqvarna Jikai Diamond Tools Co., Ltd., which is 0.00 percent.[5] This cash deposit requirement shall remain in effect until further notice.

## Notification

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. 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 sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.216 and 351.221(c)(3).

Dated: August 2, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2013–19237 Filed 8–7–13; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 76128 (December 6, 2011).

[5] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 42930 (July 18, 2013), in which we refer to this company as Hebei Husqvarna-Jikai Diamond Tools Co., Ltd.

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# DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–552–801]**

## Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty New Shipper Review; 2011–2012

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

**SUMMARY:** The Department of Commerce (''the Department'') is amending the final results of a new shipper review of the antidumping duty order on certain frozen fish fillets (''fish fillets'') from the Socialist Republic of Vietnam (''Vietnam'') to correct a ministerial error.[1] The period of review (''POR'') is August 1, 2011, through January 31, 2012.

**DATES:** *Effective Date:* August 8, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jerry Huang, Seth Isenberg, or Toni Dach, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4047, (202) 482–0588, and (202) 482–1655, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On June 25, 2013, the Department disclosed to interested parties its calculations for the *Final Results.*[2] On July 1, 2013, we received ministerial error comments from Petitioners. No other interested party submitted comments.

## Scope of the Order

For a full description of the products covered by the antidumping duty order, *see* I&D Memo.

## Ministerial Errors

Section 751(h) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.224(f) define a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial.'' After analyzing Petitioners' ministerial error comments, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we made a ministerial error in our calculation for the *Final Results.* For a detailed discussion of all alleged ministerial errors, as well as the Department's analysis, *see* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, through Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office 9, ''Antidumping Duty New Shipper Reviews, 2011–2012, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Ministerial Error Allegation Memorandum,'' dated concurrently with this notice.

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of the new shipper review of fish fillets from Vietnam for Hoang Long. The revised weighted-average dumping margin for Hoang Long is detailed below. We have

[1] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011–2012,* 78 FR 39708 (July 2, 2013) (''*Final Results*''), and accompanying Issues and Decisions Memorandum (''I&D Memo'').

[2] The interested parties include: The Catfish Farmers of America, and individual U.S. catfish processors (collectively ''Petitioners''), Quang Minh Seafood Co., Ltd. (''Quang Minh''), Dai Thanh Seafoods Company Limited (''Dathaco''), Fatifish Company Limited (''Fatifish''), and Hoang Long Seafood Processing Co., Ltd. (''Hoang Long'').

not revised the weighted-average dumping margins and cash deposit requirements for the other companies subject to the *Final Results* because the ministerial error referenced above does not affect the calculation of their margins.

**Amended Final Results of the New Shipper Review**

The amended weighted-average dumping margin calculated for Hoang Long in the new shipper review is as follows:

| Exporter | Producer | Weighted-average margin (dollars per kilogram) |
|---|---|---|
| Hoang Long Seafood Processing Co., Ltd | Hoang Long Seafood Processing Co., Ltd | 0.83 |

**Disclosure**

We will disclose the calculations performed for these amended final results to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

**Assessment Rates**

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 of subject merchandise in accordance with the amended final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the amended final results of this new shipper review.

For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. We will continue to direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. Specifically, we calculated importer-specific duty assessment rates on a per-unit rate basis by dividing the total dumping margins (calculated as the difference between normal value and export price or constructed export price) for each importer by the total sales quantity of subject merchandise sold to that importer during the POR. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.50 percent or more). Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2).

**Cash Deposit Requirements**

The following cash deposit requirements will be effective retroactively on any entries made after July 2, 2013, the date of publication of the *Final Results,* for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the amended final results of these new shipper reviews, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Hoang Long, the cash deposit rate will be the rate established in the amended final results of this new shipper review; (2) for subject merchandise exported by Hoang Long, but not manufactured by Hoang Long, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.,* $2.11/kilogram); [3] and (3) for subject merchandise manufactured by Hoang Long, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. The cash deposit requirement, 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)(2) 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.

[3] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010–2011,* 78 FR 17350, 17353 (March 21, 2013).

**Administrative Protective Orders**

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

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: July 29, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2013–19240 Filed 8–7–13; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–915]**

### Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

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

**DATES:** *Effective Date:* August 8, 2013.

**SUMMARY:** On April 2, 2013, the Department of Commerce (Department) initiated the first sunset review of the countervailing duty order on light-walled rectangular pipe and tube from the People's Republic of China (PRC). The Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of net countervailable

subsidies at the rates shown below under ''Final Results of Review.''

**FOR FURTHER INFORMATION CONTACT:** Jennifer Meek, 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) 482–2778.

**SUPPLEMENTARY INFORMATION:**

## Background

The countervailing duty order on light-walled rectangular pipe and tube from the PRC was published on August 5, 2008. *See Notice of Countervailing Duty Order: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 45405 (August 5, 2008).

On April 2, 2013, the Department initiated the first sunset review of this order, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 19647 (April 2, 2013). The Department received a notice of intent to participate from the following domestic parties: Bull Moose Tube Company; California Steel & Tube; Hannibal Industries; JMC Steel Group; Maruichi American Corporation; Searing Industries; Southland Tube; Vest, Inc.; and Western Tube & Conduit (collectively, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i).

The Department received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive any other responses from interested parties or the Government of the PRC. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting an expedited (120-day) sunset review of the countervailing duty order on light-walled rectangular pipe and tube from the PRC.

## Scope of the Order

The merchandise subject to the order is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The merchandise subject to the order is currently classifiable under items 7306.61.50.00 and 7306.61.70.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

A full description of the scope of the order is contained in the ''Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Light-Walled Rectangular Pipe and Tube from the People's Republic of China'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum).

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.

## Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum. The issues include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the order was revoked.

## Final Results of Review

Pursuant to sections 752(b)(1) and (3) of the Act, we determine that revocation of the countervailing duty order on light-walled rectangular pipe and tube from the PRC would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

| Manufacturers/producer/exporter | Net Countervailable Subsidy (percent) |
|---|---|
| Zhangjiagang Zhongyuan Pipe-making Co., Ltd., Jiangsu Qiyuan Group Co., Ltd. | 15.28 |
| Qingdao Xiangxing Steel Pipe Co., Ltd. | 200.58 |
| Kunshan Lets Win Steel Machinery Co., Ltd. | 2.20 |

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders 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 the final results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act.

Dated: July 30, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2013–18969 Filed 8–7–13; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Educational Partnership Program (EPP), Ernest F. Hollings Undergraduate Scholarship Program, Dr. Nancy Foster Scholarship Program, and Recruitment, Training, and Research Program

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before October 7, 2013.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Meka Laster, 301–713–9437 or *meka.laster@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This request is for revision and extension of a current information collection.

The National Oceanic and Atmospheric Administration (NOAA) Office of Education (OEd) collects, evaluates and assesses student data and information for the purpose of selecting successful candidates, generating internal NOAA reports and articles to demonstrate the success of its program. The OEd requires applicants to its student scholarship programs to complete an application for NOAA undergraduate scholarship programs. Part of the application package requires completion of a NOAA student scholar reference form in support of the scholarship application by academic professors/advisors. NOAA OEd student scholar alumni are also requested to provide information to NOAA for internal tracking purposes. NOAA OEd grantees are required to update the student tracker database with the required student information. In addition, the collected student data supports NOAA OEd's program performance measures.

*Revision:* New to the alumni student data collection are the Dr. Nancy Foster Scholarship Program and the Recruiting, Training, and Research Program. Both programs have a need to collect information on their program alumni.

## II. Method of Collection

Electronic applications and electronic forms are required from participants, and the primary methods of submittal are email and Internet transmission of electronic forms. Approximately 1% of the application and reference forms may be mailed.

## III. Data

*OMB Control Number:* 0648–0568.

*Form Number:* None.

*Type of Review:* Regular submission (revision and extension of a current information collection).

*Affected Public:* Individuals or households; business or other for-profit organizations; not-for-profit institutions; State, Local or Tribal Government.

*Estimated Number of Respondents:* 3,604.

*Estimated Number of Annual Responses:* 3,612.

*Estimated Time per Response:* Student and Performance Measures Tracking System database form, 17 hours; undergraduate application form, 8 hours; reference forms, 1 hour; alumni update form, 1 hour.

*Estimated Total Annual Burden Hours:* 9,404.

*Estimated Total Annual Cost to Public:* $300 in recordkeeping/reporting costs.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 5, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–19205 Filed 8–7–13; 8:45 am]

**BILLING CODE 3510–22–P**

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Proposed Information Collection; Comment Request; Nautical Discrepancy Reporting System

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before October 7, 2013.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Dawn Forsythe, 301–713–2780 ext. 144, or *Dawn.Forsythe@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This request is for a revision and extension of a currently approved information collection.

National Oceanic and Atmospheric Administration (NOAA) Office of Coast Survey is the nation's nautical chartmaker, maintaining and updating over a thousand charts covering the 3.5 million square nautical miles of coastal waters in the U.S. Exclusive Economic Zone and the Great Lakes. Coast Survey also writes and publishes the *United States Coast Pilot®*, a series of nine nautical books that supplement nautical charts with essential marine information that cannot be shown graphically on the charts and are not readily available elsewhere.

Revision: Until recently, Coast Survey asked readers of the *Coast Pilot* to submit corrections or reports of inaccuracies by mailing or faxing a printed form found in the book. That form was discontinued. Now Coast Survey solicits information through the online Nautical Discrepancy Reporting

System (*http://ocsdata.ncd.noaa.gov/idrs/discrepancy.aspx*).

The data obtained through this system is used to update U.S. nautical charts and the *United States Coast Pilot.*

**II. Method of Collection**

Respondents can submit discrepancy reports electronically or by telephone (888–990–6622).

**III. Data**

*OMB Control Number:* 0648–0007.

*Form Number:* None.

*Type of Review:* Regular submission (revision and extension of a current information collection).

*Affected Public:* Business or other for-profit organizations; individuals or households; not-for-profit institutions; federal government; state, local or tribal government.

*Estimated Number of Respondents:* 300.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 150.

*Estimated Total Annual Cost to Public:* $0 in recordkeeping/reporting costs.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 5, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–19206 Filed 8–7–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC796**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Oversight Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Thursday, September 19, 2013 at 9:30 a.m.

**ADDRESSES:**

*Meeting address:* The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600; fax: (978) 535–8283.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Committee will review Draft Framework 3 to the Atlantic Herring FMP (to establish catch caps for river herring/shad in the herring fishery) and related background information/analysis. The Committee will also review Herring Advisory Panel recommendations regarding Framework 3 as well as develop recommendations for Council consideration during the selection of final measures for Framework 3, scheduled for the September 2013 Council meeting. The Committee will discuss partial approval of Amendment 5 to the Herring FMP and 2014 herring management priorities. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 2, 2013.

**Tracey L. Thompson,**

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

[FR Doc. 2013–19105 Filed 8–7–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC798**

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's (Council) Bluefish Advisory Panel (AP) will meet to develop a Fishery Performance Report for the Bluefish fishery in preparation for the Council and the Council's Scientific and Statistical Committee (SSC) review of specifications that have been set for the 2014 fishing year.

**DATES:** The meeting will be held on Wednesday, August 29, 2013 from 9 a.m. until 12 noon.

**ADDRESSES:** The meeting will be held via webinar with a listening station also available at the Council address below. Webinar link: *http://mafmc.adobeconnect.com/bluefish/*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The Advisory Panel will develop a Fishery Performance Report for consideration by the Council and the Council's SSC as

they review bluefish management measures established for the 2014 fishing year.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: August 2, 2013.

**Tracey L. Thompson,**

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

[FR Doc. 2013–19131 Filed 8–7–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC788**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee (SSC) on August 20–21, 2013 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Tuesday, August 20, 2013 at 8 a.m. and on Wednesday, August 21, 2013 at 8 a.m.

**ADDRESSES:**

*Meeting Address:* The meeting will be held at the Westin Waterfront Hotel, 425 Summer Street, Boston, MA 02210; telephone: (617) 532–4600; fax: (617) 532–4650.

*Council Address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

**Tuesday, August 20, 2013—Wednesday, August 21, 2013**

On Tuesday, the Scientific and Statistical Committee (SSC) will meet to consider information from the Council's Monkfish Plan Development Team (PDT) and develop acceptable biological catch (ABC) recommendations for monkfish (goosefish) for fishing years 2014–16; review stock assessment information, consider information provided by the Groundfish PDT and develop ABC recommendations for white hake for fishing years 2014–15; and review information provided by the Groundfish PDT and develop ABC recommendations for Gulf of Maine cod and American plaice for fishing years 2014–15, if needed, for rebuilding programs for these stocks. The committee may not develop all the ABC recommendations for these stocks at this meeting.

On Wednesday, the SSC will review stock assessment information and develop ABC recommendations for Georges Bank yellowtail flounder for fishing year 2014; review information from the Red Crab PDT and develop ABC recommendations for red crab for fishing years 2014–16; review information provided by the Groundfish PDT and provide guidance to the Council on whether the Gulf of Maine haddock ABC may be adjusted in response to possible movement of Georges Bank haddock into the Gulf of Maine. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 5, 2013.

**Tracey L. Thompson,**

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

[FR Doc. 2013–19170 Filed 8–7–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC795**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel on Wednesday, September 18, 2013 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Wednesday, September 18, 2013 at 10 a.m.

**ADDRESSES:**

*Meeting address:* The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600; fax: (978) 535–8238.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Advisory Panel (AP) will review Draft Framework 3 to the Atlantic Herring FMP (to establish catch caps for river herring/shad in the herring fishery) and develop recommendations for Herring Committee and Council consideration as well as a general update regarding partial approval of Amendment 5 and 2014 management priorities. The AP will also have a discussion and Election of a Herring Advisory Panel Chairman. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come

before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 2, 2013.

**Tracey L. Thompson,**

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

[FR Doc. 2013–19103 Filed 8–7–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648–XC797

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's Spiny Dogfish Advisory Panel (AP) will meet to develop a Fishery Performance Report for the Spiny Dogfish fishery in preparation for the Council and the Council's Scientific and Statistical Committee (SSC) review of specifications that have been set for the 2014 fishing year.

**DATES:** The meeting will be held on Wednesday, August 28, 2013 from 9 a.m. until 12 noon.

**ADDRESSES:** The meeting will be held via webinar with a listening station also available at the Council Address below. Webinar link: *http://mafmc.adobeconnect.com/dogfish/*

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The Advisory Panel will develop a Fishery Performance Report for consideration by the Council and the Council's SSC as they review spiny dogfish management measures established for the 2014 fishing year.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: August 2, 2013.

**Tracey L. Thompson,**

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

[FR Doc. 2013–19130 Filed 8–7–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Publication of North American Datum of 1983 (2011) Epoch 2010.00, North American Datum of 1983 (PA2011) Epoch 2010.00 and North American Datum of 1983 (MA2011) Epoch 2010.00

**AGENCY:** National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Informational Notice

**SUMMARY:** The National Geodetic Survey (NGS) has finalized the publication of new realizations of three geodetic references frames that have all carried the name of ''the North American Datum of 1983'' (or ''NAD 83''). The new realizations are NAD 83 (2011) epoch 2010.00 [for the North America and Caribbean tectonic plates], NAD 83 (MA11) epoch 2010.00 [for the Mariana tectonic plate] and NAD 83 (PA11) epoch 2010.00 [for the Pacific tectonic plate]. These three realizations supersede all previous NAD 83 realizations, including CORS96, NSRS2007, PACP00 and MARP00, for all epochs prior to 2010.00 (January 1, 2010).

This notice complements, but does not replace, the affirmation of NAD 83 as the official civilian horizontal datum for the United States surveying and mapping activities performed or financed by the Federal Government (**Federal Register** Notice, 54 FR 25318, June 14, 1989).

**DATES:** Individuals or organizations wishing to submit comments on the Publication of the North American Datum of 1983 (2011, MA11, PA11), epoch 2010.00, should do so by August 30, 2013.

**ADDRESSES:** Written comments should be sent to the attention of Neil D. Weston, Chief—Spatial Reference System Division, Office of the National Geodetic Survey, National Ocean Service, 1315 East West Highway, Silver Spring, Maryland 20910, fax 301–713–4324 or via email *neil.d.weston@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Neil D. Weston, Chief—Spatial Reference System Division, Office of the National Geodetic Survey, National Ocean Service, 1315 East West Highway, Silver Spring, Maryland 20910, Phone: (301) 713–3191.

**SUPPLEMENTARY INFORMATION:**

**Abstract**

The National Geodetic Survey (NGS), the federal agency responsible for defining, maintaining and providing access to the National Spatial Reference System (NSRS), has adopted a new realization for each of the three geodetic reference frames which carry the name ''NAD 83''. The new NAD 83 realizations (2011, MA11, and PA11, all at epoch 2010.00) were derived from a simultaneous reprocessing of Global Navigation Satellite System (GNSS) data from the NGS-managed Continuously Operating Reference Station (CORS) network and a selected number of International GNSS Service (IGS) global tracking stations in August 2011. To ensure spatial consistency of the NSRS, coordinates for all current GNSS-derived control stations (passive marks) were optimally aligned with the CORS coordinates in a nationwide adjustment completed in June 2012.

Dated: July 22, 1013.

**Juliana P. Blackwell,**

*Director, Office of National Geodetic Survey, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2013–19167 Filed 8–7–13; 8:45 am]

**BILLING CODE P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

**[Docket No: CFPB–2013–0026]**

### Agency Information Collection Activities: Comment Request

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing a new information collection titled, ''Development of Metrics to Measure Financial Well-being of Working-age and Older American Consumers.''

**DATES:** Written comments are encouraged and must be received on or before October 7, 2013 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.

*Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* In general, all comments received will be posted without change to regulations.gov, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

**FOR FURTHER INFORMATION CONTACT:** Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this mailbox.*

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Development of Metrics to Measure Financial Well-being of Working-age and Older American Consumers.

*OMB Control Number:* 3170–XXXX.

*Type of Review:* New Collection (Request for a new OMB control number).

*Affected Public:* Individual or households.

*Estimated Number of Respondents:* 16,500.

*Estimated Total Annual Burden Hours:* 4,625.

*Abstract:* Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, the Bureau's Office of Financial Education is responsible for developing and implementing a strategy to improve the financial literacy of consumers that includes measurable goals and initiatives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Literacy. In addition, the Office of Financial Protection for Older Americans within the Bureau is charged with conducting research to identify methods and strategies to educate and counsel seniors, and developing goals for programs that provide seniors with financial literacy and counseling.

The CFPB intends to collect quantitative data through surveys with working-age (age 18–61) and older American (age 62 and older) consumers in order to develop and refine survey instruments that will enable the CFPB to reliably and accurately measure adult consumers' financial well-being. The primary anticipated data collection strategy is through Internet-based surveys. The core objective of the data collection is to iteratively test, refine, and produce valid and reliable measures of consumer financial well-being that will create a strong, standardized basis for setting measurable goals, and evaluating financial education strategies and programs.

*Request for Comments:* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: July 31, 2013.

**Nellisha Ramdass,**

*Acting Deputy Chief Information Officer, Bureau of Consumer Financial Protection.*

[FR Doc. 2013–19010 Filed 8–7–13; 8:45 am]

**BILLING CODE 4810–AM–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 13–17]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–17 with attached Transmittal, Policy Justification and Sensitivity of Technology.

Dated: August 2, 2013.

**Aaron Siegel,**

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

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 25 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-17, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $300 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 13–17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Iraq

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment * | $ 230 million |
| Other | $ 70 million |
| TOTAL | $ 300 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 12 Bell 412 EP helicopters equipped with Star SAFIRE III EO/IR systems, PT6T–3DF engines, KDM–706 Distance Measuring Equipment, KNR 634 VOR/LOC with MB/HSI, MST67A Transponder, Artex C406–1HM Emergency Locator Transmitter, Wulfsberg FlexComm II C5000 System with Synthesized Guard, KTR–908 Very High Frequency Radios, NAT AA–95 Audio System, 660 Weather Radar, AAI Radome, Night Vision Imaging System (NVIS) Compatible Cockpit Lighting, SX–16 Nightsun, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, site surveys, U.S. Government and contractor technical assistance, and other related elements of program and logistics support.

(iv) *Military Department:* U.S. Army (WAS)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 25 July 2013

* as defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*Iraq—Bell 412 EP Helicopters*

The Government of Iraq has requested a possible sale of 12 Bell 412 EP helicopters equipped with Star SAFIRE III EO/IR systems, PT6T–3DF engines, KDM–706 Distance Measuring Equipment, KNR 634 VOR/LOC with MB/HSI, MST67A Transponder, Artex C406–1HM Emergency Locator Transmitter, Wulfsberg FlexComm II C5000 System with Synthesized Guard, KTR–908 Very High Frequency Radios, NAT AA–95 Audio System, 660 Weather Radar, AAI Radome, Night Vision Imaging System (NVIS) Compatible Cockpit Lighting, SX–16 Nightsun, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, site surveys, U.S. Government and contractor technical assistance, and other related elements of program and logistics support. The estimated cost is $300 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic partner. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

This proposed sale will contribute to Iraq's stability and sovereignty by providing a critical component to building its Air Force and achieving air sovereignty. This equipment will provide the Iraqi Air Force with a search and rescue capability critical to developing a mature Air Force.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Bell Helicopter Textron, Hurst, TX. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require approximately 20 U.S. Government contractor representatives to travel to Iraq for a period of up 3 years to provide aircraft specific flight and maintenance training and logistical support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Bell 412 is a commercial helicopter with integrated commercial off-the-shelf (COTS) mission equipment. It is equipped with two (2) Honeywell PT6T–3DF engines, fuel capacity of 330.5, GPS 500 or GPN 750, KDM–706 Distance Measuring Equipment, (DME), KNR 634 VOR/LOC with MB/HSI (KNR 634), MST67A Transponder, Artex C406–1HM Emergency Locator Transmitter (ELT), Wulfsberg FlexComm II C5000 System -w- Synthesized Guard, 29.7- 960 MHz (system consist of CD–5000), VHF–AM Comm #2 Radio (KTR–908), NAT AA–95 Audio System, FLIR Star Safire III, Honeywell 660 Weather Radar, AAI Radome, Night Vision Imaging System (NVIS) Compatible Cockpit Lighting, SX–16 Nightsun-w-in-flight IR changeover, and Life Port Interior Crew Seat and floor Armor. The Star SAFIRE III is an all-digital, full high definition EO/IR system that provides superior image stabilization, ultra long range imaging performance, and true metadata embedded in the digital video.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapons systems effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2013–19117 Filed 8–7–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 13–02]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives,

Transmittals 13–02 with attached Transmittal and Policy Justification.

Dated: August 2, 2013.

**Aaron Siegel,**

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

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 25 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-02, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $750 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 13–02

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Iraq

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment * | $ 0 |
| Other | $ 750 million |
| TOTAL | $ 750 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* provide for a five year follow-on maintenance support for the M88A1 Recovery Vehicle, M88A2 Hercules, M113 Family of Vehicles, M109A5 Howitzers, M198 Howitzers, M1070 Heavy Equipment Trailer and Truck (HETT), M977 Heavy Expanded Mobility Tactical Truck (HEMTT), High Mobility Multipurpose Wheeled Vehicle (HMMWV), and the Tactical Floating River Bridge System (TFRBS) including, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, site surveys, Quality Assurance Teams, U.S. Government and contractor technical assistance, and other related elements of program and logistics support.

(iv) *Military Department:* U.S. Army (UFW)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

* as defined in Section 47(6) of the Arms Export Control Act.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 25 July 2013

*POLICY JUSTIFICATION*

*Iraq—Multi-Platform Maintenance Support, On-The-Job Maintenance Training and Maintenance Advice*

The Government of Iraq has requested a possible sale to provide for a five year follow-on maintenance support for the M88A1 Recovery Vehicle, M88A2 Hercules, M113 Family of Vehicles, M109A5 Howitzers, M198 Howitzers, M1070 Heavy Equipment Trailer and Truck (HETT), M977 Heavy Expanded Mobility Tactical Truck (HEMTT), High Mobility Multipurpose Wheeled Vehicle (HMMWV), and the Tactical Floating River Bridge System (TFRBS) Including, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, site surveys, Quality Assurance Teams, U.S. Government and contractor technical assistance, and other related elements of program and logistics support. The estimated cost is $750 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic partner. This proposed sale directly supports the Iraqi government and serves the interests of the Iraqi people and the United States.

Helping Iraq maintain, sustain, and effectively utilize the equipment it has purchased or received from the United States over the past decade is a U.S. priority. This proposed sale is essential to provide Iraq with the support, spares, services, and equipment necessary to continue its effective use of its ground-based vehicle fleet.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor involved in this program is unknown at this time. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple U.S. Government or contractor representatives to travel to Iraq over period of (5) years to establish maintenance support, on-the-job (OJT) maintenance training and maintenance advice for program and technical support and training.

There will be no adverse impact on United States defense readiness as a result of this proposed sale.

[FR Doc. 2013–19134 Filed 8–7–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 13–33]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–33 with attached Transmittal, Policy Justification, and Sensitivity of Technology.

Dated: August 2, 2013.

**Aaron Siegel,**

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

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 29 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-33, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Qatar for defense articles and services estimated to cost $1.1 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 13–33

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Qatar

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment * | $ .800 billion |
| Other | $ .300 billion |
| TOTAL | $1.100 billion |

(iii) *Description and Quantity or Quantities of Articles or Services under consideration for Purchase:* one (1) A/N FPS–132 Block 5 Early Warning Radar (EWR) to include a Prime Mission Equipment package, technical and support facilities, communication equipment, encryption devices, spare and repair parts, support and test equipment, publications and technical documentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services; and related elements of logistics and program support.

(iv) *Military Department:* Air Force (DAE)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 29 July 2013

* As defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*Qatar—AN/FPS–132 Block 5 Early Warning Radar*

The Government of Qatar has requested a possible sale of one (1) A/N FPS–132 Block 5 Early Warning Radar (EWR) to include Prime Mission Equipment package, technical and support facilities, communication equipment, encryption devices, spare and repair parts, support and test equipment, publications and technical documentation, publications and technical documentation, personnel training and training equipment, U.S Government and contractor engineering, technical and logistics support services; and related elements of logistics and program support. The estimated cost is $1.1B.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in the Middle East.

This proposed sale will help strengthen U.S. efforts to promote regional stability by enhancing regional defense to a key U.S. ally. The acquisition of this air defense system would provide a permanent defensive capability to the Qatar Peninsula as well as protection of the economic infrastructure and well-being of Qatar. The proposed sale will help strengthen Qatar's capability to counter current and future threats in the region and reduce dependence on U.S. forces. Qatar will have no difficulty absorbing this radar system into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Company in Woburn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale at this time.

Implementation of this proposed sale will require the assignment of additional U.S. Government or contractor representatives to Qatar. The number of U.S. Government and contractor representatives required in Qatar to support the program will be determined in joint negotiations as the program proceeds through the development, production and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–33

Notice of Proposed Issuance of Letter of Offer Pursuant to Sect5ion 36(b)(1) Of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AN/FPS–132 Block 5 supports Missile Defense, Space Situational Awareness, and Missile Warning mission areas. The Block 5 system employs 3 electronically steered phased array radar faces to survey 360 degree azimuth. The Block 5 system is capable of reporting airborne tracks to a maximum range of up to 2000 km and to a minimum radar cross-section (RCS) of 1 m2.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2013–19119 Filed 8–7–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 13–19]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–19 with attached Transmittal and Policy Justification.

Dated: August 2, 2013.

**Aaron Siegel,**

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

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 25 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-19, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $900 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 13–19

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Iraq

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment * | $ 450 million |
| Other | $ 450 million |
| TOTAL | $ 900 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 50 M1135 Stryker Nuclear, Biological, and Chemical Reconnaissance Vehicles, DECON 3000 Decontamination Systems, M26 Commercial Joint Service Transportable Decontamination Systems (JSTDS), AN/VRC–89 Single Channel Ground and Airborne Radio Systems (SINCGARS) with Global Positioning System (GPS), AN/VRC–90 SINCGARS with GPS, M40A1 Protective Masks, Lightweight Personal Chemical Detectors LCD–3, Portable Chemical Warfare Agent Detectors GID–3, MultiRAE PLUS Gas Detectors, AN/VDR–2 Radiac Sets, M256 Chemical Agent Detector Kits, Decontamination Kits, Chemical Biological Mask Canisters, M8 Chemical Paper Agent Detector Kits, water canteens, individual clothing and equipment, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, site surveys, a Quality Assurance Team, U.S. Government and contractor technical assistance, and other related elements of program and logistics support.

(iv) *Military Department:* U.S. Army (UGV)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 25 July 2013

* as defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*Iraq—M1135 Stryker Nuclear, Biological, and Chemical Reconnaissance Vehicles*

The Government of Iraq has requested a possible sale of 50 M1135 Stryker Nuclear, Biological, and Chemical Reconnaissance Vehicles, DECON 3000 Decontamination Systems, M26 Commercial Joint Service Transportable Decontamination Systems (JSTDS), AN/VRC-89 Single Channel Ground and Airborne Radio Systems (SINCGARS) with Global Positioning System (GPS), AN/VRC-90 SINCGARS with GPS, M40A1 Protective Masks, Lightweight Personal Chemical Detectors LCD-3, Portable Chemical Warfare Agent Detectors GID-3, MultiRAE PLUS Gas Detectors, AN/VDR-2 Radiac Sets, M256 Chemical Agent Detector Kits, Decontamination Kits, Chemical Biological Mask Canisters, M8 Chemical Paper Agent Detector Kits, water canteens, individual clothing and equipment, spare and repair parts, support equipment, communication equipment, publications and technical data, personnel training and training equipment, site surveys, a Quality Assurance Team, U.S. Government and contractor technical assistance, and other related elements of program and logistics support. The estimated cost is $900 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic partner. This proposed sale will contribute to Iraq's stability and sovereignty by increasing its situational awareness and ability to identify potential Chemical, Biological, Radiological and Nuclear (CBRN) agents. This proposed sale directly supports the Iraqi government and serves the interests of the Iraqi people and the United States.

This equipment provides the Iraqi Army CBRN reconnaissance units with reliable capabilities for early warning of contamination by radiological, biological, and chemical material. Overall, these systems meet the requirements of providing the Iraqi Army with the ability to conduct CBRN reconnaissance techniques of search, survey, surveillance, and sampling to reduce the effects of exposure to these hazardous agents.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors involved in this program are General Dynamics Land System of Sterling Heights, Michigan; Karcher Futuretech of Schwailheim, Germany; DRS Technologies of Florence, Kentucky; Smiths Detection of Danbury, Connecticut; and Federal Resources of Stevensville, Maryland. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require approximately 35 U.S. Government or contractor representatives to travel to Iraq for a period of up 2 years to provide management and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2013–19118 Filed 8–7–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2013–ICCD–0029]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Integrated Postsecondary Education Data System (IPEDS) 2013–2016

**AGENCY:** Department of Education (ED), Institute of Education Sciences/National Center for Education Statistics (IES).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before September 9, 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–0029 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:* Integrated Postsecondary Education Data System (IPEDS) 2013–2016.

*OMB Control Number:* 1850–0582.

*Type of Review:* Revision of an existing collection of information.

*Respondents/Affected Public:* State, Local, or Tribal Governments.

*Total Estimated Number of Annual Responses:* 71,867.

*Total Estimated Number of Annual Burden Hours:* 929,530.

*Abstract:* The Integrated Postsecondary Education Data System (IPEDS) is a web-based data collection system designed to collect basic data from all postsecondary institutions in the United States and the other jurisdictions. IPEDS enables NCES to report on key dimensions of postsecondary education such as enrollments, degrees and other awards earned, tuition and fees, average net price, student financial aid, graduation

rates, revenues and expenditures, faculty salaries, and staff employed. The IPEDS web-based data collection system was implemented in 2000–01, and it collects basic data from approximately 7,500 postsecondary institutions in the United States and the other jurisdictions that are eligible to participate in Title IV Federal financial aid programs. All Title IV institutions are required to respond to IPEDS (Section 490 of the Higher Education Amendments of 1992 (Pub. L. 102–325)). IPEDS allows other (non-title IV) institutions to participate on a voluntary basis. About 200 elect to respond. IPEDS data are available to the public through the College Navigator and IPEDS Data Center Web sites. The National Center for Education Statistics (NCES) seeks authorization to continue its IPEDS data collection. Current authorization expires 6/30/2014 (OMB No. 1850–0582). We are requesting a new clearance for the 2014–15 and 2015–16 data collections now in order to provide institutions advanced notice of changes to the current data collection. Because the already approved 2013–14 IPEDS data collection has not yet taken place, we are carrying over the documentation and estimated burden associated with the 2013–14 data collection.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2013–19107 Filed 8–7–13; 8:45 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9392–5]**

## Agency Information Collection Activities; Proposed Collection of Several Currently Approved Collections; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit two Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). The first ICR, titled: ''Reporting and Recordkeeping for Asbestos Abatement Worker Protection'' and identified by EPA ICR No. 1246.12 and OMB Control No. 2070–0072, represents the renewal of an existing ICR that is scheduled to expire on May 31, 2014. The second ICR, titled: ''Asbestos-Containing Materials in Schools Rule and Revised Asbestos Model Accreditation Plan Rule'' and identified by EPA ICR No. 1365.10 and OMB Control No. 2070–0091, represents the renewal of an existing ICR that also is scheduled to expire on May 31, 2014. Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections that are summarized in this document. The ICRs and accompanying materials are available in the docket for public review and comment in the relevant dockets identified in this document for the ICR.

**DATES:** Comments must be received on or before October 7, 2013.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number for the corresponding ICR as identified in this document, 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. ATTN: Docket ID Number EPA–HQ–OPPT–2012–0915. 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:* Direct your comments to the docket ID number for the corresponding ICR as identified in this document. 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:* Robert Courtnage, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–1081; fax number: (202) 566–0473; email address: *courtnage.robert@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. What Information is EPA Particularly Interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

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 estimates 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.
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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## II. What Do I Need to Know About PRA?

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 EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

## III. Which ICRs Are Being Renewed?

EPA is planning to submit two currently approved ICRs to OMB for review and approval under PRA. In addition to specifically identifying the ICRs by title and corresponding ICR, OMB and docket ID numbers, this unit provides a brief summary of the information collection activity and the Agency's estimated burden. The Supporting Statement for each ICR, a copy of which is available in the corresponding docket, provides a more detailed explanation.

### *A. Docket ID Number EPA–HQ–OPPT–2012–0915*

*Title:* Reporting and Recordkeeping for Asbestos Abatement Worker Protection.

*ICR number:* 1246.12.

*OMB control number:* 2070–0072.

*ICR status:* This ICR is currently scheduled to expire on May 31, 2014.

*Abstract:* EPA's asbestos worker protection rule is designed to provide occupational exposure protection to state and local government employees who are engaged in asbestos abatement activities in states that do not have state plans approved by the Occupational Safety and Health Administration (OSHA). The rule provides protection for public employees not covered by the OSHA standard from the adverse health effects associated with occupational exposure to asbestos. Specifically, the rule requires state and local governments to monitor employee exposure to asbestos, take action to reduce exposure to asbestos, monitor employee health and train employees about asbestos hazards.

The rule includes a number of information reporting and recordkeeping requirements. State and local government agencies are required to provide employees with information about exposures to asbestos and the associated health effects. The rule also requires state and local governments to notify EPA before commencing any asbestos abatement project. State and local governments must maintain medical surveillance and monitoring records and training records on their employees, must establish a set of written procedures for respirator programs, and must maintain procedures and records of respirator fit tests. EPA will use the information to monitor compliance with the asbestos worker protection rule. This request addresses these reporting and recordkeeping requirements.

Responses to the collection of information are mandatory (see 40 CFR part 763, subpart G). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

*Burden statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.32 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

*Respondents/Affected Entities:* Entities potentially affected by this ICR are state and local government employers in 25 states, the District of Columbia, and certain U.S. Territories that have employees engaged in asbestos-related construction, custodial and brake and clutch repair activities without OSHA-approved state plans.

*Estimated total number of potential respondents:* 22,488.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* 51.

*Estimated total annual burden hours:* 363,523 hours.

*Estimated total annual costs:* $14,548,910. This includes an estimated burden cost of $ 14,548,910 and an estimated cost of $0 for capital investment or maintenance and operational costs.

### *B. Docket ID Number EPA–HQ–OPPT–2012–0916*

*Title:* Asbestos-Containing Materials in Schools Rule and Revised Asbestos Model Accreditation Plan Rule.

*ICR number:* 1365.10.

*OMB control number:* 2070–0091.

*ICR status:* This ICR is currently scheduled to expire on May 31, 2014.

*Abstract:* The Asbestos Hazard Emergency Response Act (AHERA) requires local education agencies (LEAs) to conduct inspections, develop management plans, and design or conduct response actions with respect to the presence of asbestos-containing materials in school buildings. AHERA also requires states to develop model accreditation plans for persons who perform asbestos inspections, develop management control plans, and design or conduct response actions. This information collection addresses the burden associated with recordkeeping requirements imposed on LEAs by the asbestos in schools rule, and reporting and recordkeeping requirements imposed on states and training providers related to the model accreditation plan rule.

Responses to the collection of information are mandatory (see 40 CFR part 763, subpart E). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

*Burden statement:* The annual public reporting and recordkeeping burden for

this collection of information is estimated to range between 5.5 hours and 140 hours per response, depending upon the nature of the respondent. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

*Respondents/Affected Entities:* Entities potentially affected by this ICR are local education agencies (LEAs, e.g., elementary or secondary public school districts or a private school or school system); asbestos training providers to schools and educational systems; state education departments or commissions; or state public health departments or commissions.

*Estimated total number of potential respondents:* 133,507.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 2,487,439 hours.

*Estimated total annual costs:* $91,829,253. This includes an estimated burden cost of $9.

## IV. Are There Changes in the Estimates from the Last Approvals?

*ICR number: 1246.12.* There is no change in the number of hours in the total estimated respondent burden compared with that identified in the ICRs currently approved by OMB.

*ICR number: 1365.10.* There is a decrease of 105,449 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's reduced estimate of the number of schools containing friable asbestos-containing materials. This change is an adjustment.

## V. What is the Next Step in the Process for these ICRs?

EPA will consider the comments received and amend the ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICRs to OMB and the opportunity to submit additional comments to OMB. If you have any questions about the ICRs or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

## List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 31, 2013.

**James Jones,**

*Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2013–19221 Filed 8–7–13; 8:45 am]

**BILLING CODE 6560–50–P**

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# ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9535–4]**

## Agency Information Collection Activities OMB Responses

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

**ACTION:** Notice.

**SUMMARY:** This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

**FOR FURTHER INFORMATION CONTACT:** Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

**SUPPLEMENTARY INFORMATION:**

## OMB Responses to Agency Clearance Requests

*OMB Approvals*

EPA ICR Number 1188.11; TSCA Section 5(a); 40 CFR parts 3, 700 and 721; was approved on 07/01/2013; OMB Number 2070–0038; expires on 07/31/2016; Approved without change.

EPA ICR Number 2249.03; Tier 1 Screening of Certain Chemicals Under the Endocrine Disruptor Screening Program (EDSP); was approved on 07/03/2013; OMB Number 2070–0176; expires on 07/31/2016; Approved without change.

EPA ICR Number 1056.11; NSPS for Nitric Acid Plants; 40 CFR part 60 subparts A, G and Ga; was approved on 07/03/2013; OMB Number 2060–0019; expires on 07/31/2016; Approved without change.

EPA ICR Number 1783.06; NESHAP for Flexible Polyurethane Foam Product; 40 CFR part 63 subparts A and III; was approved on 07/23/2013; OMB Number 2060–0357; expires on 07/31/2016; Approved without change.

EPA ICR Number 1678.08; NESHAP for Magnetic Tape Manufacturing Operations; 40 CFR part 63 subparts A and EE; was approved on 07/25/2013; OMB Number 2060–0326; expires on 07/31/2016; Approved without change.

EPA ICR Number 2115.04; NESHAP for Miscellaneous Coating Manufacturing; 40 CFR part 63 subparts A and HHHHH; was approved on 07/25/2013; OMB Number 2060–0535; expires on 07/31/2016; Approved without change.

EPA ICR Number 1064.17; NSPS for Automobile and Light Duty Truck Surface Coating Operations; 40 CFR part 60 subparts A and MM; was approved on 07/25/2013; OMB Number 2060–0034; expires on 07/31/2016; Approved without change.

EPA ICR Number 1072.10; NSPS for Lead-Acid Battery Manufacturing; 40 CFR part 60 subparts A and KK; was approved on 07/25/2013; OMB Number 2060–0081; expires on 07/31/2016; Approved without change.

EPA ICR Number 1652.08; NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants; 40 CFR part 63 subparts A and T; was approved on 07/25/2013; OMB Number 2060–0273; expires on 07/31/2016; Approved without change.

EPA ICR Number 1788.10; NESHAP for Oil and Natural Gas Production; 40 CFR part 63 subparts A and HH; was approved on 07/25/2013; OMB Number 2060–0417; expires on 07/31/2016; Approved without change.

EPA ICR Number 1790.06; NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production; 40 CFR part 63 subparts A, AA and BB; was approved on 07/25/2013; OMB Number 2060–0361; expires on 07/31/2016; Approved without change.

EPA ICR Number 1088.13; NSPS for Industrial-Commercial-Institutional Steam Generating Units; 40 CFR part 60 subparts A and Db; was approved on 07/31/2013; OMB Number 2060–0072; expires on 07/31/2016; Approved without change.

EPA ICR Number 1799.08; NESHAP for Mineral Wool Production (Renewal); 40 CFR part 63 subparts A and DDD; was approved on 07/25/2013; OMB Number 2060–0362; expires on 07/31/2016; Approved without change.

## Comment Filed

EPA ICR Number 2485.01; NSPS for Kraft Pulp Mills for which Construction, Reconstruction or Modification; in 40 CFR part 60 subparts A and BBa; OMB filed comment on 07/16/2013.

**Withdrawn and Continue**

EPA ICR Number 0877.11; RadNet (Renewal); Withdrawn from OMB on 07/15/2013.

EPA ICR Number 2415.01; Pesticide Environmental Stewardship Program Annual Measures Reporting; Withdrawn from OMB on 07/23/2013.

**John Moses,**

*Director, Collections Strategies Division.*

[FR Doc. 2013–19139 Filed 8–7–13; 8:45 am]

**BILLING CODE P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPA–2007–0042; FRL—9535–2]**

## Information Collection Request Submitted to OMB for Review and Approval; Comment Request; National Oil and Hazardous Substances Pollution Contingency Plans (Renewal)

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency has submitted an information collection request (ICR), National Oil and Hazardous Substances Pollution Contingency Plans (Renewal) (EPA ICR No. 1664.09, OMB Control No. 2050–0141) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through October 31, 2013. Public comments were previously requested via the **Federal Register** 78 FR 22256 on April 15, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before September 9, 2013.

**ADDRESSES:** Submit your comments, referencing Docket ID Number HQ–OPA–2007–0042, to: (1) EPA online using *www.regulations.gov* (our preferred method), by email to *Docket.rcra@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460 and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** William Nichols, Office of Emergency Management, Regulation and Policy Development Division, (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–1970; fax number: 202–564–8222; email address: *nichols.nick@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

*Abstract:* This Information Collection Request (ICR) renewal supports activities to implement the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Subpart J (40 CFR 300.900, ''Use of Dispersants and Other Chemicals''). Subpart J of the NCP governs the use of bioremediation agents, dispersants, surface washing agents, surface collecting agents, sorbents, and miscellaneous agents in response to oil spills in U.S. waters or adjoining shorelines (40 CFR 300.900). Subpart J requirements include criteria for listing oil spill mitigating agents on the NCP Product Schedule, hereafter referred to as the Schedule. EPA's regulation, which is codified at 40 CFR 300.900, requires that EPA prepare a schedule of ''dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP. Section 300.910 of Subpart J addresses the authorization of the use of products on the Schedule and specifies the conditions under which OSCs may authorize the use of dispersants, other chemicals, and other spill mitigating substances.

The Schedule is required by section 311(d)(2)(G) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990. The Schedule is used by federal On-Scene Coordinators (OSCs), Regional Response Teams (RRTs), and Area Planners to identify spill mitigating agents in preparation for and response to oil spills.

*Form Numbers:* None

*Respondents/affected entities:* Private manufacturers.

*Respondent's obligation to respond:* Required to obtain or retain benefits.

*Estimated number of respondents:* 11 per year.

*Frequency of response:* Once.

*Total estimated burden:* 315 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $88,743 (per year), includes $72,450 annualized capitol or operation & maintenance costs.

*Changes in the Estimates:* There is a decrease of 75 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to the expectation that the number of manufacturer respondents will decrease from 14 to 11 per year.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2013–19140 Filed 8–7–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R07–SFUND–2013–0463; FRL–9844–6]**

## Proposed Administrative Cost Recovery Settlement Under Section 122(h) of the Comprehensive Environmental Response Compensation and Liability Act, as Amended, 42 U.S.C. 9622(h), Carter Carburetor Superfund Site, St. Louis, Missouri

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement with Carter Building, Inc., St. Louis, Missouri, for the compromise of past and projected future oversight costs concerning the Carter Carburetor Superfund Site in St. Louis, Missouri. The settlement includes a covenant not to sue with the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty

(30) days following the date of publication of this notice, EPA will receive written comments relating to the compromise of costs component of the settlement. EPA will consider all comments and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the compromise of costs is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the EPA Region 7 office located at 11201 Renner Boulevard, Lenexa, Kansas 66219.

**DATES:** Comments must be submitted on or before September 9, 2013.

**ADDRESSES:** The proposed settlement is available for public inspection at the EPA Region 7 office, 11201 Renner Boulevard, Lenexa, Kansas, Monday through Friday, between the hours of 8:00 a.m. through 4:00 p.m. A copy of the proposed settlement may be obtained from the Regional Hearing Clerk, 11201 Renner Boulevard, Lenexa, Kansas 66219, (913) 551–7567 or email address *robinson.kathy@epa.gov.* Requests should reference the Carter Carburetor Superfund Site, EPA Docket No. CERCLA–07–2013–0009. Comments should be addressed to: J. Scott Pemberton, Senior Assistant Regional Counsel, 11201 Renner Boulevard, Lenexa, Kansas 66219. The proposed settlement is also available at the following Web site: *http://www2.epa.gov/aboutepa/epa-region-7-midwest.*

**FOR FURTHER INFORMATION CONTACT:** J. Scott Pemberton, at telephone: (913) 551–7276; fax number: (913) 551–7925/ Attn: J. Scott Pemberton; email address: *pemberton.scott@epa.gov.*

Dated: July 31, 2013.

**Robert W. Jackson,**

*Acting Division Director, Superfund Division, EPA Region 7.*

[FR Doc. 2013–19216 Filed 8–7–13; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

A & J Cargo Logistics Inc. (OFF), 8245 NW. 36th Street, Suite 5, Miami, FL 33166, Officers: Jose Iglasias, Jr., Vice President (QI), Andrex Iglesias, President, Application Type: Transfer to AJ Freight Services Inc. and QI Change.

American International Line (NYC), Inc. (NVO & OFF), 147–38 182nd Street, 1st Floor, Jamaica, NY 11413, Officers: Byung Ha Yoon, President (QI), Ki Bok Sung, Vice President, Application Type: New NVO & OFF License.

Cargo America, Inc. (OFF), 332 S. Wayside Drive, Houston, TX 77011, Officer: Ali Jabr, President (QI), Application Type: Add Trade Name Arabia Cargo and OFF Service.

CMX Global Logistics, LLC (NVO & OFF), 370 S. Crenshaw Blvd., Suite E202A, Torrance, CA 90503, Officers: Charles W. Dobeck, Member (QI), Grant J. Seeley, Member, Application Type: New License NVO & OFF License.

Columbus International Transport Co., Ltd. (NVO), 13101 Moore Street, Cerritos, CA 90703, Officers: Ki Hyeon Lee, CFO (QI), Seong Won Lee, CEO, Application Type: New NVO License.

Eagle Trans Shipping & Logistics LLC (NVO & OFF), Hoboken Business Center, 50 Harrison Street, Suite 301, Hoboken, NJ 07030, Officers: Jose L. Ramirez, Manager (QI), Sandip ''Bobby'' Ahluwalia, Chief Operations Officer, Application Type: QI Change.

EMIC International Corporation dba Express Auto Sales (NVO & OFF), 10729 Audelia Road, Suite 201, Dallas, TX 75238, Officer: Emmanuel U. Igwe, President (QI), Application Type: New NVO & OFF License.

Far East Freight Networks, Inc. (NVO & OFF), 321 E. Gardena Blvd., 2nd Floor, Gardena, CA 90248, Officers: Jenie Kim, President (QI), Sean W. Kim, Director, Application Type: New NVO & OFF License.

In Motion Logistics, LLC (NVO), 1535 SW 151 Avenue, Pembroke Pines, FL 33027, Officers: Michael L. DeBartolo, Managing Member (QI), Juan D. Restrepo, Member, Application Type: New NVO License.

KYS Imports & Exports Inc. (NVO), 1938 Tyler Avenue, Suite O, El Monte, CA 91733, Officer: Kevin Lee, President (QI), Application Type: New NVO License.

Martik LLC (OFF), 19390 Collins Avenue, Suite 1224, Sunny Isles, FL 33160, Officers: Diana P. Alzate, Managing Member (QI), Oscar J. Alzate, Member, Application Type: New OFF License.

MGL International Group Inc. dba Mega Grace Logistics (NVO), 2703 S. George Lane, Walnut, CA 91789, Officer: Shin Shin (Cynthia) Liu, President (QI), Application Type: New NVO License.

Monfreight, Inc. (NVO & OFF), 765 Revere Beach Parkway, Suite A, Revere. MA 02151, Officer:Peter E. Awezec, President (QI), Application Type: Add NVO Service and Trade Name Nelseco Line.

Raymond Express Corporation dba Raymond Express International (OFF), 320 Harbor Way, South San Francisco, CA 94080, Officers: Raymond Wong, Chairman (QI), John Tree, CEO, Application Type: License Transfer to Raymond Express International, LLC.

RMT Logistics Inc. (NVO), 7425 SW 126th Street, Pinecrest, FL 33156, Officer: Rafael Mejias, President (QI), Application Type: New NVO License.

Seatop International Corporation (NVO & OFF), 15442 E. Valley Blvd., City of Industry, CA 91746, Officer: Joseph Y. Yau, President (QI), Application Type: New NVO License.

Soonest Express, Inc. (NVO & OFF), 228 East Harris Avenue, P.O. Box 2165, South San Francisco, CA 94083, Officers: Kang Y. Sun, Treasurer (QI), C.M. Ku-Twn, President, Application Type: Add OFF Service.

Tri-Best Logistics, Inc. (NVO & OFF), 1484 E. Valencia Drive, Fullerton, CA 92831, Officers: David S. Moon, Secretary (QI), Chris J. Lee, CEO, Application Type: QI Change.

By the Commission.

Dated: July 19, 2013.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2013–19108 Filed 8–7–13; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Barthco International, Inc. (NVO & OFF), 5101 South Broad Street, Philadelphia, PA 19112, Officers: Jack Bashkow, Assistant Vice President (QI), Patrick Moebel, President, Application Type: QI Change.

Ever Line Logistics Inc. (NVO & OFF), 147–35 Farmers Blvd., Suite 208, Jamaica, NY 11434, Officer: Caihong Yang, President (QI), Application Type: Name Change to Bona Logistics US Inc.

Global Container Line, Inc. dba Global Container Line (NVO & OFF), 18209 80th Avenue South, Suite A, Kent, WA 98032, Officers: Jeanne H. Sargent, Vice President (QI), James G. Smith, CFO, Application Type: QI Change.

Global Trade Associates, Inc. (OFF), 5 Mount Royal Avenue, Suite 150, Marlborough, MA 01752, Officers: Frank Navin, President (QI), Sandra Navin, Treasurer, Application Type: New OFF License.

Horizon Lines of Guam, LLC (NVO), 4064 Colony Road, Suite 200, Charlotte, NC 28211, Officers: Ricardo F. Rodriguez, President (QI), Michael T. Avara, Vice President, Application Type: QI Change.

J Z Cargo Logistic Corporation (NVO), 150 NW 96th Avenue, Apt. 204, Pembroke Pines, FL 33024, Officers: Joan S. Ziade, President (QI), Santiago Rameix, Vice President, Application Type: New NVO License.

Jolaco International Procurement Inc. (OFF), 2018 Park Row Drive, Suite 6765, Katy, TX 77449, Officers: Frederick D. Coker, President (QI), Amy M. Benya, Secretary, Application Type: New OFF License.

Malecon Shipping, Inc. (NVO), 2225 Adams Place, Bronx, NY 10457, Officer: Arisleyda Polanco, President (QI), Application Type: New NVO License.

Metro Box Cargo, LLC (NVO), 3447 Investment Blvd., Suite 6, Hayward, CA 94545, Officers: Ammabelle P. Bote, Member/Manager, Edgar T. Bote, Member/Manager, Application Type: New NVO License.

National Air Cargo, Inc. (NVO & OFF), 350 Windward Drive, Orchard Park, NY 14127, Officers: Marc A. Gonzales, Assistant Secretary (QI), Christopher J. Alf, President, Application Type: QI Change.

Norse Freight Forwarding, LLC (NVO & OFF), 130 Grandview Trace, Fayetteville, GA 30215, Officers: Johnny S. Flaten, Managing Member (QI), Robert S. Stamey, Member, Application Type: New NVO & OFF License.

Northwestern Shipping and Transportation Ltd (NVO & OFF), 606 Oriole Blvd., Suite 100G, Duncanville, TX 75116, Officers: Jackson Ehioguh, President (QI), Rosemary Ehioguh, Vice President, Application Type: New NVO & OFF License.

Overland Logistics LLC (NVO & OFF), 455 W. 100 N, Ephraim, UT 84627, Officers: Kyle S. Bailey, Member (QI), Jeremy Hallows, Member, Application Type: Add NVO Service.

Ray-Mont Logistics Corp. (NVO & OFF), 13619 E. 28th Avenue, Spokane Valley, WA 99216, Officers: Teri M. Zimmerman, Treasurer (QI), Charles Raymond, President, Application Type: Add NVO Services.

Viking Corporation dba The Viking Corporation Relocation and Logistics (NVO), 32 Estate Contant, St. Thomas, VI 00802, Officers: Berisford F. Lynch, President (QI), Joann F. Lynch, Vice President, Application Type: New NVO License.

V R Logistics Incorporated (NVO & OFF), 30 Sheryl Drive, Edison, NJ 08820, Officers: Govind (Gary) Bhagat, Vice President (QI), Vanita Bhagat, President, Application Type: Add Trade Name Yellow Shark Logistics.

By the Commission.

Dated: July 26, 2013.

**Rachel E. Dickon.**

*Assistant Secretary.*

[FR Doc. 2013–19106 Filed 8–7–13; 8:45 am]

**BILLING CODE 6730–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: HHH–OS–20215–60D]**

### 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 an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for reinstatement of a previously-approved information collection assigned OMB control number OS–0937–0191, which expired on May 31, 2011. 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 October 7, 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–20215–60D for reference.

*Information Collection Request Title:* Application packets for Real Property for Public Health Purposes.

*Abstract:* The Federal Property and Administrative Services Act of 1949 (Pub. L. 81–152), as amended, provides authority to the Secretary of Health and Human Services to convey or lease surplus real property to States and their political subdivisions and instrumentalities, to tax-supported institutions, and to nonprofit institutions which (except for institutions which lease property to assist the homeless) have been held exempt from taxation under Section 501(c)(3) of the 1954 Internal Revenue Code, and 501(c)(19) for veterans organizations. Transfers are made to transferees at little or no cost.

*Need and Proposed Use of the Information:* State and local governments and no-profit institutions use these applications to apply for excess/surplus, underutilized/unutilized and off-site government real property. These applications are used to determine if institutions/organizations are eligible to purchase, lease or use property under the provisions of the surplus real property program.

*Likely Respondents:* State, local, or tribal units of government or instrumentalities thereof; not-for-profit organizations.

*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 |
|---|---|---|---|---|
| Applications for surplus Federal real property | 12 | 1 | 200 | 2,400 |
| Total | 12 | 1 | 200 | 2,400 |

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.

**Darius Taylor,**

*Deputy, Information Collection Clearance Officer.*

[FR Doc. 2013–19135 Filed 8–7–13; 8:45 am]

**BILLING CODE 4151–17–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: HHS–OS–19201–30D]**

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for renewal of the approved information collection assigned OMB control number 0990–0001, scheduled to expire on September 30, 2013. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

**DATES:** Comments on the ICR must be received on or before September 9, 2013.

**ADDRESSES:** Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

**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 OMB control number 0990–0001 and document identifier HHS–OS–19201–30D for reference.

*Information Collection Request Title:* Application for waiver of the two year foreign residence requirement of the Exchange Visitor Program.

*OMB No.:* 0990–0001

*Abstract:* The HHS program deals with both research and clinical care waivers. Applicant institutions apply to this Department to request a waiver on behalf of research scientists or foreign medical graduates to work as clinicians in HHS designated health shortage areas doing primary care in medical facilities. The instructions request a copy of Form G–28 from applicant institutions represented by legal counsel outside of the applying institution. United States Department of Justice Form G–28 ascertains that legal counsel represents both the applicant organization and the exchange visitor.

*Need and Proposed Use of the Information:* Required as part of the application process to collect basic information such as name, address, family status, sponsor and current visa information.

*Likely Respondents:* Research scientists and research facilities.

*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.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Application Waiver/Supplemental A Research | HHS 426 | 45 | 1 | 10 | 450 |
| Application Waiver/Supplemental B Clinical Care | HHS 426 | 35 | 1 | 10 | 350 |
| Total | | | | | 800 |

**Darius Taylor,**

*Deputy, Information Collection Clearance Officer.*

[FR Doc. 2013–19137 Filed 8–7–13; 8:45 am]

**BILLING CODE 4150–38–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, National Center for Health Statistics

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following meeting of the aforementioned committee:

*Times and Dates:*

11:00 a.m.–5:30 p.m., September 19, 2013

8:30 a.m.–1:00 p.m., September 20, 2013

*Place:* NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

*Status:* This meeting is open to the public; however, visitors must be processed in accordance with established federal policies and procedures. For foreign nationals or non-US citizens, pre-approval is required (please contact Gwen Mustaf, 301–458–4500, *glm4@cdc.gov* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements). All visitors are required to present a valid form of picture identification issued by a state, federal or international government. As required by the Federal Property Management Regulations, Title 41, Code of Federal Regulation, Subpart 101–20.301, all persons entering in or on Federal controlled property and their packages, briefcases, and other containers in their immediate possession are subject to being x-rayed and inspected. Federal law prohibits the knowing possession or the causing to be present of firearms, explosives and other dangerous weapons and illegal substances. The meeting room accommodates approximately 100 people.

*Purpose:* This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

*Matters to be Discussed:* The agenda will include welcome remarks by the Acting Director, NCHS; Demo of the NHIS Online Analytic Real-time System (OARS); initiation of Office of Analysis and Epidemiology review.

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by September 4, 2013.

The agenda items are subject to change as priorities dictate.

*Contact Person for more Information:* Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7208, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2013–19156 Filed 8–7–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0001]**

### Pediatric Ethics Subcommittee of the Pediatric Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a subcommittee of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Subcommittee:* Pediatric Ethics Subcommittee of the Pediatric Advisory Committee.

*General Function of the Subcommittee:* To advise and make recommendations to the Pediatric Advisory Committee on pediatric ethical issues.

*Date and Time:* The meeting will be held on September 9, 2013, from 8 a.m. to 5:30 p.m. and September 10, 2013, from 8 a.m. to 3 p.m.

*Location:* Doubletree Hilton Hotel, 8727 Colesville Rd., Silver Spring, MD 20910, 301–589–5200 or visit the hotel's Web site at *http://doubletree3.hilton.com/en/hotels/maryland/doubletree-by-hilton-hotel-washington-dc-silver-spring-DCASSDT/index.html.*

*Contact Person:* Walter Ellenberg, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5154, Silver Spring, MD 20993, 301–796–0885, email *walter.ellenberg@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced subcommittee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

*Agenda:* On September 9 and 10, 2013, the Pediatric Ethics Subcommittee of the Pediatric Advisory Committee will meet to discuss ethical issues in pediatric product development, including medical counter measures, focusing on the concepts of minimal risk, disorder or condition, and exposure of pediatric subjects to risks under 21 CFR 50.54.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the subcommittee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 9, 2013. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. Those individuals interested in making formal oral presentations should notify the contact

person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 30, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 3, 2013.

Persons attending FDA's subcommittee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at this meeting 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 Walter Ellenberg at 301–796–0885, email *walter.ellenberg@fda.hhs.gov,* at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 2, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–19138 Filed 8–7–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

**DATES:** Comments on this ICR should be received within 30 days of this notice.

**ADDRESSES:** Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

**SUPPLEMENTARY INFORMATION:**

*Information Collection Request Title:* Analyzing Title V Programs in the Context of the Affordable Care Act

*OMB No.:* 0915–xxxx—New

*Abstract:* The Affordable Care Act (ACA) will make affordable health coverage available to all legal U.S. residents, as well as guide transformation in the delivery of medicine and public health services. For children, expanded coverage has come about gradually over the past two decades and implementation of major coverage provisions of the ACA in 2014 will result in some shifts in child health coverage.

The Title V Maternal and Child Health (MCH) Block Grant, administered by the Health Resources and Services Administration's Maternal and Child Health Bureau, provides the foundation for ensuring the health of the nation's mothers, women, children, and youth, including children and youth with special health care needs and their families. Many ACA provisions, like state Medicaid expansions and mandatory health insurance, will change the face of health insurance demand and services provided. In response, State Title V programs will focus on increasing access, equality, and health equity.

A proposed data collection form has been developed to collect health care services budget information from Title V MCH Block Grant recipients to better understand the types of direct services currently provided by Title V MCH programs. This form will request information on expenditures for medical services in addition to data on the individuals served.

*Need and Proposed Use of the Information:* As children shift between coverage categories as a result of implementation of the ACA, HRSA would like to quantify the impact of these shifts on the federal investment in Title V funding specifically through the federal funds provided via the Title V MCH Block Grant. To do this, HRSA will need to survey states to collect information on whether they use federal Title V MCH Block Grant funds to reimburse health care practitioners who provide services to children and pregnant women.

*Likely Respondents:* The respondents to the survey will be the Title V Program Directors in the states, the District of Columbia, and Puerto Rico.

*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 | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Title V Health Care Services Budget Survey | 52 | 1 | 52 | 36 | 1,872 |
| Total | 52 | 1 | 52 | 36 | 1,872 |

Dated: August 1, 2013.

**Bahar Niakan,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2013–19124 Filed 8–7–13; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Service Administration

### Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD).

*Date and Time:* August 29, 2013, 9:00 a.m.—5:00 p.m. (Eastern Standard Time).

*Place:* Webinar Format.

*Status:* The meeting will be open to the public.

*Purpose:* The ACTPCMD provides advice and recommendations on a broad range of issues relating to grant programs authorized by sections 222 and 749 of the Public Health Service Act, as amended by section 5103(d) and re-designated by section 5303 of the Patient Protection and Affordable Care Act of 2010.

At this meeting the ACTPCMD will review the latest draft of their 11th Report to Congress. The members will also receive presentations from experts on the subject of integrating oral health into primary care and on health literacy. The ACTPCMD's reports are submitted to the Secretary of the Department of Health and Human Services; the Committee on Health, Education, Labor, and Pensions of the Senate; and the Committee on Energy and Commerce of the House of Representatives.

*Agenda:* The webinar meeting on Thursday, August 29, 2013, will begin with opening comments from HRSA senior officials. The ACTPCMD agenda includes an overview of the Committee's general business activities, presentations by and dialogue with experts, and discussions pertinent to work related to their upcoming 11th report.

The official agenda will be available two days prior to the meeting on the HRSA Web site (*http://www.hrsa.gov/advisorycommittees/bhpradvisory/actpcmd/index.html*). Agenda items are subject to change as priorities dictate.

**SUPPLEMENTARY INFORMATION:**

Information on accessing the webinar will be available via the following Web site two days prior to the meeting date: *http://www.hrsa.gov/advisorycommittees/bhpradvisory/actpcmd/index.html.* The audio portion of the meeting will be computer-based. Therefore anyone wishing to make a public comment should use the Question & Answer Pod anytime during the meeting. The questions will be collected and as many as possible will be addressed during the time provided at the end of the meeting. Anyone wishing further information on the webinar aspects of the meeting should contact Iwona Grodecki at (301) 443–8379.

**FOR FURTHER INFORMATION CONTACT:**

Anyone requesting information regarding the ACTPCMD should contact Mr. Shane Rogers, Designated Federal Official within the Bureau of Health Professions, Health Resources and Services Administration, in any one of the following three ways: (1) Send a request to the following address: Shane Rogers, Designated Federal Official, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–27, 5600 Fishers Lane, Rockville, Maryland 20857; (2) call (301) 443–5260; or (3) send an email to *srogers@hrsa.gov.*

Dated: August 1, 2013.

**Bahar Niakan,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2013–19115 Filed 8–7–13; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Committee on Organ Transplantation; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Advisory Committee on Organ Transplantation (ACOT).

*Date and Time:* September 4, 2013, 10:00 a.m. to 4:00 p.m. (Eastern Standard Time).

*Place:* The meeting will be via audio conference call and Adobe Connect Pro.

*Status:* The meeting will be open to the public.

*Purpose:* Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, thereby increasing public confidence in the integrity and effectiveness of the transplantation system. ACOT is composed of up to 25 members including the Chair. Members serve as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, and economics and statistics; as well as being representatives of transplant candidates, transplant recipients, organ donors, and family members.

*Agenda:* The Committee will hear presentations, including those from the following ACOT Work Groups: Kidney Paired Donation; Research Barriers; and Alignment of CMS Regulatory Requirements with Organ Procurement and Transplantation Network and the Health Resources and Services Administration. Agenda items are subject to change as priorities dictate.

After Committee discussions, members of the public will have an opportunity to comment. Because of the Committee's full agenda and timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting. Meeting summary notes will be posted on the Department's donation Web site at *http://www.organdonor.gov/legislation/advisory.html#meetings.*

The draft meeting agenda will be posted on *http://www.blsmeetings.net/ACOT/.* Those participating in this meeting should register by visiting *http://www.blsmeetings.net/ACOT/.* The deadline to register for this meeting is Tuesday, September 3, 2013. For all logistical questions and concerns, please contact Sydney Vranna, Conference Planner, at *svranne@seamoncorporation.com* (or by phone at (301) 577–0244, extension 2800).

The public can join the meeting by:

1. (Audio Portion) Calling the Conference Phone Number (800–857–9638) and providing the Participant Code (75841); and

2. (Visual Portion) Connecting to the ACOT Adobe Connect Pro Meeting using the following URL and entering as GUEST: *https://hrsa.connectsolutions.com/advcmt_orgtrans/* (copy and paste the link into your browser if it does not work directly, and enter as a guest). Participants should call and connect 15 minutes prior to the meeting for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL: *https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm* and get a quick overview by following URL: *http://www.adobe.com/go/connectpro_overview*. Call (301) 443–0437 or send an email to *ptongele@hrsa.gov* if you are having trouble connecting to the meeting site.

*Public Comment:* It is preferred that persons interested in providing an oral presentation submit a written request, along with a copy of their presentation to: Passy Tongele, MBA, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857 or email at *ptongele@hrsa.gov*. Requests should contain name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative.

The allocation of time may be adjusted to accommodate the level of expressed interest. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may request it during the public comment period. Public participation and ability to comment will be limited to time as it permits.

**FOR FURTHER INFORMATION CONTACT:** Patricia Stroup, MBA, MPA, Executive Secretary, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857; telephone (301) 443–1127.

Dated: August 1, 2013.

**Bahar Niakan,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2013–19112 Filed 8–7–13; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Office of Urban Indian Health Programs Proposed Single Source Grant With Native American Lifelines, Inc.

*Funding Announcement Number:* HHS–2013–IHS–UIHP–0002.

*Catalogue of Federal Domestic Assistance Number:* 93.193.

**Key Dates**

*Application Deadline Date:* August 26, 2013.

*Review Period:* August 28, 2013.

*Earliest Anticipated Start Date:* September 1, 2013.

**I. Funding Opportunity Description**

*Statutory Authority*

The Indian Health Service (IHS), Office of Urban Indian Health Programs (OUIHP), announces the FY 2013 single source competing grant for operation support for the 4-in-1 Title V grant to make health care services more accessible for American Indians and Alaska Natives (AI/AN) residing in the Boston metropolitan area. This program is authorized under the authority of the Snyder Act, 25 U.S.C. 13, and the Indian Health Care Improvement Act (IHCIA), as amended, 25 U.S.C. 1652, 1653, 1660a. This program is described at 93.193 in the Catalog of Federal Domestic Assistance (CFDA).

*Purpose*

Under this grant opportunity, the IHS proposes to award a single source grant to Native American Lifelines, Inc., which is an urban Indian organization that has an existing IHS contract, in accordance with 25 U.S.C. 1653(c)–(f), 1660a, in the Boston metropolitan area. This grant announcement seeks to ensure the highest possible health status for urban Indians. Funding will be used to establish the urban Indian organization's successful implementation of the priorities of the Department of Health and Human Services (HHS), Strategic Plan Fiscal Years 2010–2015, Healthy People 2020, and the IHS Strategic Plan 2006–2011. Additionally, funding will be utilized to meet objectives for Government Performance Rating Act (GPRA) reporting, collaborative activities with the Veterans Health Administration (VA), and four health programs that make health services more accessible to urban Indians. The four health services programs are: (1) Health Promotion/Disease Prevention (HP/DP) services, (2) Immunizations, (3) Behavioral Health Services consisting of Alcohol/Substance Abuse services, and (4) Mental Health Prevention and Treatment services. These programs are integral components of the IHS improvement in patient care initiative and the strategic objectives focused on improving safety, quality, affordability, and accessibility of health care.

Single Source Justification

Native American Lifelines, Inc. is identified as the single source for this award, based on the following criteria:

1. As required by law, the grants authorized by 25 U.S.C. 1653(c)–(f), 1660a may only be awarded to those urban Indian organizations that have a current contract with the IHS to provide health care to urban Indians, in the urban center identified in the contract.

2. Native American Lifelines is the urban Indian organization IHS currently contracts with to provide health care and referral services to urban Indians residing in the Boston area.

Native American Lifelines, Inc. is uniquely qualified to receive this award and provide the identified program activities based on their history with the urban Indian health programs, and their knowledge of urban Indian health and the Boston target population. The program is licensed by the state as a behavioral health provider; all of the staff operating at the facility are licensed and credential in their respective fields (specifically behavioral health); and they use evidence-based behavioral health assessment and treatment strategies with success. The program successfully uses targeted outreach and comprehensive case management services for clients in the community. Through this outreach and case management, the program has expanded offering to include on-site dental service and transportation. Also, the program has been successful in entering into collaborative agreements with community health resources for the provision of quality and comprehensive health care for clients. In support of these successful activities, the Board of Directors is active in the program and committed to bringing quality health care to the urban Indians of the Boston metropolitan area.

**II. Award Information**

*Type of Awards*

Grant.

*Estimated Funds Available*

The total amount of funding identified for the current fiscal year (FY) 2013 is $153,126. Any awards issued under this announcement are subject to the availability of funds. In the absence of funding, the Agency is under no obligation to make awards funded under this announcement.

*Anticipated Number of Awards*

One single source award will be issued under this program announcement.

*Project Period*

The project periods for this award will be as follows:

Year One: Six Months Budget Period from September 1, 2013 to March 31, 2014.

Year Two: Twelve Months Budget Period from—April 1, 2014 to March 31, 2015.

Year Three: Twelve Months Budget Period from—April 1, 2015 to March 31, 2016.

## IIII. Application and Submission Information

*1. Obtaining Application Materials*

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_funding.* Questions regarding the electronic application process may be directed to Mr. Paul Gettys at (301) 443–2114.

*2. Content and Form Application Submission*

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single-spaced and not exceed five pages).
- Project Narrative (must be single spaced and not exceed ten pages).
  - Background information on the organization.
  - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- 501(c)(3) Certificate.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Documentation of current OMB A–133 required Financial Audit (if applicable).

Acceptable forms of documentation include:

- Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
- Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database.*

Public Policy Requirements

All Federal-wide public policies apply to IHS grants with exception of the Discrimination policy.

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative should be a separate Word document that is no longer than ten pages and must: be single-spaced, be typewritten, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½″ × 11″ paper. These narratives will assist the Objective Review Committee (ORC) in becoming more familiar with the grantee's activities and accomplishments prior to this possible grant award. If the narrative exceeds the page limit, only the first ten pages will be reviewed. The 10-page limit for the narrative does not include the work plan, standard forms, table of contents, budget, budget justifications, narratives, and/or other appendix items.

B. Budget Narrative: This narrative must describe the budget requested and match the scope of work described in the project narrative. The budget narrative should not exceed five pages.

*3. Submission Dates and Times*

Applications must be submitted electronically through Grants.gov by 12:00 a.m., midnight Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. The applicant will be notified by the Division of Grants Management (DGM) via email of this decision.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Mr. Paul Gettys, DGM (*Paul.Gettys@ihs.gov*) at (301) 443–2114. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If the applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained (see Section IV.6 below for additional information). The waiver must be documented in writing (emails are acceptable), before submitting a paper application. A copy of the written approval must be submitted with the hardcopy that is mailed to the DGM. Once the waiver request has been approved, the applicant will receive a confirmation of approval and the mailing address to submit the application. Paper applications that are submitted without a waiver from the Acting Director of DGM will not be reviewed or considered further for funding. The applicant will be notified via email of this decision by the Grants Management Officer of DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EST, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding.

*4. Intergovernmental Review*

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

*5. Funding Restrictions*

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- IHS will not acknowledge receipt of applications.

*6. Electronic Submission Requirements*

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the ''Find Grant Opportunities'' link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant receives a waiver to submit paper application documents, the applicant must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the Application Deadline Date listed in the Key Dates

section on page one of this announcement.

Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If technical challenges are experienced while submitting the application electronically, please contact Grants.gov Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and waiver from the agency must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from the standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the Application Deadline Date listed in the Key Dates section on page one of this announcement.
- An applicant is strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for SAM and Grants.gov could take up to fifteen working days.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGM.
- An applicant must comply with any page limitation requirements described in this Funding Announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download the application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGM nor the OCPS will notify the applicant that the application has been received.
- Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access it through *http://fedgov.dnb.com/webform,* or to expedite the process, call (866) 705–5711.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), to report information on subawards. Accordingly, all IHS grantees must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the ''Transparency Act.''

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration (CCR) and have not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the ''Transparency Act,'' including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy Web site: *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_policy_topics.*

## IV. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 10-page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See ''Multi-year Project Requirements'' at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 75 points is required for approval and funding. Points are assigned as follows:

*1. Criteria*

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing the application.

The narrative should address program progress for the seven months budget period activities, September 1, 2013 through March 31, 2014.

The narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the urban Indian health programs (UIHP). It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project.

Points assigned for the criteria are as follows:

- UNDERSTANDING OF THE NEED AND NECESSARY CAPACITY (30 Points)
- WORK PLANS (40 Points)
- PROJECT EVALUATION (15 Points)
- ORGANIZATIONAL CAPABILITIES AND QUALIFICATIONS (10 Points)
- CATEGORICAL BUDGET AND BUDGET JUSTIFICATION (5 Points)

A. PROJECT NARRATIVE: UNDERSTANDING OF THE NEED AND NECESSARY CAPACITY (30 points)

1. Facility Capability:

The UIHPs provide health care services within the context of the HHS Strategic Plan, Fiscal Years 2010–2015; the IHS Strategic Plan 2006–2011, and four IHS priorities.

Describe the UIHP: Define activities planned for the 2013 budget period September 1, 2013—March 31, 2014 budget period in each of the following areas:

(a) IHS Priorities for American Indian/Alaska Native Health Care Current governmental trends and environmental

issues impact urban Indians and require clear and consistent support by the IHS funded UIHP. The IHS Web site is *http://www.ihs.gov.*

(1) Renew and Strengthen Partnerships with Tribes and the UIHPs: The UIHPs have a hybrid relationship with the IHS. With the passage of Public Law 111–148, the Indian Health Care Improvement Act was made permanent.

• Identify what the UIHP is doing to strengthen its partnerships with Tribes and other UIHPs.

(a) September 1, 2013—March 31, 2014 activities planned, including information on how results are shared with the community.

(b) List the top ten Tribes whose members are seen by the program.

2. Bring Health Care Reform to the UIHPs: In order to support health care reform, it must be demonstrated there is a willingness to change and improve, i.e., in human resources and business practices.

• Describe activities the UIHP is taking to ensure health care reform is being implemented.

(a) September 1, 2013—March 31, 2014 activities planned.

3. Improve the Quality of and Access to Care: Customer service is the key to quality care. Treating patients well is the first step to improving quality and access. This area also incorporates Best Practices in customer service.

• Identify activities that demonstrate the UIHP is improving quality of and access to care.

(a) September 1, 2013—March 31, 2014 activities planned.

4. Ensure all UIHP work is Transparent, Accountable, Fair, and Inclusive: Quality health care needs to be transparent, with all parties held accountable for that care. Accountability for services is emphasized.

• Describe activities that demonstrate how this is implemented in the UIHP program.

(a) September 1, 2013—March 31, 2014 activities planned.

5. HHS Priorities for Health Care:

Current governmental trends and environmental issues impact urban Indians and require clear and consistent support by the IHS funded UIHP.

(a) Health Care Value Incentives: The growth of health care costs is restrained because consumers know the comparative costs and quality of their health care—and they have a financial incentive to care.

• Identify what the UIHP is doing to help its consumers gain control of their health care and have the knowledge to make informed health care decisions.

(1) September 1, 2013—March 31, 2014 activities planned, including information on how clinical quality data is shared with consumers and the community.

6. Health Information Technology: Secure interoperable electronic records are available to patients and their doctors anytime, anywhere.

• Describe Resource Patient Management Systems (RPMS)/ Electronic Health Record (EHR) or non-RPMS activities the UIHP is taking to ensure immediate access to accurate information to reduce dangerous medical errors and help control health care costs.

(a) September 1, 2013-March 31, 2014 activities planned.

7. Medicare Rx: Every senior has access to affordable prescription drugs. Consumers will inspire plans to provide better benefits at lower costs. Medicare Part D is streamlined and improved to better connect people with their benefits. Pay for Performance methodologies act to increase health care quality.

• Identify activities the UIHP is taking to implement Medicare Rx.

(a) September 1, 2013—March 31, 2014 activities planned.

8. Personalized Health Care: Health care is tailored to the individual. Prevention and wellness is emphasized. Propensities for disease are identified and addressed through preemptive intervention.

• Describe activities that demonstrate how this is implemented in the UIHP program.

(a) September 1, 2013—March 31, 2014 activities planned.

9. Obesity Prevention: The risk of many diseases and health conditions are reduced through actions that prevent obesity. A culture of wellness deters or diminishes debilitating and costly health events. Individual health care is built on a foundation of responsibility for personal wellness.

• Describe activities that demonstrate how the UIHP program is implementing this priority.

(a) September 1, 2013—December 31, 2014 activities planned.

10. Tobacco Cessation: The only proven strategies to reduce the risks of tobacco-caused disease are preventing initiation, facilitating cessation, and eliminating exposure to secondhand smoke.

• Describe activities that demonstrate how the UIHP is implementing this priority.

(a) September 1, 2013—March 31, 2014 activities planned.

11. Pandemic Preparedness: The United States is better prepared for an influenza pandemic. Rapid vaccine production capacity is increased, national stockpiles and distribution systems are in place, disease monitoring and communication systems are expanded and local preparedness encompasses all levels of government and society.

• Describe activities that demonstrate how the UIHP is prepared and identify changes, if any, made to the UIHP pandemic preparedness plan.

12. Emergency Response: We have learned from the past and are better prepared for the future. There is an ethic of preparedness at the urban program and throughout the Nation.

• Describe activities that demonstrate how the UIHP is prepared and identify changes, if any, made to the UIHP emergency preparedness plan.

13. Hours of Operation Ensure Access to Care:

• Identify the urban program hours of operation and provide assurance that services are available and accessible at times that meets the needs of the urban Indian population, including arrangements that assure access to care when the UIHP is closed.

14. UIHP Collaboration with the Veteran's Health Administration (VA)

In 2007, the UIHPs contacted their local VA Veterans Integrated Services Network and established agreements to collaborate at the local level to expand opportunities to enhance access to health services and improve the quality of health care of urban Indian veterans.

(a) Describe plan of action to develop a partnership with the local VA and plans to establish a Memorandum of Understanding for serving urban Indian veterans.

(b) Identify areas of collaboration and activities that will be conducted between your UIHP and your local area VA for budget period September 1, 2013-March 31, 2014.

15. GPRA Reporting:

All UIHPs report on IHS GPRA/ Government Performance Rating Act Modernization Act (GPRAMA) clinical performance measures. This is required using the Resource and Patient Management System (RPMS). RPMS users must use the Clinical Reporting System (CRS) for reporting. Questions related to GPRA reporting may be directed to the IHS Area Office GPRA Coordinator, or the OUIHP on (301) 443–4680.

The 2014 GPRA Reporting Period is July 1, 2013 through June 30, 2014. The GPRA measures to report for 2014 include 25 clinical measures. The 2014 measure targets are attached.

(a) The following GPRA measures are priority focus areas for target achievement: Good Glycemic Control, Childhood Immunizations and

Depression Screening. Briefly describe the steps/activities you will take to ensure your program meets the 2014 target rates for these measures.

(b) Describe at least two actions you will complete to meet the 2014 desired performance outcomes/results. For programs using RPMS, a Performance Improvement Toolbox is available on the CRS Web site at *http://www.ihs.gov/cio/crs_performance_improvementtoolbox.asp.*

(c) GPRA Behavioral Health performance measures include Alcohol Screening (to prevent Fetal Alcohol Syndrome (FAS)), Domestic (Intimate Partner) Violence Screening and Depression Screening. Describe actions you will take to improve 2013–2014 desired behavioral health performance outcomes/results.

(d) Document your ability to collect and report on the required performance measures to meet GPRA requirements. Include information about your health information technology system.

FY 2014 GPRA MEASURES

1. Diabetes DX Ever (not a GPRA measure, used for context only).
2. Documented A1c (not a GPRA measure, used for context only).
3. Diabetes: Good Glycemic Control.
4. Diabetes: Controlled Blood Pressure.
5. Diabetes: Dyslipidemia (LDL) Assessment.
6. Diabetes: Nephropathy Assessment.
7. Diabetes: Retinopathy Assessment.
8. Influenza Immunization 65+.
9. Pneumovax Immunization 65+.
10. Childhood Immunizations.
11. Pap Screening Rates.
12. Mammography Screening Rates.
13. Colorectal Cancer Screening Rates.
14. Cardiovascular Disease (CVD Screening Rates).
15. Tobacco Cessation.
16. Alcohol Screening (FAS Prevention).
17. Domestic Violence/Intimate Partner Violence Screening.
18. Depression Screening.
19. Prenatal Human Immunodeficiency Virus (HIV) Screening.
20. Childhood Weight Control.
21. Breast Feeding Rates.
22. Topical Fluorides.
23. Dental Assessment.
24. Dental Sealants.
25. Suicide Surveillance.

16. Schedule of Charges and Maximization of Third Party Payments.

(a) Describe the UIHP established schedule of charges and consistency with local prevailing rates.

(1) If the UIHP is not currently billing for billable services, describe the process the UIHP will take to begin third party billing to maximize collections.

(2) Describe how reimbursement is maximized from Medicare, Medicaid, State Children's Health Insurance Program, private insurance, etc.

(b) Describe how the UIHP achieves cost effectiveness in its billing operations with a brief description of the following:

(1) Establishes appropriate eligibility determination.

(2) Reviews/updates and implements up-to-date billing and collection practices.

(3) Updates insurance at every visit.

(4) Maintains procedures to evaluate necessity of services.

(5) Identifies and describes financial information systems used to track, analyze and report on the program's financial status by revenue generation, by source, aged accounts receivable, provider productivity, and encounters by payor category.

(6) Indicate the date the UIHP last reviewed and updated its Billing Policies and Procedures.

B. PROGRAM PLANNING: WORK PLANS (40 Points)

A program narrative and a program specific work plan are required for each health services program: (1) Health Promotion/Disease Prevention, (2) Immunizations, (3) Alcohol/Substance Abuse, and (4) Mental Health. The IHCIA, Public Law 111–148, as amended, identified eligibility for health services as follows.

The grantee shall provide health care services to eligible urban Indians living within the urban center. An ''Urban Indian'' eligible for services, as codified at 25 U.S.C. 1603(13), (27), (28), includes any individual who:

1. Resides in an urban center, which is any community that has a sufficient urban Indian population with unmet health needs to warrant assistance under subchapter IV of the IHCIA, as determined by the Secretary, HHS; and who

2. Meets one or more of the following criteria:

(a) Irrespective of whether he or she lives on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including: (i) Those Tribes, bands, or groups terminated since 1940, and (ii) those recognized now or in the future by the State in which they reside; or

(b) Is a descendant, in the first or second degree, of any such member described in (A); or

(c) Is an Eskimo or Aleut or other Alaska Native; or

(d) Is a California Indian; [1]

(e) Is considered by the Secretary of the Department of the Interior to be an Indian for any purpose; or

(f) Is determined to be an Indian under regulations pertaining to the Urban Indian Health Program that are promulgated by the Secretary, HHS.

[1] Eligibility of California Indians may be demonstrated by documentation that the individual:

(1) Is a descendent of an Indian who was residing in California on June 1, 1852; or

(2) Holds trust interests in public domain, national forest, or Indian reservation allotments in California; or

(2) Is listed on the plans for distribution of assets of California Rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), or is the descendant of such an individual.

The grantee is responsible for taking reasonable steps to confirm that the individual is eligible for IHS services as an urban Indian.

PROGRAM NARRATIVES AND WORKPLANS

1. HP/DP

Program Narrative and Work Plan

Contact your IHS Area Office HP/DP Coordinator to discuss and identify effective and innovative strategies to promote health and enhance prevention efforts to address chronic diseases and conditions. Identify one or more of the strategies you will conduct during budget period September 1, 2013—March 31, 2014.

(a) Applicants are encouraged to use evidence-based and promising strategies which can be found at the IHS best practice database at *http://www.ihs.gov/hpdp/*and the National Registry for Effective Programs at *http://modelprograms.samhsa.gov/.*

(b) Program Narrative. Provide a brief description of the collaboration activities that: (1) Will be planned and will be conducted between the UIHP and the IHS Area Office HP/DP Coordinator during the budget period September 1, 2013 through March 31, 2014.

(c) An example of an HP/DP work plan is provided on the following pages. Develop and attach a copy of the UIHP HP/DP Work Plan for September 1, 2013 through March 31, 2014.

SAMPLE 2013 HP/DP WORK PLAN

[Goal: To address physical inactivity and consumption of unhealthy food among youth who are in the 4th to 6th grade in the Watson, Kennedy, Blackwood, and Rocky Hill Elementary schools.]

| Objectives | Activities/time line | Person responsible | Evaluation |
|---|---|---|---|
| 1. Develop school policies to address physical inactivity and consumption of unhealthy foods in the first year of the funding year. | 1. Schedule a meeting with the school health board in the first quarter of the project.<br>2. Establish a parent advisory committee to assist with the development of the policy in 2nd quarter. | Program Coordinator School Administrator. | Progress report on status of policy and documentation of number of participants in parent advisory committee, and number of meetings held. |
| 2. Implement a classroom nutrition curriculum to increase awareness about the importance of healthier foods. | 1. Design pre/post test survey and pilot test with group of students by 2nd quarter.<br>2. Schedule a meeting with the School Principal to discuss dates of program implementation by 3rd quarter.<br>3. Implement the ''Healthy Eating'' curriculum, a 6 week program in the 2nd quarter.<br>4. Collect pre/post survey at beginning and end of the program to assess changes. | Program Coordinator IHS Nutritionist. | Pre/post knowledge, attitude, and behavior survey. |
| 3. Implement physical activity in at least four schools for grades 4th to 6th in first year of the funding. | 1. Contract with SPARK PE to train classroom teachers to implement SPARK PE in the school by 3rd Quarter.<br>2. Train volunteers to administer FITNESSGRAM to collect baseline data and post data to assess changes. | Program Coordinator School Counselor and PE teacher. | 1. Training evaluation and number of participants.<br>2. Pre/post FITNESSGRAM Data. |

SAMPLE 2013 HP/DP WORK PLAN

[Goal: To reduce tobacco use among residents of community X and Y.]

| Objectives | Activities/time line | Person responsible | Evaluation |
|---|---|---|---|
| 1. Establish a tobacco-free policy in the schools and Tribal buildings by year one. | 1. Schedule a meeting with the Tribal Council and school board to increase awareness of the health effects of tobacco by June 2010. | Tobacco Coordinator ..... | Documentation of the number of participants. |
| | 2. Schedule and conduct tobacco awareness education in the community, schools, and worksites by July 2010 through September 2010. | Tobacco Coordinator Health Educator. | Documentation of the number of participants. |
| | 3. Draft a policy and present to the Tribal Council for approval by January 2011. | | Documentation of whether the policy was established. |
| 2. Coordinate and establish tobacco cessation programs with the local hospitals and clinics. | 1. Partner with the American Cancer Association and the Tribal Health Education Coordinators to establish 8-week tobacco cessation programs by July 2010. | Tobacco Coordinator Health Educator Pharmacist. | Progress toward timeline. |

SAMPLE 2013 HP/DP WORK PLAN—Continued

[Goal: To reduce tobacco use among residents of community X and Y.]

| Objectives | Activities/time line | Person responsible | Evaluation |
|---|---|---|---|
| | 2. Meet with the hospital/clinic administrators and pharmacist to discuss and develop a behavior-based tobacco cessation program. | Tobacco Coordinator Health Educator. | Progress report indicating timeline is being met. |
| | 3. Design and disseminate brochures and flyers of tobacco cessation program that are available in the community and clinic. | Tobacco Coordinator ..... | # of brochures distributed. |
| | 4. Meet with nursing and medical provider staff to increase patient referral to tobacco cessation program. | Health Educator, Tobacco Coordinator. | RPMS data—baseline # of referrals, # of participants who completed program, # who quit tobacco. |
| | 5. Implement the 8-week tobacco cessation program at the community X and Y clinic. | Tobacco Coordinator. | |

2. IMMUNIZATION SERVICES

Program Narrative and Work Plan

(a) Program Management Required Activities

(1) Provide assurance that your facility is participating in the Vaccines for Children program.

(2) Provide assurance that your facility has look up capability with State/regional immunization registry (where applicable). Please contact Amy Groom, Immunization Program Manager at *amy.groom@ihsgov* or (505) 248–4374 for more information.

(b) Service Delivery Required Activities—For Sites using RPMS

(1) Provide trainings to providers and data entry clerks on the RPMS Immunization package.

(2) Establish process for immunization data entry into RPMS (e.g., point of service or through regular data entry).

(3) Utilize RPMS Immunization package to identify 3–27 month old children who are not up to date and generate reminder/recall letters.

(c) Immunization Coverage Assessment Required Activities

(1) Submit quarterly immunization reports to Area Immunization Coordinator for the 3–27 month old, Two year old and Adolescent, Influenza and Adult reports. Sites not using the RPMS Immunization package should submit a Two Year old immunization coverage report—an excel spreadsheet with the required data elements that can be found under the ''Report Forms for non-RPMS sites'' section at: *http://www.ihs.gov/Epi/index.cfm?module=epi_vaccine_reports.*

(d) Program Evaluation Required Activities

(1) Report coverage with the 4313314 ** vaccine series for children 19–35 months old.

(2) Report coverage with influenza vaccine for adults 65 years and older.

(3) Report coverage with at least one dose of pneumococcal vaccine for adults 65 years and older.

(4) Report coverage for patients (6 months and older) who received at least one dose of seasonal flu vaccine during flu season.

(5) Establish baseline coverage on adult vaccines, specifically: 1 dose of Tdap for adults 19 yrs and older; 1 dose of Human Papillomavirus (HPV) for females 19–26 years old; 3 doses HPV for females 19–26 yrs; 1 dose of HPV for males 19–21 years old; 3 doses HPV for males 19–21 years; and 1 dose of Zoster for patients 60+ years.

SAMPLE URBAN GRANT FY 2013 WORK PLAN IMMUNIZATION

| Primary prevention objective | Service or program | Target population | Process measure | Outcome measures |
|---|---|---|---|---|
| Protect children and communities from vaccine preventable diseases. | Immunization Program. | Children < 3 years | On a quarterly basis:<br># of children 3–27 months old .....<br># of children 3–27 months old who are children up to date with age appropriate vaccinations.<br><br>% of 3–27 month old children up to date with age appropriate vaccinations.<br># of children 19–35 months old. | As of June 30th, 2012:<br><br>% of 19–35 month olds up to date with the 431331 and 4313314 vaccine series. |

* The 4:3:1:3:3:1:4 vaccine series is defined as: 4 doses diphtheria and tetanus toxoids and pertussis vaccine, diphtheria and tetanus toxoids, or diphtheria and tetanus toxoids and any pertussis vaccine, 3 doses of oral or inactivated polio vaccine, 1 dose of measles, mumps, and rubella vaccine, 3 doses of *Haemophilus influenzae* type b vaccine, 3 doses of hepatitis B vaccine, 1 dose of varicella vaccine, and 4 doses of pneumococcal conjugate vaccine(PCV).

SAMPLE URBAN GRANT FY 2013 WORK PLAN IMMUNIZATION—Continued

| Primary prevention objective | Service or program | Target population | Process measure | Outcome measures |
|---|---|---|---|---|
| | | | | # of children 19–35 months old who received the 431331 and 4313314 vaccine series |
| | | | % of children 19–35 months old who received the 431331 and 4313314 vaccine series. | |
| Protect adolescents and communities from vaccine preventable diseases. | Immunization Program. | Adolescents 13–17 years. | On a quarterly basis:<br># of adolescents 13–17 years old .... | As of June 30th, 2012: |
| | | | # of adolescents 13–17 years old who are up to date with Tdap, Tdap/Td, Meningococcal, and 1, 2 and 3 dose of HPV (females only). | % of adolescents 13–17 years old who are up to date with Tdap. |
| | | | % of adolescents 13–17 years old who are up to date with Tdap, Tdap/Td, Meningococcal, and 1, 2 and 3 dose of HPV (females only). | % of adolescents 13–17 years old who are up to date with Tdap, females only.<br># of adolescents 13–17 years old who are up to date with Meningococcal vaccine.<br># of adolescents 13–17 years old who are up to date with 1, 2 and 3 dose of HPV (females only). |
| Protect adults and communities from influenza. | Immunization Program. | All Ages ..... | On a quarterly basis during flu season (e.g., Sept–June).<br># of patients (all ages) ..... | As of June 30th, 2012: |
| | | | # of patients who received a seasonal flu shot during the flu season. | # of patients who received a seasonal flu shot during the flu season. |
| | | | % of patients who received a seasonal flu shot during flu season. | % of patients who received a seasonal flu shot during flu season. |
| Protect adults and communities from influenza & Pneumovax. | Immunization Program. | Adults > 65 years | On a quarterly basis:<br># of adults 65+ years ..... | As of June 30th, 2012: |
| | | | # of adults 65+ years who received an influenza shot during flu season. | % of adults 65+ years who received an influenza shot Sept. 1, 2010–June 30, 2011. |
| | | | # of adults 65+ years who received a pneumovax shot. | % of adults 65+ years who received a pneumovax shot ever |
| | | | % of adults 65+ years who received an influenza shot during flu season. | |
| | | | % of adults 65+ years who received a pneumovax shot. | |

3. ALCOHOL/SUBSTANCE ABUSE

Program Narrative and Work Plan

(a) Narrative Description of Program Services for September 1, 2013–March 31, 2014 Budget Period

(1) Program Objectives

(a) Clearly state the outcomes of the health service.

(b) Define needs related outcomes of the program health care service.

(c) Define who is going to do what, when, how much, and how you will measure it.

(d) Define the population to be served and provide specific numbers regarding the number of eligible clients for whom services will be provided.

(e) State the time by which the objectives will be met.

(f) Describe objectives in numerical terms—specify the number of clients that will receive services.

(g) Describe how achievement of the goals will produce meaningful and relevant results (e.g., increase access, availability, prevention, outreach, pre-services, treatment, and/or intervention).

(h) Provide a one-year work plan that will include the primary objectives, services or program, target population, process measures, outcome measures, and data source for measures (see work plan sample in Appendix 2).

(i) Identify Services Provided: Primary Residential; Detox; Halfway House; Counseling; Outreach and Referral; and Other (Specify)

(ii) Number of beds: Residential __, Detox__; or Half way House __.

(iii) Average monthly utilization for the past year.

(iv) Identify Program Type: Integrated Behavioral Health; Alcohol and Substance Abuse only; Stand Alone; or part of a health center or medical establishment.

(i) Address methamphetamine-related contacts:

(i) Estimate the number patient contacts during the budget period, September 1, 2013—March 31, 2014.

(ii) Describe your formal methamphetamine prevention and education program efforts to reduce the prevalence of methamphetamine abuse related problems through increased outreach, education, prevention and treatment of methamphetamine-related issues.

(iii) Describe collaborative programming with other agencies to coordinate medical, social, educational, and legal efforts.

(2) Program Activities

(a) Clearly describe the program activities or steps that will be taken to achieve the desired outcomes/results. Describe who will provide (program, staff) what services (modality, type, intensity, duration), to whom (individual characteristics), and in what context (system, community).

(b) State reasons for selection of activities.

(c) Describe sequence of activities.

(d) Describe program staffing in relation to number of clients to be served.

(e) Identify number of Full Time Equivalents (FTEs) proposed and adequacy of this number:

(i) Percentage of FTEs funded by IHS grant funding; and

(ii) Describe clients and client selection.

(f) Address the comprehensive nature of services offered in this program service area.

(g) Describe and support any unusual features of the program services, or extraordinary social and community involvement.

(h) Present a reasonable scope of activities that can be accomplished within the time allotted for program and program resources.

(3) Accreditation and Practice Model

(a) Name of Program Accreditation.

(b) Type of evidence-based practice.

(c) Type of practice-based model.

(4) Attach the Alcohol/Substance Abuse Work Plan.

IHS URBAN GRANT FY 2013 WORK PLAN

[Alcohol/Substance Abuse Program *Sample* Work Plan]

| Objectives | Service or program | Target population | Process measure | Outcome measures | Data source for measures |
|---|---|---|---|---|---|
| What are you trying to accomplish? | What type of program do you propose? | Who do you hope to serve in your program? | What information will you collect about the program activities? | What information will you collect to find out the results of your program? | Where will you find the information you collect? |
| To prevent substance abuse among urban American Indian youth. | Community-based substance abuse prevention curriculum. | American Indian youth ages 5–18 years old. | # of youth completing the curriculum, # of sessions conducted, # of staff trained. | Incidence/prevalence of substance abuse/dependence. | Medical records, RPMS behavioral health package, National Youth Survey. |
| To prevent substance abuse and related problems. | After school, summer, and weekend activities (e.g. outdoor experiential activities, camps, classroom based problem solving activities). | American Indian youth ages 5–14 years old. | # of youth completing community-based sessions, # of parents completing community-based sessions, # of community-based sessions. | Incidence of substance abuse, incidence of negative and positive attitudes and behaviors, incidence of peer drug use. | Charts, RPMS behavioral health package, National Youth Survey. |

IHS URBAN GRANT FY 2013 WORK PLAN—Continued

[Alcohol/Substance Abuse Program *Sample* Work Plan]

| Objectives | Service or program | Target population | Process measure | Outcome measures | Data source for measures |
|---|---|---|---|---|---|
| Reduce drug use and increase treatment retention. | Matrix model for outpatient treatment. | American Indian adult methamphetamine clients. | # of clients completing program, # of relapse prevention sessions, # of family and group therapies, # of drug education sessions, # of self-help groups, # of urine tests. | Incidence of drug use, increase or decrease in treatment retention, positive or negative urine samples. | Medical records, RPMS behavioral health package, Addiction Severity Index, results of urine tests. |

4. MENTAL HEALTH SERVICES

Program Narrative and Work Plan

Use the alcohol/substance abuse program narrative description template to develop the Mental Health Services program narrative. Attach the UIHP Mental Health Services Work Plan.

IHS URBAN GRANT FY 2013 WORK PLAN

[Mental Health Program *Sample* Work Plan]

| Objectives | Service or program | Target population | Process measure | Outcome measures | Data source for measures |
|---|---|---|---|---|---|
| What are you trying to accomplish? | What type of program do you propose? | Who do you hope to serve in your program? | What information will you collect about the program activities? | What information will you collect to find out the results of your program? | Where will you find the information you collect? |
| To promote mental health. | American Indian Life Skills Development curriculum. | American Indian youth ages 13–17 years old. | # of youth completing the curriculum, # of sessions conducted, # of teachers trained, number of community resource leaders trained. | Feelings of hopelessness, problem solving skills. | Medical records, RPMS behavioral health package, Beck Hopelessness Scale, problem solving skills. |
| Improve the mental health of American Indian children and their families. | Home-based, community-based, and office-based mental health counseling. | American Indian children and their families needing services from our community-based program. | # of individual, couples, group, and family counseling sessions, # of home, community, and office-based visits. | Reduced child involvement in juvenile justice and child welfare, improved coping skills, improved school attendance and grades. | Medical records, RPMS behavioral health package coping skill measure, report cards, attendance records. |

IHS URBAN GRANT FY 2013 WORK PLAN—Continued

[Mental Health Program *Sample* Work Plan]

| Objectives | Service or program | Target population | Process measure | Outcome measures | Data source for measures |
|---|---|---|---|---|---|
| Reduce symptoms related to trauma. | Mental health counseling with cognitive behavioral therapy intervention and historical trauma intervention. | American Indian adults. | # of individual, couples, group, and family counseling sessions, # of historical trauma groups, # of adults counseled. | Incidence of Post-Traumatic Stress Disorder (PTSD) symptoms, incidence of depression, increased coping skills, increased peer and family support. | Self-report PTSD, Beck Depression Inventory, coping skills measure, peer and family support measure, medical records, RPMS behavioral health package. |

RPMS Suicide Reporting Form

Instructions for Completing

This form is intended as a data collection tool only. It does not replace documentation of clinical care in the medical record and it is not a referral form. HRN, Date of Act and Provider Name are required fields. If the information requested is not known or not listed as an option, choose ''Unknown'' or ''Other'' (with specification) as appropriate. The form can be partially completed, saved and completed at a later time if needed.

LOCAL CASE NUMBER:

Indicate internal tracking number if used, not required.

DATE FORM COMPLETED:

Indicate the date the Suicide Reporting Form was completed.

PROVIDER NAME:

Record the name of Provider completing the form.

DATE OF ACT:

Record Date of Act as mm/dd/yy. If exact day is unknown, use the month, 1st day of the month (or another default day), year. If exact date of act is unknown, all providers should use the same default day of the month.

HEALTH RECORD NUMBER:

Record the patient's health record number.

DOB/AGE:

Record Date of Birth as mm/dd/yy and patient's age.

SEX:

Indicate Male or Female.

COMMUNITY WHERE ACT OCCURRED:

Record the community code or the name, county and state of the community where the act occurred.

EMPLOYMENT STATUS:

Indicate patient's employment status, choose one.

RELATIONSHIP STATUS:

Indicate patient's relationship status, choose one.

EDUCATION:

Select the highest level of education attained and if less than a High School graduate, record the highest grade completed. Choose one.

SUICIDAL BEHAVIOR:

Identify the self-destructive act, choose one. Generally, the threshold for reporting should be ideation with intent and plan, or other acts with higher severity, either attempted or completed.

LOCATION OF ACT:

Indicate location of act, choose one.

PREVIOUS ATTEMPTS:

Indicate number of previous suicide attempts, choose one.

METHOD:

Indicate method used. Multiple entries are allowed, check all that apply. Describe methods not listed.

SUBSTANCE USE INVOLVED:

If known, indicate which substances the patient was under the influence of at the time of the act. Multiple entries allowed, check all that apply. List drugs not shown.

CONTRIBUTING FACTORS:

Multiple entries allowed, check all that apply. List contributing factors not shown.

DISPOSITION:

Indicate the type of follow-up planned, if known.

NARRATIVE:

Record any other relevant clinical information not included above.

Last Updated 10/25/12

BILLING CODE 3510–22–P

RPMS Suicide Reporting Form

| **Local Case Number:** | | **Health Record Number:** | |
|---|---|---|---|
| **Date Form Completed:** | | **DOB/Age:** | |
| **Provider Name:** | | **Sex (M/F):** | |
| **Date of Act:** | | **Community Where Act Occurred:** | |

| ☐ | **Employment Status** | ☐ | **Relationship Status** | ☐ | **Education** |
|---|---|---|---|---|---|
| | Part-time | | Single | | High School Graduate/GED |
| | Full-time | | Married | | Less than High School, highest grade complete |
| | Self-employed | | Divorced/Separated | | Some College/Technical |
| | Unemployed | | Widowed | | College Graduate |
| | Student | | Cohabitating/Common-Law | | Post Graduate |
| | Student and employed | | Same Sex Partnership | | Unknown |
| | Retired | | Unknown | | |
| | Unknown | | | | |

| ☐ | **Suicidal Behavior** | ☐ | **Location of Act** | ☐ | **Previous Attempts** |
|---|---|---|---|---|---|
| | Ideation with Plan and Intent | | Home or Vicinity | | 0 |
| | Attempt | | School | | 1 |
| | Completed Suicide | | Work | | 2 |
| | Att'd Suicide w/ Att'd Homicide | | Jail/Prison/Detention | | 3 or more |
| | Att'd Suicide w/ Compl Homicide | | Treatment Facility | | Unknown |
| | Compl Suicide w/ Att'd Homicide | | Medical Facility | | |
| | Compl Suicide w/ Compl Homicide | | Unknown | | |
| | | | Other *(specify):* | | |

| **Method ( ☐ all that apply)** | | | | | |
|---|---|---|---|---|---|
| | Gunshot | | ***Overdose list:*** | | Non-prescribed opiates (e.g. Heroin) |
| | Hanging | | Aspirin/Aspirin-like medication | | Sedatives/ Benzodiazepines/ Barbiturates |
| | Motor Vehicle | | Acetaminophen (e.g. Tylenol) | | Alcohol |
| | Jumping | | Tricyclic Antidepressant (TCA) | | Other Prescription Medication *(specify):* |
| | Stabbing/Laceration | | Other Antidepressant *(specify):* | | Other Over-the-counter Medication *(specify):* |
| | Carbon Monoxide | | Amphetamine/Stimulant | | Other *(specify):* |
| | Overdosed Using (select from list) | | Prescribed Opiates (e.g. Narcotics) | | |
| | Unknown | | | | |
| | Other *(specify)*: | | | | |

| **Substances Involved ( ☐ all that apply)** | | | | | |
|---|---|---|---|---|---|
| | None | | Alcohol | | Inhalants |
| | Alcohol & Other Drugs (select from list) | | Amphetamine/Stimulant | | Non-Prescribed Opiates (e.g. Heroin) |
| | Unknown | | Cannabis (Marijuana) | | Prescribed Opiates (e.g. Narcotics) |
| | | | Cocaine | | Sedatives/ Benzodiazepines/ Barbiturates |
| | | | Hallucinogens | | Other *(specify):* |

| Contributing Factors ( all that apply) | | | | | |
|---|---|---|---|---|---|
| | Suicide of Friend or Relative | | History of Substance Abuse/Dependency | | Divorce/ Separation/ Break-up |
| | Death of Friend or Relative | | Financial Stress | | Legal |
| | Victim of Abuse (Current) | | History of Mental Illness | | Unknown |
| | Victim of Abuse (Past) | | History of Physical Illness | | Other *(specify):* |
| | Occupational/Educational Problem | | | | |

| | Disposition | Narrative |
|---|---|---|
| | Mental Health Follow-up | |
| | Alcohol/Substance Abuse Follow-up | |
| | Inpatient MH Treatment Voluntary | |
| | Inpatient MH Treatment Involuntary | |
| | Medical Treatment (ED or In-patient) | |
| | Outreach to Family/School/Community | |
| | Unknown | |
| | Other (specify): | |

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C. PROJECT EVALUATION (15 Points)

1. Describe your evaluation plan. Provide a plan to determine the degree to which objectives are met and methods are followed.

2. Describe how you will link program performance/services to budget expenditures. Include a discussion of Uniform Data System (UDS) and GPRA Report Measures here.

3. Include the following program specific information:

(a) Describe the expected feasibility and reasonable outcomes (e.g., decreased drug use in those patients receiving services) and the means by which you determined these targets or results.

(b) Identify dates of reviews by the internal staff to assess efficacy:

(1) Assessment of staff adequacy.

(2) Assessment of current position descriptions.

(3) Assessment of impact on local community.

(4) Involvement of local community.

(5) Adequacy of community/ governance board.

(6) Ability to leverage IHS funding to obtain additional funding.

(7) Additional IHS grants obtained.

(8) New initiatives planned for funding year.

(9) Customer satisfaction evaluations.

4. Quality Improvement Committee (QIC).

The UIHP QIC, a planned, organization-wide, interdisciplinary team, systematically improves program performance as a result of its findings regarding clinical, administrative and cost-of-care performance issues, and actual patient care outcomes including the FY 2012 GPRA report and 2011 UDS report (results of care including safety of patients).

(a) Identify the QIC membership, roles, functions, and frequency of meetings. Frequency of meetings shall be at least quarterly.

(b) Describe how the results of the QIC reviews provide regular feedback to the program and community/ governance board to improve services.

(1) September 1, 2013–March 31, 2014 activities planned.

(c) Describe how your facility is integrating the improving patient care model into your health delivery structure:

(1) Identify specific measures you are tracking as part of the Improvements in Patient Care (IPC) work.

(2) Identify community members that are part of your IPC team.

(3) Describe progress meeting your program's goals for the use of the IPC model within your healthcare delivery model.

D. PROGRESS REPORT: ORGANIZATIONAL CAPABILITIES AND QUALIFICATIONS (10 Points)

This section outlines the broader capacity of the organization to complete the project outlined in the application and program specific work plans. This section includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the project outlined in the work plans.

1. Describe the organizational structure with a current approved one page organizational chart that shows the board of directors, key personnel, and staffing. Key personnel positions include the Chief Executive Officer or Executive Director, Chief Financial Officer, Medical Director, and Information Officer.

2. Describe the board of directors that is fully and legally responsible for operation and performance of the 501(c)(3) non-profit urban Indian organization:

(a) List all current board members by name, sex, and Tribe or race/ethnicity.

(b) Indicate their board office held.

(c) Indicate their occupation or area of expertise.

(d) Indicate if the board member uses the UIHP services.

(e) Indicate if the board member lives in the health service area.

(f) Indicate the number of years of continuous service.

(g) Indicate number of hours of Board of Directors training provided, training dates and attach a copy of the Board of Directors training curriculum.

3. List key personnel who will work on the project.

(a) Identify existing key personnel and new program staff to be hired.

(b) For all new key personnel only include position descriptions and resumes in the appendix. Position descriptions should clearly describe each position and duties indicating desired qualifications, experience, and requirements related to the proposed project and how they will be supervised. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities and who will determine if the work of a contractor is acceptable.

(c) Identify who will be writing the progress reports.

(d) Indicate the percentage of time to be allocated to this project and identify the resources used to fund the remainder of the individual's salary if personnel are to be only partially funded by this grant.

E. CATEGORICAL BUDGET AND BUDGET JUSTIFICATION (5 Points)

This section should provide a clear estimate of the project program costs and justification for expenses for the

budget period September 1, 2013–March 31, 2014. The budget and budget justification should be consistent with the tasks identified in the work plan.

1. Categorical Budget (Form SF 424A, Budget Information Non-Construction Programs).

(a) Provide a narrative justification for all costs, explaining why each line item is necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of cost allowability.

(b) If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the current rate agreement in the appendix.

## V. Award Administration Information

*Reporting Requirements*

Failure to submit required reports within the time allowed may result in suspension or termination of an active agreement, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the organization or the individual responsible for preparation of the reports.

The reporting requirements for this program are noted below:

A. Program Progress Report

Program progress reports are required quarterly. These reports will include a brief comparison of actual program accomplishments to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required. A final program report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Report

Federal Financial Report, (FFR–SF–425), Cash Transaction Reports are due every calendar quarter to the Division of Payment Management, Payment Management Branch, HHS at: *http://www.dpm.psc.gov*. Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate information being reported on all required reports; the Progress Reports, and Federal Financial Report.

*C. Federal Subaward Reporting System (FSRS)*

This award may be subject to the Transparency Act subaward and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the Office of Management and Budget (OMB) to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 subaward obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) The project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 subaward obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the Grants Management Grants Policy Web site at: *https://www.ihs.gov/dgm/index.cfm?module=dsp_dgm_policy_topics*.

D. Annual Audit Report

In accordance with 25 U.S.C. 1657, the reports and records of the urban Indian organization with respect to a contract or grant under subchapter IV, shall be subject to audit by the Secretary, Department of Health and Human Services and the Comptroller General of the United States.

The Secretary shall allow as a cost to any contract or grant entered into under section 1653 of this title the cost of an annual private audit conducted by a certified public accountant.

E. GPRA Report

GPRA reports are required quarterly. These reports are submitted to the IHS Area GPRA Coordinator. RPMS users must use CRS for reporting. Non-RPMS users must use the interface system to transfer data from their current data system to RPMS for CRS reporting.

F. Quarterly Immunization Report

Immunization reports are required quarterly. These reports are submitted to the IHS Area Immunization Coordinator.

G. Unmet Needs Report

An unmet needs report is required quarterly. These reports will include information gathered to: (1) Identify gaps between unmet health needs of urban Indians and the resources available to meet such needs; and (2) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians.

## VI. Agency Contacts

1. Questions on the programmatic issues may be directed to: Phyllis Wolfe, Director, Office of Urban Indian Health Programs, 801 Thompson Avenue, Suite 200, Rockville, MD 20852, 301–443–1631, *Phyllis.wolfe@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Pallop Chareonvootitam, Grants Management Specialist, 801 Thompson Avenue, Suite 100, Rockville, MD 20852, 301–443–2195, *Pallop.chareonvootitam@ihs.gov*.

3. Questions on systems matters may be directed to: Paul Gettys, Grant Systems Coordinator, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, Phone: 301–443–2114; or the DGM main line 301–443–5204, Fax: 301–443–9602, Email: *Paul.Gettys@ihs.gov*.

## VII. Other Information

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Date: July 31, 2013.

**Yvette Roubideaux,**

*Acting Director, Indian Health Service.*

[FR Doc. 2013–19113 Filed 8–7–13; 8:45 am]

BILLING CODE 4165–16–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public 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 Diabetes and Digestive and Kidney Diseases Advisory Council.

*Date:* September 26, 2013.

*Open:* 8:30 a.m. to 12:00 p.m.

*Agenda:* To present the Director's Report and other scientific presentations.

*Place:* National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

*Closed:* 3:45 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes And Digestive And Kidney Diseases, 6707 Democracy Blvd. Room 715, Msc 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases Subcommittee.

*Date:* September 26, 2013.

*Open:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Building 31, Conference Room 7, 31 Center Drive, Bethesda, MD 20892.

*Closed:* 3:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, Conference Room 7, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive And Kidney Diseases, 6707 Democracy Blvd. Room 715, Msc 5452, Bethesda, Md 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

*Date:* September 26, 2013.

*Open:* 1:00 p.m. to 2:15 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Closed:* 2:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, Ph.D., Director, Division Of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrinology and Metabolic Diseases Subcommittee.

*Date:* September 26, 2013.

*Open:* 1:00 p.m. to 2:15 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

*Closed:* 2:15 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes And Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: *August 2, 2013.*

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–19110 Filed 8–7–13; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Advisory Board.

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 Cancer Advisory Board.

*Date:* September 10, 2013.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Paulette S. Gray, Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 9609

Medical Center Drive, Room 7W–444, Bethesda, MD 20892, (240) 276–6340.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 2, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–19109 Filed 8–7–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Biomarkers for AKI and CKD.

*Date:* September 25, 2013.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* D. G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452-5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Pharmacogenomics or Metformin.

*Date:* September 27, 2013.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (Telephone Conference Call).

*Contact Person:* D. G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 2, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–19111 Filed 8–7–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Notice of Cancellation of Customs Broker Licenses Due to Death of the License Holder

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Customs broker license cancellation due to death of the broker.

**SUMMARY:** Notice is hereby given that the customs broker licenses of certain brokers have been cancelled without prejudice due to the death of the license holders.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641) and section 111.51(a) of title 19 of the Code of Federal Regulations (19 CFR 111.51(a)), the following customs broker licenses and any and all associated permits have been cancelled without prejudice due to death of the broker.

| Last name | First name | License No. | Port of issuance |
|---|---|---|---|
| Waters | Owen | 02371 | Charlotte. |
| Partyka | Leo | 09556 | Chicago. |
| Hastings, Jr. | Daniel | 05745 | Laredo. |
| Scarangello | Peter | 06420 | Los Angeles. |

Dated: August 2, 2013.

**Richard F. DiNucci,**

*Deputy Assistant Commissioner, Office of International Trade.*

[FR Doc. 2013–19128 Filed 8–7–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Notice of Cancellation of Customs Broker Licenses

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Customs broker license cancellations.

**SUMMARY:** Notice is hereby given that the customs broker licenses and any and all associated permits of certain customs brokers are being cancelled without prejudice.

**SUPPLEMENTARY INFORMATION:**

Notice is hereby given that, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.51(a) of title 19 of the Code of Federal Regulations (19 CFR 111.51(a)), the following customs broker licenses are cancelled without prejudice.

| Last/company name | First name | License No. | Port of issuance |
|---|---|---|---|
| Gembala Customs Brokers, Inc. | | 14353 | Boston. |
| Feinstein & Norris | | 06018 | Houston. |
| Skelton Sherborne, Inc. | | 23530 | Houston. |
| The I.C.E. Co., Inc. | | 05641 | Houston. |
| A&L International Customs Brokerage | | 28940 | Los Angeles. |
| Espex International, Inc. | | 15674 | Los Angeles. |
| Nuno | Deborah | 05128 | Los Angeles. |
| Lynx Global Corp. | | 28284 | New York. |
| The Boyd & Lam Company | | 10426 | New York. |
| Premier Customs Brokerage, Inc. | | 21933 | Nogales. |

Dated: August 2, 2013.

**Richard F. DiNucci,**

*Deputy Assistant Commissioner, Office of International Trade.*

[FR Doc. 2013–19123 Filed 8–7–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Correction of Document Revoking Customs Broker Licenses

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Correction of document revoking certain customs broker licenses.

**SUMMARY:** In a notice published in the **Federal Register** in December 6, 2012, announcing the revocation of certain customs broker licenses, while correctly listing some broker license numbers that were revoked, CBP inadvertently linked certain broker license numbers to the incorrect broker's name. In this document, CBP is correcting the errors in that document by accurately listing those broker names and license numbers that were revoked and by listing those broker names and license numbers that were not revoked and are currently active.

**SUPPLEMENTARY INFORMATION:** In the December 6, 2012 **Federal Register** (77 FR 72873) notice, CBP inadvertently provided the wrong customs broker names for the correct customs broker license numbers that were being revoked. The following customs brokers were incorrectly identified by name. Some of these customs broker licenses should not have had their licenses revoked and are currently active, whereas others have not filed their triennial status report and have had their customs broker license revoked.

| Last name | First name | License No. | Port of issuance |
|---|---|---|---|
| Cosmo Customs Service, Inc. | | 23831 | Atlanta. |
| Miller | John S. | 16462 | Atlanta. |
| Koss | Lori J. | 20529/ 16184 (legacy) | Buffalo. |
| Downie | Kevin | 20664 | Chicago. |
| Gregersen | Gerda | 10970 | Houston. |
| Genesis Forwarding Services of California, Inc | | 17573 | Los Angeles. |
| Henry | Hiram L. | 12779 | Los Angeles. |
| Duncan | Robert A. | 15524 | New York. |
| Lugon-Moulin | Shelley | 17583 | San Diego. |

Of these customs brokers who were incorrectly named in the notice published on December 6, 2012 in the **Federal Register**, four of them have had their licenses revoked for failure to file a triennial status report. Notice is hereby given that, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641) and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)), the following customs broker licenses are revoked by operation of law without prejudice.

| Last name | First name | License No. | Port of issuance |
|---|---|---|---|
| Miller | John S. | 16462 | Atlanta. |
| Genesis Forwarding Services of California, Inc | | 17573 | Los Angeles. |
| Lugon-Moulin | Shelley | 17583 | San Diego. |

The remaining customs brokers listed above and set forth below are currently active:

| Last name | First name | License No. | Port of issuance |
|---|---|---|---|
| Koss | Lori J. | 20529/16184 (legacy) | Buffalo. |
| Downie | Kevin | 20664 | Chicago. |

| Last name | First name | License No. | Port of issuance |
|---|---|---|---|
| Gregerson | Gerda | 10970 | Houston. |
| Henry | Hiram L. | 12779 | Los Angeles. |
| Duncan | Robert A. | 15524 | New York. |

CBP notes that Lori J. Koss's originally assigned customs broker license number (16184) had been inadvertently assigned to another customs broker. CBP had therefore taken the remedial step of issuing Ms. Koss a new broker license number (20529). Since that time, CBP has revoked the other customs broker license number (16184).

CBP also notes that Gerda Gregersen's assigned customs broker license number (10970) had earlier been assigned to another customs broker, Christopher J. Martin. CBP had therefore taken the remedial step of allowing Ms. Gregersen to retain her license number, and issued Mr. Martin a new license number (23628). Since that time, CBP has revoked Mr. Martin's customs broker's license (23628).

In the notice published in the **Federal Register** on December 6, 2012, the following customs brokers' names should have been identified along with their revoked broker license numbers. These brokers are no longer active.

| Last name | First name | License No. | Port of issuance |
|---|---|---|---|
| Rennie | William E. | 16184 | Atlanta. |
| Harlow | David B. | 22867 | Atlanta. |
| Durkin | James T. | 05733 | Chicago. |
| Jones & Klink Corporation | | 07798 | Los Angeles. |
| EWP Int'l, Inc. | | 16645 | Los Angeles. |
| Lupian | Georginna L. | 07640 | San Diego. |
| Martin | Christopher J. | 23628/10970 (legacy) | Seattle. |

Dated: August 2, 2013.

**Richard F. DiNucci,**

*Deputy Assistant Commissioner, Office of International Trade.*

[FR Doc. 2013–19122 Filed 8–7–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Notice of Reinstatement of Customs Broker License

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Reinstatement of customs broker license.

**SUMMARY:** Notice is hereby given that a customs broker's license has been reinstated.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** (77 FR 72873) on December 6, 2012, U.S. Customs and Border Protection, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)), revoked the following customs broker license by operation of law without prejudice. Notice is hereby given that the below identified customs broker license has been reinstated and is currently active.

| Last name | First name | License No. | Port of issuance |
|---|---|---|---|
| Santos | Pablo | 17201 | Chicago. |

Dated: August 2, 2013.

**Richard F. DiNucci,**

*Deputy Assistant Commissioner, Office of International Trade.*

[FR Doc. 2013–19127 Filed 8–7–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Notice of Reinstatement of Revoked Customs Broker Licenses

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Reinstatement of customs broker licenses that were erroneously revoked.

**SUMMARY:** CBP erroneously revoked without prejudice several broker licenses in **Federal Register** notices published on November 18, 2011 and December 6, 2012. Notice is hereby given that the licenses named in the previous documents and identified in this document have been reinstated and are currently active.

**SUPPLEMENTARY INFORMATION:**

In a notice published in the **Federal Register** (76 FR 71584) on November 18, 2011, CBP erroneously revoked the following broker license by operation of law without prejudice pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)). The following license that was revoked in that notice has been reinstated and is currently active.

| Last name | First name | License No. | Port of issuance |
|---|---|---|---|
| Ngo | Catherine | 24181 | Los Angeles |

In a notice published in the **Federal Register** (77 FR 72873) on December 6, 2012, CBP erroneously revoked the following broker licenses by operation of law without prejudice pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)). The following licenses that were revoked in that notice have been reinstated and are currently active.

| Last name | First name | License No. | Port of issuance |
|---|---|---|---|
| Lahey (Ramin) | Melissa | 04118 | Detroit |
| Smith | Nathaneal E. | 22372 | Laredo |
| Couch | Lesley | 17093 | New Orleans |
| Ahn | Byung M. | 22354 | New York |
| Arbolante | Armand | 16369 | New York |
| Banghart | Warren G. | 16374 | New York |
| Cambell & Gardiner, Inc. | | 02342 | New York |
| Crapanzano | Dominick J. | 10029 | New York |
| Elisberg | Norman Gene | 02929 | New York |
| EWA Customs Service, Inc. | | 23694 | New York |
| Fei | Donald L. | 10362 | New York |
| Fellouris | George | 04757 | New York |
| Ferrara International Logistics, Inc. | | 20280 | New York |
| Fietz | William L. | 05163 | New York |
| Forte | Peter F. | 14575 | New York |
| Gambardella | Michael J. | 02913 | New York |
| Gregoriou | Larry | 10461 | New York |
| Haft | Shlomo Yisrael | 22296 | New York |
| Hassinger | Herbert A. | 07057 | New York |
| HAV International Freight | | 12843 | New York |
| Irizarry | Dawn M. | 15160 | New York |
| Keenan | Gloria J. | 12322 | New York |
| Keough | James | 06910 | New York |
| Kittler | James A. | 09946 | New York |
| Konstantinovsky | Boris | 20792 | New York |
| Launer | Ralph W. | 05747 | New York |
| Lehat | Irving | 02579 | New York |
| Levine | Seth A. | 09759 | New York |
| Ma | Guo Zhan | 28050 | New York |
| Mosher | Fredric W. | 17134 | New York |
| Ovair Freight Service, Inc. | | 05773 | New York |
| Palmieri | Eugene D. | 02632 | New York |
| Piechota | Robert Daniel | 23529 | New York |
| Rea | Robert | 03980 | New York |
| Reid | Derick | 15453 | New York |
| Ronan | William G. | 23177 | New York |
| Rowan | Susan M. | 09932 | New York |
| Stettner | Robert | 05894 | New York |
| Valdes | Dorianne | 17091 | New York |
| Walsh | John X. | 03979 | New York |
| Wang | Chia S. | 15452 | New York |
| Weinstock | Richard | 05119 | New York |
| Pietz | Lisa B. | 11676 | Norfolk |
| Bolalek | Philip J. | 21312 | Philadelphia |
| Liberati Corporation | | 13176 | Philadelphia |
| Ellgen | Eric J. | 17010 | St. Louis |
| Keperling | Amy Denise | 17232 | St. Louis |
| Kim | Rae H. | 23730 | St. Louis |
| Lappin | Katharine A. | 20049 | St. Louis |
| Meadows | Matthew C. | 11512 | St. Louis |
| Polley | Teresa L. | 21661 | St. Louis |
| Trost | Thomas F. | 14753 | St. Louis |
| Waltos | Shirley A. | 07375 | St. Louis |
| Whitaker | John W. | 05474 | St. Louis |
| Golemon | Meredith Lee | 22352 | Washington, DC |

Dated: August 2, 2013.

**Richard F. DiNucci,**

*Deputy Assistant Commissioner, Office of International Trade.*

[FR Doc. 2013–19132 Filed 8–7–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Notice of Revocation of Customs Broker License

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of revocation of a customs broker license.

**SUMMARY:** Notice is hereby given that a customs broker license is being revoked by operation of law.

**SUPPLEMENTARY INFORMATION:**

Notice is hereby given that, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641) and § 111.45(a) of title 19 of the Code of Federal Regulations (19 CFR 111.45(a)), the following customs broker license is revoked by operation of law.

| Company name | License No. | Port of issuance |
|---|---|---|
| Celco Customs Service Co. Inc. | 22167 | Los Angeles |

Dated: August 2, 2013.

**Richard F. DiNucci,**

*Deputy Assistant Commissioner, Office of International Trade.*

[FR Doc. 2013–19129 Filed 8–7–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–EA–2013–N154; FF09D00000–FXGO1664091HCC0–134]**

### Wildlife and Hunting Heritage Conservation Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a public meeting of the Wildlife and Hunting Heritage Conservation Council (Council).

**DATES:** *Meeting:* Tuesday September 17, 2013, from 8:00 a.m. to 4:30 p.m., and Wednesday September 18, 2013, from 8:00 a.m. to 4:30 p.m. (Eastern daylight time). For deadlines and directions on registering to attend, submitting written material, and giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The meeting will be held in the Room 5160 at the Main Interior Building, 1849 C Street NW., Washington DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Joshua Winchell, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2639; fax (703) 358–2548; or email *joshua_winchell@fws.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Wildlife and Hunting Heritage Conservation Council will hold a meeting.

#### Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

1. Benefit wildlife resources;
2. Encourage partnership among the public, the sporting conservation organizations, the states, Native American tribes, and the Federal Government;
3. Benefit recreational hunting.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Director, National Park Service (NPS); Chief, Forest Service (USFS); Chief, Natural Resources Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

1. Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Increasing public awareness of and support for the Wildlife Restoration Program;
3. Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;
4. Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;
5. Fostering communication and coordination among State, tribal, and Federal governments; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;
6. Providing appropriate access to Federal lands for recreational shooting and hunting;
7. Providing recommendations to improve implementation of Federal conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and
8. When requested by the Designated Federal Officer in consultation with the Council Chairperson, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc.*

#### Meeting Agenda

The Council will convene to consider:

1. The Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Farm Bill;
3. Land and Water Conservation Fund; and
4. Other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/whhcc.*

PUBLIC INPUT

| If you wish to | You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than |
|---|---|
| Attend the meeting | September 6, 2013. |
| Submit written information or questions before the meeting for the council to consider during the meeting | September 6, 2013. |

PUBLIC INPUT—Continued

| If you wish to | You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than |
|---|---|
| Give an oral presentation during the meeting | September 6, 2013. |

*Attendance*

Because entry to Federal buildings is restricted, all visitors are required to preregister to be admitted. In order to attend this meeting, you must register by close of business on the dates listed in ''Public Input'' under **SUPPLEMENTARY INFORMATION**. Please submit your name, time of arrival, email address, and phone number to the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**).

*Submitting Written Information or Questions*

Interested members of the public may submit relevant information or questions for the Council to consider during the public meeting. Written statements must be received by the date above, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

*Giving an Oral Presentation*

Individuals or groups requesting to make an oral presentation at the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. Nonregistered public speakers will not be considered during the meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the meeting.

**Meeting Minutes**

Summary minutes of the conference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/whhcc.*

**Stephen Guertin,**

*Deputy Director.*

[FR Doc. 2013–19164 Filed 8–7–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[LLWY922000–L57000000–BX0000; WYW172684]**

## Notice of Competitive Coal Lease Sale, WYW172684, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that certain coal resources in the Hay Creek II Coal Tract described below in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

**DATES:** The lease sale will be held at 10 a.m. on Wednesday, September 18, 2013. Sealed bids must be submitted on or before 4 p.m. on Tuesday, September 17, 2013.

**ADDRESSES:** The lease sale will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

**FOR FURTHER INFORMATION CONTACT:** Mavis Love, Land Law Examiner, or Kathy Muller Ogle, Coal Coordinator, at 307–775–6258, and 307–775–6206, respectively.

**SUPPLEMENTARY INFORMATION:** This coal lease sale is being held in response to a lease by application (LBA) filed by Kiewit Mining Properties, Inc., on behalf of its subsidiary, Buckskin Mining Company, Gillette, Wyoming. The coal resource to be offered consists of all reserves recoverable by surface mining methods in the following-described lands located approximately 12 miles north of Gillette, Wyoming, approximately 2 miles east of U.S. Highway 14/16, and adjacent to Collins and McGee Roads along its western boundary.

**Sixth Principal Meridian**

T. 52 N., R. 72 W.,
Sec. 7, lot 21;
Sec. 8, lots 13 to 16, inclusive;
Sec. 9, lots 13 and 14;
Sec. 17, lots 1 to 4, inclusive, and lots 17, 19, 21, and 23;
Sec. 18, lots 5, 14, 18, 19, 21, 24, 25, 27, and 30;
Sec. 19, lots 6, 7, 10, 11, 14, 15, and lots 17 to 19, inclusive, and lots 22, 23, 26, 27.

The areas described aggregate 1,253.27 acres.

The tract is adjacent to Federal leases along the northern and western lease boundary of the Buckskin Mine, and adjacent to additional unleased Federal coal to the west and north.

All of the acreage offered has been determined to be mineable, except for Collins and McGee Roads, which present a barrier due to the qualified surface owner to the west. A 100-foot buffer is required from the right-of-way of these public roads, and a 300-foot buffer is required from any occupied residence off-lease. Reasonable costs to move features such as utilities and pipelines to allow coal recovery have been included in the economic analysis. In addition, coal bed natural gas wells have been drilled on the tract. The estimate of the bonus value of the coal lease will include consideration of the future production from these wells and the successful coal lessee's interaction with the gas producers regarding any pre-existing rights of such producers. An economic analysis of this future income stream will consider reasonable compensation to the gas lessee for lost production of the natural gas when the wells are bought out by the coal lessee. The surface estate of the tract is largely owned by Kiewit Mining Properties, Inc.

The LBA tract contains surface mineable coal reserves in the Wyodak-Anderson Coal Zone currently being recovered in the adjacent, existing mine.

On the LBA tract, there are two mineable seams, the Anderson Rider, which ranges from about 2 feet to 49 feet thick and averages about 26 feet thick, and the merged Anderson/Canyon Seams, which range from about 46 feet to 120 feet thick and average about 68 feet thick. Overall, the two mineable seams average about 94 feet thick over the LBA tract. The two seams are continuous over the entire tract with no outcrops or subcrops. Overburden depth to the upper Anderson Rider ranges from approximately 50 feet to 449 feet thick and averages approximately 163 feet thick. The interburden to the merged Anderson/Canyon Seams ranges from approximately 0 feet to 190 feet thick and averages approximately 88 feet thick.

The tract contains an estimated 167,001,577 tons of mineable coal. This estimate of mineable reserves includes the main seams mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. The total mineable stripping ratio of the coal in Bank Cubic Yards per ton is approximately 2.8:1. Potential bidders for the LBA should consider the recovery rate expected from multiple seam mining.

The Hay Creek II LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8,297 British Thermal Units per pound containing approximately 0.27 percent sulfur. These quality averages place the coal reserves near the lower end of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value (FMV) of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The BLM Wyoming State Office Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m. local time on Tuesday, September 17, 2013, will not be considered. The minimum bid is not intended to represent FMV. The FMV of the tract will be determined by the Authorized Officer after the sale. The lease that may be issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payment to the United States of 12.5 percent of the value of coal produced by surface mining methods. The value of the coal will be determined in accordance with 30 CFR 1206.250.

Pursuant to the regulation at 43 CFR 3473.2(f), the applicant for the Hay Creek II Tract, Kiewit Mining Properties, Inc., has paid a total case-by-case cost recovery processing fee in the amount of $199,243. The successful bidder for the Hay Creek II Tract, if someone other than the applicant, must pay to the BLM the $199,243 previously paid by Kiewit Mining Properties, Inc. Additionally, the successful bidder must pay all processing costs the BLM will incur after the date this sale notice is published in the **Federal Register**, which are estimated to be $10,000.

Bidding instructions for the LBA tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the address above. Case file documents, WYW172684, are available for inspection at the BLM Wyoming State Office.

**Donald A. Simpson,**

*State Director.*

[FR Doc. 2013–19169 Filed 8–7–13; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Air Act (''CAA'')

On July 31, 2013, the Department of Justice lodged a proposed Consent Decree (''Decree'') with the United States District Court for the District of Utah in the lawsuit entitled *United States and State of Utah, Utah Division of Air Quality* v. *Chevron U.S.A. Inc.,* Civil Action No. 2:13-cv-00721–EJF.

In this action the United States and the State of Utah, Utah Division of Air Quality filed a complaint and consent decree concurrently against Chevron U.S.A., Inc. (''Chevron'' or ''Defendant'') seeking mitigation relief and civil penalties under Sections 113(b) and 167 of the Clean Air Act (''CAA'' or ''the Act''), 42 U.S.C. 7413(b) and 7475, and Utah Code Ann. §§ 19–2–104 and 107, for the Defendant's alleged violations at the petroleum refinery (''Refinery'') operated by Chevron located in Salt Lake City, Utah. The Defendant operated the Refinery in violation of various provisions of the CAA which include failing to obtain the necessary prevention of significant deterioration (''PSD'') permit and to install controls under the Act to reduce the pollutant nitrogen oxides (''NOx''). The Decree requires the Settling Defendant to install pollution controls at the Refinery to mitigate the harm caused by the Refinery's excess emissions and pay the sum of $384,000 dollars cash, including interest, to the United States as a civil penalty.

The publication of this notice opens a period for public comment on the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Chevron U.S.A. Inc.,* D.J. Ref. No. 90–5–2–1–09645. 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 Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree 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 $15.25 (25 cents per page reproduction cost) payable to the United States Treasury.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2013–19141 Filed 8–7–13; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Comment Request for Information Collection: American Recovery and Reinvestment Act (ARRA), High Growth and Emerging Industries (HGEI) Grants, Extension With no Revisions

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing

effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

As all of the ARRA HGEI grants will no longer be active once the current OMB-approved collection no. 1205–0478 expires on November 30, 2013, ETA is soliciting comments concerning the collection of data for the active Green Jobs Innovation Fund (GJIF) grants.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before October 7, 2013.

**ADDRESSES:** Submit written comments to Sarah Sunderlin, Division of Strategic Investments, Room C4526, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–2963 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3890. Email: *green.jobs@dol.gov.* A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The American Recovery and Reinvestment Act of 2009 (The Recovery Act) was signed into law by President Obama on February 17, 2009. Funding directed to the Department of Labor from the Recovery Act provided $750 million for a program of competitive grants for worker training and placement in high growth and emerging industries, which included $500 million in funding for energy efficiency and renewable energy, often referred to as ''green jobs.'' In the FY 2010 budget, approximately $40 million in grant funds were authorized by the Workforce Investment Act (WIA) of 1998, Title I, Subtitle D, Section 171(d), Public Law 105–220 for GJIF. With grants funded through GJIF, the Department is emphasizing two key workforce strategies that move participants along green career pathways by: (1) Forging linkages between Registered Apprenticeship and pre-apprenticeship programs, and/or (2) integrating the delivery of technical and basic skills training through community-based partnerships.

It is critical to record the impact of all these resources, current information on participants in these grants, and the services provided to them. ETA received initial approval for this information collection in June, 2010. The ARRA HGEI grants will all end by November 30, 2013, but to ensure that it can continue to obtain comprehensive information on participants served by and services provided with Federal resources, ETA proposes an extension with no revisions of the existing OMB-approved information collection set #1205–0478 for GJIF grantees.

## II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the 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.

## III. Current Actions

*Type of Review:* Extension with no revisions.

*Title:* American Recovery and Reinvestment Act (ARRA), High Growth and Emerging Industries (HGEI) Grants.

*OMB Number:* 1205–0478.

*Affected Public:* GJIF Grantees only. All ARRA HEGI grants will have ended prior to the expiration of the current OMB-approved ICR.

*Form(s):* ETA–9153.

*Total Annual Respondents:* 6.

*Annual Frequency:* Quarterly.

*Total Annual Responses:* 24.

*Average Time per Response:* 16 Hours.

*Estimated Total Annual Burden Hours:* 384 Hours.

*Total Annual Burden Cost for Respondents:* $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: July 31, 2013.

**Eric M. Seleznow,**

*Acting Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2013–19116 Filed 8–7–13; 8:45 am]

**BILLING CODE 4510–FN–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Comment Request for Information Collection for Form ETA 9033, Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports and Form ETA 9033–A, Attestation by Employers Using Alien Crewmembers for Longshore Activities in the State of Alaska; Extension With Revisions

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data about Form ETA 9033 *Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports* (OMB Control Number 1205–0309), which expires October 31, 2013, and Form ETA 9033A, *Attestation by Employers Using Alien Crewmembers for Longshore Activities in the State of Alaska* (currently under OMB Control Number 1205–0352), which expires October 31, 2014. These forms are used by employers to request permission to use foreign crewmen at U.S. Ports for longshore work.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before October 7, 2013.

**ADDRESSES:** Submit written comments to William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Room C–4312, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–2768. Email: *ETA.OFLC.Forms@dol.gov* subject line: ETA 9033 and ETA 9033A. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The information collection is required by section 258 of the Immigration and Nationality Act (INA) (8 U.S.C. 1288) and 20 CFR part 655 Subpart F. The INA generally prohibits the performance of longshore work by foreign crewmembers in U.S. ports. 8 U.S.C. 1288(a). However, the INA contains an exception to this general prohibition where the use of foreign crewmembers is permitted by an applicable collective bargaining agreement or otherwise is a prevailing practice at the U.S. port. 8 U.S.C. 1288(c)(1). Under the prevailing practice exception, before any employer may use foreign crewmembers to perform longshore activities in U.S. ports, it must submit an attestation to the Secretary of Labor containing the elements required by the INA. 8 U.S.C. 1288(c)(1)(B). The INA further requires that the Secretary of Labor make available for public examination in Washington, DC a list of employers that have filed attestations and for each of these employers, a copy of the employer's attestation, and accompanying documentation received by the Secretary. 8 U.S.C. 1288(c)(4). Similarly, the INA permits foreign crewmembers to perform longshore work in the State of Alaska if the employer complies with certain attestation requirements. 8 U.S.C. 1288(d).

The information is being collected to ensure compliance with the INA's requirements that employers must make certain attestations as a condition precedent to the employer's use of foreign crewmembers to perform longshore activities in the U.S. The attestations required by section 258 are collected by the Secretary of Labor through his or her designee, the Employment & Training Administration, on Form ETA 9033, *Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports* (OMB Control Number 1205–0309) and Form ETA 9033A, *Attestation by Employers Using Alien Crewmembers for Longshore Activities in the State of Alaska* (currently under OMB Control Number 1205–0352).

Previously, the Department of Labor (Department) accounted for the hourly burdens for each of these information collections under two different OMB control numbers—1205–0309 and 1205–0352. The Department is proposing to merge the two OMB control numbers into one (1205–0309) for purposes of efficiency and clarity for both the Federal Government and the public and discontinuing the other (1205–0352).

The revisions to the forms are designed to collect better information for contacting the employer and/or agent such as email. They are also meant to make the form easier to read and complete, and provide more thorough instructions.

## II. Review Focus

The Department 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 submissions of responses.

## III. Current Actions

In order to meet its statutory responsibilities under the INA, the Department needs to revise, extend, and merge two existing collections of information used by employers wishing to employ alien crewmembers to do longshore work in U.S. ports under either the prevailing practice exception or the Alaska exception.

*Type of Review:* extension with revisions.

*Title:* Form ETA 9033, *Attestation by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports* and Form ETA 9033A, *Attestation by Employers Using Alien Crewmembers for Longshore Activities in the State of Alaska.*

*OMB Number:* 1205–0309 and 1205–0352.

*Affected Public:* Business or other for-profits.

*Form(s):* ETA–9033 and ETA–9033A.

*Total Annual Respondents:* 7.

*Annual Frequency:* 1.

*Total Annual Responses:* 7.

*Average Time per Response:* 3 hours 15 minutes.

*Estimated Total Annual Burden Hours:* 23.

*Total Annual Burden Cost for Respondents:* 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: July 31, 2013.

**Eric Seleznow,**

*Acting Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2013–19121 Filed 8–7–13; 8:45 am]

BILLING CODE 4510–FP–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Comment request for Information Collection for Quick Turnaround Surveys of All Statutes and Programs for Which the Employment and Training Administration (ETA) is Responsible (Extension with Revisions)

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format,

reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data about quick turnaround surveys for statutes and programs for which ETA is responsible. Authorization for this process will expire in November 2013. To obtain a copy of the proposed information collection request (ICR), please contact the office listed below in the addresses section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before October 7, 2013.

**ADDRESSES:** Submit written comments to U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, Attention: Richard Muller, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210. Telephone number: (202) 693–3680 (this is not a toll-free number). Fax: (202) 693–2766. Email: *muller.richard@dol.gov*.

**FOR FURTHER INFORMATION CONTACT:** Richard Muller, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5637, Washington, DC 20210; (202) 693–3680 (this is not a toll-free number); email: *Muller.Richard@dol.gov;* fax: (202) 693–2766 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background

ETA is soliciting comments regarding an extension of a current Office of Management and Budget (OMB) clearance for a series of quick turnaround surveys in which data will be collected from State workforce agencies, local workforce investment areas, and other entities involved in employment and training and related programs. The surveys will focus on a variety of issues concerning a broad spectrum of programs administered by ETA including the governance, administration, funding, service design, and delivery structure of workforce programs authorized by the Workforce Investment Act of 1998 (WIA).

ETA has a continuing need for information on the operation of all of its programs and is seeking another extension of the clearance for conducting a series of 8 to 20 separate surveys over the next 3 years. Each survey will be short (typically 10–30 questions) and, depending on the nature of the survey, may be administered to state workforce agencies, local workforce boards, American Job Centers, employment service offices, or other entities involved in employment and training or related activities. Each survey will be designed on an ad hoc basis and will focus on topics of pressing policy interest. Examples of broad topic areas include:

- Local management information system developments
- New processes and procedures
- Services to different target groups
- Integration and coordination with other programs
- Local workforce investment board membership and training

ETA needs quick turnaround surveys for a number of reasons. The most pressing reason concerns the need to understand key operational issues in light of changes in focus deriving from the Administration's policy priorities. ETA needs timely informaion that identifies the scope and magnitude of various practices or problems, to fulfill its obligations to develop high quality policy, administrative guidance, regulations, and technical assistance.

ETA will request data in the quick turnaround surveys that are not otherwise available. Other research and evaluation efforts, including case studies or long-range evaluations, either cover only a limited number of sites or take many years for data to be gathered and analyzed. Administrative information and data are too limited. The Five-Year Workforce Investment Plans, developed by States and local areas, are too general in nature to meet ETA's specific informational needs. Quarterly or annual data reported by States and local areas do not provide information on key operational practices and issues. Thus, ETA has no alternative mechanism for collecting precise information that both identifies the scope and magnitude of emerging issues and provides the information on a quick turnaround basis.

ETA will make every effort to coordinate the quick turnaround surveys with other research it is conducting, in order to ease the burden on local and State respondents, to avoid duplication, and to fully explore how interim data and information from each study can be used to inform other studies. Information from the quick turnaround surveys will complement but not duplicate other ETA reporting requirements or evaluation studies.

## II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the 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.

## III. Current Actions:

*Type of Review:* Extension with changes.

*Title:* Quick Turnaround Surveys of all statutes and programs for which ETA is responsible.

*OMB Number:* 1205–0436.

*Affected Public:* State and local workforce agencies and workforce investment boards, and Employment and Training-related partner program agencies at the State and local levels.

*Total Respondents:* Varies by survey, from 54 to 250 (or, occasionally, more) respondents per survey, for up to 20 surveys. The calculations in the Summary Burden chart below are based on an upper limit of 250 respondents; however, it is understood that an occasional survey may exceed that upper limit by no more than 370 respondents. That total number of 620 is derived from adding together the total number of State and local workforce investment boards.

| | Sample size | Number of questions | Average time per question (minutes) | Aggregate burden hours per survey (hours) | Estimated number of surveys | Total annual burden hours |
|---|---|---|---|---|---|---|
| Lower-Bound | 54 | 10 | 1 | 9 | 8 | 72 |

| | Sample size | Number of questions | Average time per question (minutes) | Aggregate burden hours per survey (hours) | Estimated number of surveys | Total annual burden hours |
|---|---|---|---|---|---|---|
| Upper-Bound | 250 | 30 | 3 | 375 | 20 | 7,500 |

*Total Burden Cost for capital and startup:* $0.

*Total Burden Cost for operation and maintenance:* $0.

Comments submitted in response to this ICR will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: July 26, 2013.

**Eric M. Seleznow,**

*Acting Assistant Secretary, Employment and Training Administration.*

[FR Doc. 2013–19120 Filed 8–7–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,180]**

### Comcast Cable, West Division Customer Care, Morgan Hill, California; Notice of Negative Determination on Reconsideration

On January 31, 2013, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Comcast Cable, West Division Customer Care, Morgan Hill, California (subject firm). The Department's Notice was published in the **Federal Register** on February 15, 2013 (78 FR 11226). The subject worker group supplies call center services, including sales and technical assistance.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances: (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on no shift in services and no company imports of services like or directly competitive services with those supplied by the workers at the subject firm.

The request for reconsideration alleges that the subject firm had shifted the supply of like or directly competitive services to a location in Mexico and that the subject worker group had supplied services like or directly competitive with the services supplied by the workers employed at two other Comcast Cable locations who were eligible to apply for Trade Adjustment Assistance (TA–W–82,140 and TA–W–82,025).

Information obtained by the subject firm by the Department during the reconsideration investigation confirmed that neither a shift in the supply of services like or directly competitive with those supplied by the subject worker group to a foreign country by the subject firm nor increased imports of services like or directly competitive with those supplied by the subject worker group contributed importantly to subject worker group separations. Further, the services supplied by workers covered by TA–W–82,140 and TA–W–82,025 are related to repairs whereas the services supplied by the subject worker group during the relevant period are related to sales. In addition, the services formerly supplied by the subject worker group are being supplied by other domestic Comcast cable facilities.

Therefore, the Department determines that 29 CFR 90.18(c) has not been met.

### Conclusion

After careful review, I determine that the requirements of Section 222 of the Act, 19 U.S.C. 2272, have not been met and, therefore, affirm the denial of the petition for group eligibility of Comcast Cable, West Division Customer Care, Morgan Hill, California, to apply for adjustment assistance, in accordance with Section 223 of the Act, 19 U.S.C. 2273.

Signed in Washington, DC on this 9th day of July, 2013.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19186 Filed 8–7–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,287]**

### Hewlett Packard Conway, Arkansas; Notice of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a Trade Adjustment Assistance (TAA) petition filed on December 21, 2012 by the State of Arkansas on behalf of workers and former workers of Hewlett Packard, Conway, Arkansas. On January 25, 2013, the Department issued a Notice of Termination of Investigation because the State of Arkansas withdrew its petition in order for a petition covering a larger worker group (which included workers and former workers at the Conway, Arkansas facility) to be filed. Because the later-filed petition was withdrawn, however, the Department is re-opening the investigation of TA–W–82,287 and will issue a determination accordingly.

Signed in Washington, DC this 9th day of July, 2013.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19187 Filed 8–7–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,290]**

### Hewlett Packard Company, Printing & Personal System Americas Division, Marketing Services, Houston, Texas; Notice of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a Trade Adjustment Assistance (TAA) petition filed on December 27, 2012 by the State of Texas on behalf of workers and former workers of Hewlett Packard Company, Printing & Personal System Americas Division, Marketing Services, Houston, Texas. On January 25, 2013, the Department issued a Notice of Termination of Investigation because

the State of Texas withdrew its petition in order for a petition covering a larger worker group (which included the workers and former workers of Printing & Personal System Americas Division, Marketing Services, Houston, Texas) to be filed. Because the later-filed petition was withdrawn, however, the Department is re-opening the investigation of TA–W–82,290 and will issue a determination accordingly.

Signed in Washington, DC this 9th day of July, 2013.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19188 Filed 8–7–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,213; TA–W–82,213A]**

### CompuCom Systems, Inc., Tewksbury, Massachusetts; CompuCom Systems, Inc. Houston, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 12, 2013, applicable to workers of CompuCom Systems, Inc., Tewksbury, Massachusetts. The workers are engaged in activities related to the supply of information technology outsourcing services. Specifically, the workers are subcontractors working in a call center and provide client support for help desk, local area networks (LAN) and wide area networks (WAN) project consulting and asset tracking. The notice was published in the **Federal Register** on April 1, 2012 (78 FR 19532).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that the Houston, Texas and Tewksbury, Massachusetts locations of CompuCom Systems are engaged in activities related to the supply of information technology outsourcing services, and both experienced worker separations during the relevant time period due to increased imports of these various IT services.

Accordingly, the Department is amending the certification to include workers of the Houston, Texas location of CompuCom Systems, Inc.

The amended notice applicable to TA–W–82,213 is hereby issued as follows:

''All workers of CompuCom Systems, Inc., Tewksbury, Massachusetts (TA–W–82,213) and CompuCom Systems, Inc., Houston, Texas (TA–W–82,213A), who became totally or partially separated from employment on or after December 4, 2011, through March 12, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended,''

Signed in Washington, DC, this 5th day of July, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19181 Filed 8–7–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,302]**

### Wausau Paper, Brainerd Converting Operation, Including On-Site Leased Workers From Employment Resource Center, Securitas and Marsden, Brainerd, Minnesota; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 7, 2013, applicable to workers of Wausau Paper, Brainerd Converting Operation, including on-site leased workers from Employment Resource Center, Brainerd, Minnesota. The Department's notice of determination was published in the **Federal Register** on February 22, 2013 (Volume 78 FR Pages 12361–12363).

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers were engaged in production of uncoated free sheet paper. The state reports that workers leased from Securitas and Marsden were employed on-site at the Brainerd, Minnesota location of Wausau Paper, Brainerd Converting Operation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Securitas and Marsden working on-site at the Brainerd, Minnesota location of Wausau Paper, Brainerd Converting Operation.

The amended notice applicable to TA–W–82,302 is hereby issued as follows:

''All workers of Wausau Paper, Brainerd Converting Operation, including on-site leased workers from Employment Resource Center, Securitas and Marsden, Brainerd, Minnesota, who became totally or partially separated from employment on or after December 27, 2011, through February 7, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through February 7, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 5th day of July, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19184 Filed 8–7–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,275]**

### Delphi Automotive Systems, LLC, Products and Service Solutions Division, Including On-Site Leased Workers From Bartech Workforce Management, Kokomo, Indiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 28, 2013, applicable to workers of Delphi Automotive Systems, LLC, Product and Service Solutions Division, Original Equipment Service Unit, including on-site leased workers from Bartech Workforce Management, Kokomo, Indiana. The Department's notice of determination was published in the **Federal Register** on February 22, 2013 (Volume 78 FR Pages 12361–12363).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The Department has determined that total and partial separations of workers of

Delphi Automotive Systems, LLC, Product and Service Solutions Division, including on-site leased workers from Bartech Workforce Management, Kokomo, Indiana are attributable to the shift of services that were the basis of the certification, and that the certification should not be limited to the Original Equipment Service Unit.

Based on these findings, the Department is amending this certification to include all workers of Delphi Automotive Systems, LLC, Product and Service Solutions Division, including on-site leased workers from Bartech Workforce Management, Kokomo, Indiana.

The amended notice applicable to TA–W–82,275 is hereby issued as follows:

''All workers of Delphi Automotive Systems, LLC, Product and Service Solutions Division, including on-site leased workers from Bartech Workforce Management, Kokomo, Indiana, who became totally or partially separated from employment on or after December 18, 2011 through January 28, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through January 28, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 5th day of July, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19183 Filed 8–7–13; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–80,242; TA–W–80,242A]**

### M/A-Com Technology Solutions, Including On-Site Leased Workers of Kelly Temps and Aerotek CE, Torrance, California; M/A-Com Technology Solutions, Including On-Site Leased Workers of Kelly Temps and Aerotek CE, Long Beach, California; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 18, 2012, applicable to workers of M/A-Com Technology Solutions, including on-site leased workers of Kelly Temps and Aerotek CE, Torrance, California. The Department's notice of determination was published in the **Federal Register** on July 29, 2011 (Volume 76 FR Pages 45622–45623).

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers were engaged in engaged in activities related to the production of RF power semiconductors and modules used in communications, avionics, and radar.

The State reports that the subject firm moved from 2330 Carson St., Torrance, California 90501 to 1500 Hughes Way, Suite C–100, Long Beach, California 90810.

Based on these findings, the Department is amending this certification to include workers separated from the subject firm at the Long Beach, California location.

The amended notice applicable to TA–W–82,242 is hereby issued as follows:

All workers of M/A-Com Technology Solutions, including on-site leased workers of Kelly Temps and Aerotek CE, Torrance, California (TA–W–80,242) and Long Beach, California (TA–W–80,242A) who became totally or partially separated from employment on or after June 17, 2010, through July 8, 2013, and all workers in the group threatened with total or partial separation from the date of certification through July 8, 2013, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC this 5th day of July, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19182 Filed 8–7–13; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,620]**

### Hewlett Packard Company, Hewlett Packard Enterprise Business Unit, EG HP Storage, Enterprise Storage, Servers and Networking Storage, APP Management, Research and Development Group, Andover, Massachusetts; Notice of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 1, 2013 in response to a petition filed on behalf of workers of Hewlett Packard Company, Hewlett Packard Enterprise Business Unit, EG HP Storage, Enterprise Storage, Servers and Networking Storage Division, APP Management, Research and Development Group, Andover, Massachusetts. On April 11, 2013, the Department issued a Notice of Termination of Investigation because the petitioning workers are part of an on-going investigation (TA–W–82,578). On June 20, 2013, the Department issued a Notice of Termination of Investigation for TA–W–82,578. Because the basis for the termination of the investigation of TA–W–82,620 no longer exists, the Department will re-open the investigation of TA–W–82,620.

Signed in Washington, DC this 9th day of July, 2013.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19189 Filed 8–7–13; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,707]**

### Delphi Corporation, Electronics and Safety Division, Including On-Site Leased Workers From Securitas, Bartech, Flint Janitorial Services, and General Motors, Flint, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 20, 2013, applicable to workers of Delphi Corporation, Electronics and Safety Division, including on-site leased workers from Securitas, Bartech and Flint Janitorial Services, Flint, Michigan. The Department's notice of determination was published in the **Federal Register** on June 10, 2013 (Volume 78 FR Pages 34672–34674).

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers were engaged in production of instrument clusters and fuel modules. The state reports that workers leased from General Motors were employed on-site at the Flint, Michigan location of Delphi Corporation, Electronics and Safety Division. The Department has determined that these workers were sufficiently under the control of the

subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from General Motors working on-site at the Flint, Michigan location of Delphi Corporation, Electronics and Safety Division.

The amended notice applicable to TA–W–82,707 is hereby issued as follows:

All workers of Delphi Corporation, Electronics and Safety Division, including on-site leased workers from Securitas, Bartech, Flint Janitorial Services, and General Motors, Flint, Michigan, who became totally or partially separated from employment on or after May 6, 2012 through May 20, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through May 20, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 5th day of July, 2013.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19179 Filed 8–7–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *July 1, 2013 through July 5, 2013.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the

International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W number | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,750 | Boise White Paper, LLC, Boise Inc., Bartlett & Associates | International Falls, MN | May 17, 2012. |
| 82,784 | The Harte-Hanks Direct Marketing/KC, LLC, Call Center Division, Adecco. | Shawnee, KS | June 5, 2012. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W number | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,755 | PerkinElmer Health Sciences, Inc., PerkinElmer Holdings, Inc., The BECO Group and Sterling Engineering. | Downers Grove, IL | May 20, 2012. |
| 82,761 | Hutchinson Leader, A Red Wing Publication, Graphic Design/Creative Department. | Hutchinson, MN | May 10, 2012. |
| 82,761A | Litchfield Independent Review, A Red Wing Publication, Graphic Design/Creative Department. | Litchfield, MN | May 10, 2012. |
| 82,761B | Southwest Newspaper, A Red Wing Publication, Graphic Design/Creative Department. | Shakopee, MN | May 10, 2012. |
| 82,766 | Hartford Financial Services Group, Inc., SI&T/CTO Service Desk, Iconma, LLC, TCA Consulting Group, Kforce, etc. | Hartford, CT | May 10, 2012. |
| 82,766A | Hartford Financial Services Group, Inc., SI&T/CTO Service Desk, Comsys Information Technology, etc. | San Antonio, TX | May 10, 2012. |
| 82,766B | Hartford Financial Services Group, Inc., SI&T/CTO Service Desk. | Lake Mary, FL | May 10, 2012. |
| 82,766C | Hartford Financial Services Group, Inc., SI&T/CTO Service Desk. | Windsor, CT | May 10, 2012. |
| 82,779 | Electrolux Home Products, Inc., North America Small Appliances Div., Research & Development, etc. | Charlotte, NC | May 10, 2012. |
| 82,779A | Electrolux Home Products, Inc., North America Small Appliances Division, Hutchinson McDonald, etc. | Charlotte, NC | May 10, 2012. |
| 82,782 | C & D Technologies, Inc., Select Technical | Milwaukee, WI | June 4, 2012. |
| 82,794 | Hasbro, Inc., Product Design Division, Aquent, Atterro, dba Digital People, etc. | Pawtucket, RI | June 7, 2012. |
| 82,800 | Osram Sylvania Inc., Superior Group | Winchester, KY | June 10, 2012. |
| 82,801 | Baldwin Hardware Corporation, Spectrum Brands, Hardware Home Improvement Division, Stanley Black & Decker. | Reading, PA | August 11, 2013. |
| 82,813 | Sony Pictures Imageworks Inc., Visual Effects Department, Sony Pictures Entertainment Inc., Studio Payroll. | Culver City, CA | June 13, 2012. |
| 82,818 | Propex Operating Company, LLC, Ambassador Personnel, Inc. | Nashville, GA | June 17, 2012. |
| 82,822 | The Smead Manufacturing Company | Hastings, MN | May 7, 2013. |
| 82,822A | The Smead Manufacturing Company | Locust Grove, GA | June 3, 2012. |
| 82,833 | Cameron Solutions, Inc., Cameron International Corporation, Burnett Staffing and Summit Staffing. | Magnolia, TX | June 20, 2012. |
| 82,834 | Callaway Golf Ball Operations, Inc., Apollo Security Services. | Chicopee, MA | June 25, 2013. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W number | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,626 | Flint Engine Operations, North America Manufacturing Division, General Motors. | Flint, MI. | |
| 82,733 | Solopower Inc., Solopower Holdings, Inc. | Portland, OR. | |

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W number | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,694 | Kerry Ingredients and Flavours, Kerry Flavor Systems US, LLC, Volt, Aerotek. | Cincinnati, OH. | |
| 82,719 | Hopewell Hardwood Sales, Inc. | Hopewell, VA. | |
| 82,791 | ITW Hi-Cone | Zebulon, NC. | |
| 82,802 | Hammary Furniture Company, Inc., La-Z-Boy Chair Company. | Granite Falls, NC. | |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the Federal Register and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

| TA–W number | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,845 | Keithley Instrument | Solon, OH. | |

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

| TA–W number | Subject firm | Location | Impact date |
|---|---|---|---|
| 82,575 | CompuCom Systems, Inc. | Houston, TX. | |
| 82,743 | Delphi Product & Service Solutions | Kokomo, ID. | |
| 82,840 | The Berry Company, LLC | Dayton, OH. | |

I hereby certify that the aforementioned determinations were issued during the period of *July 1, 2013 through July 5, 2013.* These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: July 9, 2013.

**Del Min Amy Chen**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19180 Filed 8–7–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 19, 2013.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 19, 2013.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 11th day of July 2013.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

APPENDIX

[16 TAA petitions instituted between 7/1/13 and 7/5/13]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 82863 | Staples, Inc., Shared Service Center (Workers) | Columbia, SC | 07/01/13 | 06/28/13 |
| 82864 | Intuit, Inc. (State/One-Stop) | Centennial, CO | 07/01/13 | 06/28/13 |
| 82865 | HaloSource (State/One-Stop) | Raymond, WA | 07/02/13 | 07/01/13 |
| 82866 | Liquid Common/Table Tents (Workers) | Albuquerque, NM | 07/02/13 | 07/01/13 |
| 82867 | Liberty Medical Supply, Inc. (Workers) | Port St. Lucie, FL | 07/02/13 | 06/12/13 |
| 82868 | Autobuses Americanos (Workers) | El Paso, TX | 07/02/13 | 07/01/13 |
| 82869 | Council for South Texas Economic Progress (COSTEP) (Workers). | Winston Salem, NC | 07/02/13 | 07/02/13 |
| 82870 | Keystone Printed Specialties (Workers) | Old Forge, PA | 07/02/13 | 07/01/13 |
| 82871 | Lock Haven Distribution/RAFKO (Workers) | Lock Haven, PA | 07/02/13 | 06/27/13 |
| 82872 | Narroflex, Inc. (Company) | Stuart, VA | 07/03/13 | 07/02/13 |
| 82873 | TE Connectivity/ICT Division (Company) | Tullahoma, TN | 07/03/13 | 07/02/13 |
| 82874 | Setra of North America (div) Daimler Buses (Workers) | Greensboro, NC | 07/03/13 | 07/02/13 |
| 82875 | Nordex USA (State/One-Stop) | Jonesboro, AR | 07/05/13 | 07/03/13 |
| 82876 | Philips Respironics (State/One-Stop) | Wallingford, CT | 07/05/13 | 07/03/13 |
| 82877 | Avaya, Inc., Avaya Client Services (State/One-Stop) | White Lake, NC | 07/05/13 | 06/20/13 |
| 82878 | Honeywell Process Solutions (State/One-Stop) | York, PA | 07/05/13 | 07/03/13 |

[FR Doc. 2013–19185 Filed 8–7–13; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–82,751]**

### Hewlett Packard Company; Enterprise Storage Servers and Networking (Tape) Group; Formerly D/B/A Enterprise Group, HP Storage, Tape Group; Fort Collins, Colorado; Notice of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 20, 2013 in response to a petition filed on behalf of workers of Hewlett Packard Company, Enterprise Storage Servers and Networking (Tape) Group (formerly d/b/a Enterprise Group, HP Storage, Tape Group), Fort Collins, Colorado. On June 7, 2013, the Department issued a Notice of Termination of Investigation because the petitioning workers are part of an on-going investigation (TA–W–82,573). On June 20, 2013, the Department issued a Notice of Termination of Investigation for TA–W–82,573. Because the basis for the termination of the investigation of TA–W–82,751 no longer exists, the Department will re-open the investigation of TA–W–82,751.

Signed in Washington, DC this 9th day of July, 2013.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2013–19190 Filed 8–7–13; 8:45 am]

BILLING CODE 4510–FN–P

## MILLENNIUM CHALLENGE CORPORATION

**[MCC FR 13–04]**

### Notice of Entering into a Compact with Georgia

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and Georgia. Representatives of the United States Government and Georgia executed the Compact documents on July 26, 2013.

Dated: August 2, 2013.

**Melvin F. Williams, Jr.,**

*VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.*

### Summary of Millennium Challenge Compact with Georgia

The Millennium Challenge Corporation's Board of Directors (the ''Board'') has approved a five-year, $140,000,000 compact with the Government of Georgia aimed at reducing poverty through economic growth (the ''Compact''). The Compact seeks to address one of Georgia's most binding constraints to economic growth, the quality of human capital, through investments in science and technology education and workforce development. MCC's investments are designed to build on Georgia's previous compact and reforms that the Government of Georgia has undertaken in the education sector. All projects have estimated economic rates of return above MCC's hurdle rate of 10 percent.

*1. Background*

Georgia's first $395 million compact, which was completed in April 2011, focused on addressing the basic needs of Georgians through investments in infrastructure (roads, water networks and energy rehabilitation) and rural private enterprise development through a grant program and separate investment fund. As the first compact concluded, Georgia was determined by the Board as eligible for a second compact in January

2011 and then again in December 2011 and December 2012.

Since the 2004 Rose Revolution, Georgia achieved sustained policy progress and economic growth, implementing major reforms that have strengthened public finances, improved the business environment, and enhanced social protection and social services. However, poverty rates remain high, increasing from 22.7 percent to 24.7 percent after the 2008 conflict with Russia. Poverty in Georgia is driven by high unemployment, which can be attributed in part to a mismatch between the demands of the Georgian labor market and the skills possessed by Georgian workers, particularly in sectors that require training in the fields of science, technology, engineering and mathematics. The Compact seeks to address that mismatch by funding investments in the education sector that will help Georgians obtain the education and job skills that subsequently lead to greater employment.

Two key lessons learned from the first compact include: (i) Early planning for operations and maintenance (''O&M'') and (ii) working with high capacity Georgian government implementing entities where possible. In recognition of the importance of O&M planning, the Government of Georgia committed to funding and carrying out long-term O&M of all Georgian schools, including the schools rehabilitated with Compact funds. The first compact demonstrated the Government of Georgia's high capacity for implementing a sophisticated investment program. The Compact builds on this experience by giving technical responsibility for implementation to domestic institutions responsible for the long-term sustainability of the investments.

*2. Program Overview and Budget*

Below is a summary describing the components of the Compact. The budget figures below and the expected impacts described in section III are based on due diligence and project appraisal.

| Project | Total ($ million) |
|---|---|
| Improving General Education Quality Project | 76.5 |
| Industry-Led Skills and Workforce Development Project | 16 |
| STEM Higher Education Project | 30 |
| Monitoring and Evaluation | 3.5 |
| Program Administration | 14 |
| Total Compact Budget | 140 |

The Compact comprises three projects in the education sector: (1) Improving General Education Quality Project, (2) Industry-Led Skills and Workforce Development Project, and (3) STEM Higher Education Project.

*Improving General Education Quality Project ($76.5 million)* seeks to improve general education quality in Georgia through infrastructure enhancements to the physical learning environment, training for educators and school managers, and support to education assessments. The project consists of three activities, which were targeted to specifically improve math and science learning, and aim to improve the pipeline of future students pursuing tertiary education and later entering the labor market:

• Improved Learning Environment Infrastructure Activity. This activity would involve the full internal and external rehabilitation of dilapidated school facilities, utility upgrades, and provision of laboratories for approximately 130 existing Georgian public schools. The planned rehabilitations address key elements correlated with improved educational performance including human comfort, indoor air quality and adequate lighting, and will be measured by a rigorous impact evaluation.[1]

• Training Educators for Excellence Activity. This activity aims to improve teaching and school management by training approximately 23,400 math, science, information and communications technology, and English teachers in grades 7–12; 2,000 public school principals; and 2,000 school-based professional development coordinators (one per public school). Investments would strengthen the capacity of staff at the Teacher Professional Development Center, the agency under the Ministry of Education and Science responsible for teacher training, to manage effective professional development.

• Education Assessment Support Activity. This activity would support Georgia's participation in five international assessments, the implementation of approximately six national assessments focused on math and science, and the development of a system of classroom assessment for secondary school math and science teachers. This activity would build on USAID's classroom assessment work in Georgia's primary schools and also seek to create a system of teacher tools for classroom assessment for students and STEM (science, technology, engineering and math) teachers in grades 7–12.

*Industry-Led Skills and Workforce Development Project ($16 million)* aims to improve the linkage between market-demanded skills and the supply of Georgians with technical skills relevant to the local economy. Georgian industry engaged in the design of this project through numerous consultations with the private sector, leading to the following activities:

• *Competitive Program Improvement Grants Activity.* This activity would provide an initial investment in programs that develop, test, and disseminate innovative and effective approaches to employment-oriented skills development in Georgia through a competitive grants program for Georgian Technical and Vocational Education and Training providers. To build upon the industry engagement already established in the compact development process, this activity would promote investment from Georgian industry partners. Technical assistance would be provided to promote high-quality proposals, build capacity, and ensure compliance with MCC requirements.

• *Strengthening Sector Policy and Provider Practice Activity.* This activity would provide technical assistance to strengthen sector policy to support industry engagement with the aim of matching private sector demand to labor supply. Existing, internationally accepted good practices in industry engagement, such as tracer studies and industry advisory boards, would be identified and promoted to foster linkages and responsiveness to labor market needs.

*STEM Higher Education Project ($30 million)* proposes to attract one or more international university partners to support the Government of Georgia's effort to modernize STEM education by delivering high-quality STEM degree programs that boost productivity and growth, and increase employment opportunities. The project aims to offer high-quality international standard STEM degrees and/or U.S. accreditation of Georgian public university degree programs, something not done before in Georgia. International partner universities would also bring the needed experience to build the capacity of Georgian partners and promote equitable participation for women and minorities in STEM programs. This approach is consistent with the view of public higher education institutions as drivers for education reform in Georgia.

The project also anticipates supporting Georgian public universities in obtaining accreditation from the

[1] Schools were targeted according to their proportion of socially vulnerable students, the overall condition of a school's infrastructure, school utilization rates, and a school's number of students.

Accreditation Board of Engineering and Technology (''ABET'') to achieve high-quality STEM education outcomes. ABET is the U.S. association that accredits domestic and international university programs in the disciplines of applied science, computing, engineering, and engineering technology. A compact investment in ABET accreditation at one or more Georgian universities would provide the physical upgrades and technical assistance needed to achieve accreditation.

*3. Expected Results, Beneficiaries, and Benefits*

MCC and the Government of Georgia collaborated to ensure that investment benefits are extended to a broad spectrum of the Georgian economy, with a focus on girls' engagement in STEM, the inclusion of socially vulnerable populations, and designing to ensure for impact evaluation.

The initial beneficiaries of the Improving General Education Quality Project are estimated to be the 186,400 students (33 percent of all Georgian students) enrolled in Georgian secondary schools (grades 7–12) during the first year of Compact implementation. Approximately half of the students are female and a significant proportion of students are from families deemed socially vulnerable. Over a 20-year time horizon, a total of 870,000 students would benefit. Total beneficiaries are estimated at 1.6 million, which includes family members. Combining all three proposed activities, the project-level estimated economic rate of return is 13 percent.

The number of beneficiaries of the Industry-Led Skills and Workforce Development Project over a 20-year time horizon is estimated to be 26,000, who would likely be from poorer households, the population that has traditionally taken advantage of technical vocational training. In particular, social and gender integration would be a critical component of technical assistance to training providers to support strategies and approaches for ensuring that women and members of disadvantaged groups are equitably represented in supported programs. The estimated economic rate of return for the Competitive Program Improvement Grants Activity is 23 percent.

The number of beneficiaries of the STEM Higher Education Project over a 20-year horizon is estimated to be approximately 31,000 and the number of students who would obtain high-quality undergraduate degrees in STEM disciplines is estimated at 8,500 students. An indicative estimated economic rate of return for this project is based on technical and financial proposals received as part of a recent request for proposals process. Assuming an operating cost (average annual tuition) of $5,500 per student, the project-level estimated economic rate of return is 11 percent.

## Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and Georgia

Millennium Challenge Compact Table of Contents

Article 1. Goal and Objectives
Section 1.1 Compact Goal
Section 1.2 Program Objective
Section 1.3 Project Objectives
Article 2. Funding and Resources
Section 2.1 Program Funding
Section 2.2 Compact Implementation Funding
Section 2.3 MCC Funding
Section 2.4 Disbursement
Section 2.5 Interest
Section 2.6 Government Resources; Budget
Section 2.7 Limitations of the Use of MCC Funding
Section 2.8 Taxes
Article 3. Implementation
Section 3.1 Program Implementation Agreement
Section 3.2 Government Responsibilities
Section 3.3 Policy Performance
Section 3.4 Accuracy of Information
Section 3.5 Implementation Letters
Section 3.6 Procurement and Grants
Section 3.7 Records; Accounting; Covered Providers; Access
Section 3.8 Audits; Reviews
Article 4. Communications
Section 4.1 Communications
Section 4.2 Representatives
Section 4.3 Signatures
Article 5. Termination; Suspension; Expiration
Section 5.1 Termination; Suspension
Section 5.2 Consequences of Termination, Suspension or Expiration
Section 5.3 Refunds; Violation
Section 5.4 Survival
Article 6. Compact Annexes; Amendments; Governing Law
Section 6.1 Annexes
Section 6.2 Amendments
Section 6.3 Inconsistencies
Section 6.4 Governing Law
Section 6.5 Additional Instruments
Section 6.6 References to MCC Web site
Section 6.7 References to Laws, Regulations, Policies and Guidelines
Section 6.8 MCC Status
Article 7. Entry Into Force
Section 7.1 Domestic Requirements
Section 7.2 Conditions Precedent to Entry into Force
Section 7.3 Date of Entry into Force
Section 7.4 Compact Term
Section 7.5 Provisional Application
Annex I: Program Description
Annex II: Multi-Year Financial Plan Summary
Annex III: Description of Monitoring and Evaluation Plan
Annex IV: Conditions Precedent to Disbursement of Compact Implementation Funding
Annex V: Definitions
Annex VI: Tax Provisions

## Millennium Challenge Compact Preamble

This Millennium Challenge Compact (this ''*Compact*'') is between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation (''*MCC*''), and Georgia (''*Georgia*''), acting through its government (the ''*Government*'') (individually a ''*Party*'' and collectively, the ''*Parties*''). Capitalized terms used in this Compact will have the meanings provided in Annex V.

Recalling that the Parties successfully concluded an initial Millennium Challenge Compact that advanced the progress of Georgia in achieving lasting economic growth and poverty reduction, demonstrated the strong partnership between the Parties, and was implemented in accordance with MCC's core policies and standards;

Recognizing that the Parties are committed to the shared goals of promoting economic growth and the elimination of extreme poverty in Georgia and that MCC assistance under this Compact supports Georgia's demonstrated commitment to strengthening good governance, economic freedom and investments in people;

Recalling that the Government consulted with the private sector and civil society of Georgia to determine the priorities for the use of MCC assistance and developed and submitted to MCC a proposal for such assistance to achieve lasting economic growth and poverty reduction; and

Recognizing that MCC wishes to help Georgia implement the program described herein to achieve the goal and objectives described herein (as such program description and objectives may be amended from time to time in accordance with the terms hereof, the ''*Program*'');

The Parties hereby agree as follows:

## Article 1. Goal and Objectives

*Section 1.1 Compact Goal*

The goal of this Compact is to reduce poverty through economic growth in Georgia (the ''*Compact Goal*''). MCC's assistance will be provided in a manner that strengthens good governance, economic freedom, and investments in the people of Georgia.

*Section 1.2 Program Objective*

The objective of the Program (the ''*Program Objective''*) is to support strategic investments in general education, technical and vocational education and training and higher education that will strengthen the quality of education in Georgia, with an emphasis on science, technology, engineering, and math (''*STEM''*) education. The Program consists of the projects described in Annex I (each a ''*Project''* and collectively, the ''*Projects''*).

*Section 1.3 Project Objectives.*

The objective of each of the Projects (each a ''*Project Objective''* and collectively, the ''*Project Objectives''*) is to:

(a) Improve general education quality in Georgia through: infrastructure enhancements to the physical learning environment in schools, training for educators and school managers, and support to classroom, national and international education assessments;

(b) strengthen the linkage between market-demanded skills and the supply of Georgians with technical skills relevant to the local economy; and

(c) support delivery of high-quality STEM degree programs in Georgia.

**Article 2. Funding and Resources**

*Section 2.1 Program Funding*

Upon entry into force of this Compact in accordance with Section 7.3, MCC will grant to the Government, under the terms of this Compact, an amount not to exceed One Hundred Thirty Six Million Six Hundred Fifty Thousand United States Dollars (US$136,650,000) (''*Program Funding''*) for use by the Government to implement the Program. The allocation of Program Funding is generally described in Annex II.

*Section 2.2 Compact Implementation Funding*

(a) Upon signature of this Compact, MCC will grant to the Government, under the terms of this Compact and in addition to the Program Funding described in Section 2.1, an amount not to exceed Three Million Three Hundred Fifty Thousand United States Dollars (US$3,350,000) (''*Compact Implementation Funding''*) under Section 609(g) of the Millennium Challenge Act of 2003, as amended (the ''*MCA Act''*), for use by the Government to facilitate implementation of the Compact, including for the following purposes:

(i) Financial management and procurement activities (including costs related to agents procured by MCC to provide standby fiscal and procurement agent services, if required);

(ii) administrative activities (including start-up costs such as staff salaries) and administrative support expenses such as rent, office equipment, computers and other information technology or capital equipment;

(iii) monitoring and evaluation activities;

(iv) feasibility, design and other project preparatory studies; and

(v) other activities to facilitate Compact implementation as approved by MCC.

The allocation of Compact Implementation Funding is generally described in Annex II.

(b) In accordance with Section 7.5, this Section 2.2 and other provisions of this Compact applicable to Compact Implementation Funding will be effective, for purposes of Compact Implementation Funding only, as of the date this Compact is signed by MCC and the Government.

(c) Each Disbursement of Compact Implementation Funding is subject to satisfaction of the conditions precedent to such disbursement as set forth in Annex IV.

(d) If, after the first anniversary of this Compact entering into force, MCC determines that the full amount of Compact Implementation Funding available under Section 2.2(a) exceeds the amount that reasonably can be utilized for the purposes set forth in Section 2.2(a), MCC, by written notice to the Government, may withdraw the excess amount, thereby reducing the amount of the Compact Implementation Funding available under Section 2.2(a) (such excess, the ''*Excess CIF Amount''*). In such event, the amount of Compact Implementation Funding granted to the Government under Section 2.2(a) will be reduced by the Excess CIF Amount, and MCC will have no further obligations with respect to such Excess CIF Amount.

(e) MCC, at its option by written notice to the Government, may elect to grant to the Government an amount equal to all or a portion of such Excess CIF Amount as an increase in the Program Funding, and such additional Program Funding will be subject to the terms and conditions of this Compact applicable to Program Funding.

*Section 2.3 MCC Funding*

Program Funding and Compact Implementation Funding are collectively referred to in this Compact as ''*MCC Funding,''* and includes any refunds or reimbursements of Program Funding or Compact Implementation Funding paid by the Government in accordance with this Compact.

*Section 2.4 Disbursement*

In accordance with this Compact and the Program Implementation Agreement, MCC will disburse MCC Funding for expenditures incurred in furtherance of the Program (each instance, a ''*Disbursement''*). Subject to the satisfaction of all applicable conditions precedent, the proceeds of Disbursements will be made available to the Government, at MCC's sole election, by (a) deposit to one or more bank accounts established by the Government and acceptable to MCC (each, a ''*Permitted Account''*) or (b) direct payment to the relevant provider of goods, works or services for the implementation of the Program. MCC Funding may be expended only for Program expenditures.

*Section 2.5 Interest*

The Government will pay or transfer to MCC, in accordance with the Program Implementation Agreement, any interest or other earnings that accrue on MCC Funding prior to such funding being used for a Program purpose.

*Section 2.6 Government Resources; Budget*

(a) In accordance with MCC's *Guidelines for Country Contributions,* the Government will make a contribution towards meeting the Program Objective and Project Objectives of this Compact. Annex II describes such contribution in more detail. In addition, the Government will take all actions that are necessary to carry out the Government's responsibilities under this Compact.

(b) The Government will use its best efforts to ensure that all MCC Funding it receives or is projected to receive in each of its fiscal years is fully accounted for in its annual budget for the duration of the Program.

(c) The Government will not reduce the normal and expected resources that it would otherwise receive or budget from sources other than MCC for the activities contemplated under this Compact and the Program.

(d) Unless the Government discloses otherwise to MCC in writing, MCC Funding will be in addition to the resources that the Government would otherwise receive or budget for the activities contemplated under this Compact and the Program.

*Section 2.7 Limitations on the Use of MCC Funding*

The Government will ensure that MCC Funding is not used for any

purpose that would violate United States law or policy, as specified in this Compact or as further notified to the Government in writing or by posting from time to time on the MCC Web site at *www.mcc.gov* (the ''*MCC Web site''*), including but not limited to the following purposes:

(a) For assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(b) for any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(c) to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard, as further described in MCC's *Environmental Guidelines* and any guidance documents issued in connection with the guidelines posted from time to time on the MCC Web site or otherwise made available to the Government (collectively, the ''*MCC Environmental Guidelines''*); or

(d) to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

*Section 2.8 Taxes*

(a) Unless the Parties specifically agree otherwise in writing, the Government will ensure that all MCC Funding and GRDF Funding are free from the payment or imposition of any existing or future taxes, duties, levies, contributions or other similar charges (but not fees or charges for services that are generally applicable in Georgia, reasonable in amount and imposed on a non-discriminatory basis) (''*Taxes''*) of or in Georgia (including any such Taxes imposed by a national, regional, local or other governmental or taxing authority of or in Georgia). Specifically, and without limiting the generality of the foregoing, MCC Funding and GRDF Funding will be free from the payment of (i) any tariffs, customs duties, import taxes, export taxes, and other similar charges on any goods, works or services introduced into Georgia in connection with the Program or the activities of GRDF; (ii) sales tax, value added tax, excise tax, property transfer tax, and other similar charges on any transactions involving goods, works or services in connection with the Program or the activities of GRDF; (iii) taxes and other similar charges on ownership, possession or use of any property in connection with the Program or the activities of GRDF; and (iv) taxes and other similar charges on income, profits or gross receipts attributable to work performed in connection with the Program or the activities of GRDF and related social security taxes and other similar charges on all natural or legal persons performing work in connection with the Program or the activities of GRDF, except (x) natural persons who are residents of Georgia for taxation purposes (excluding non-Georgian citizens) and (y) legal persons formed under the laws of Georgia or any subsidiaries or branches thereof (but excluding MCA-Georgia and any other entity formed for the purpose of implementing the Government's obligations hereunder).

(b) The mechanisms that the Government will use to implement the tax exemption required by Section 2.8(a) are set forth in Annex VI. Such mechanisms may include exemptions from the payment of Taxes that have been granted in accordance with applicable law, refund or reimbursement of Taxes by the Government to MCC, MCA-Georgia or to the taxpayer, or payment by the Government to MCA-Georgia or MCC, for the benefit of the Program, of an agreed amount representing any collectible Taxes on the items described in Section 2.8(a). To the extent that there are Taxes not addressed in Annex VI, whether currently in force or established in the future, that MCC determines, in its sole discretion, are not being exempted by the Government in accordance with this Section 2.8(b), the Government hereby agrees that it will implement appropriate procedures (approved in writing by MCC) to ensure that such additional Taxes are exempted in accordance with this Section 2.8. For the avoidance of doubt, the identification (or lack of identification) of Taxes in Annex VI, or the description (or lack of description) of procedures to implement the required exemption from such Taxes in Annex VI, will in no way limit the scope of the tax exemption required by Section 2.8.

(c) If a Tax has been paid contrary to the requirements of Section 2.8(a) or Annex VI, the Government will refund promptly to MCC (or to another party as designated by MCC) the amount of such Tax in United States dollars or the currency of Georgia within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified in writing (whether by MCC or MCA-Georgia) that such Tax has been paid.

(d) No MCC Funding or GRDF Funding, proceeds thereof or Program Assets may be applied by the Government in satisfaction of its obligations under Section 2.8(c).

(e) MCA-Georgia will withhold all applicable Taxes on behalf of the staff of MCA-Georgia (excluding non-Georgian citizens).

**Article 3. Implementation**

*Section 3.1 Program Implementation Agreement*

The Parties will enter into an agreement providing further detail on the implementation arrangements, fiscal accountability and disbursement and use of MCC Funding, among other matters (the ''*Program Implementation Agreement''* or ''*PIA''*); and the Government will implement the Program in accordance with this Compact, the PIA, any other Supplemental Agreement and any Implementation Letter.

*Section 3.2 Government Responsibilities*

(a) The Government has principal responsibility for overseeing and managing the implementation of the Program.

(b) The Government hereby designates Millennium Challenge Account Georgia, a legal entity of public law under Georgian law, as the accountable entity to implement the Program and to exercise and perform the Government's right and obligation to oversee, manage and implement the Program, including without limitation, managing the implementation of Projects and their Activities, allocating resources and managing procurements. Such entity will be referred to herein as ''*MCA-Georgia,''* and has the authority to bind the Government with regard to all Program activities. The Government hereby also designates MCA-Georgia to exercise and perform the Government's rights and responsibilities to oversee, manage and implement the activities defined in the Grant and Implementation Agreement, dated as of July 13, 2012. The designation by this Section 3.2(b) will not relieve the Government of any obligations or responsibilities hereunder or under any related agreement, for which the Government remains fully responsible. MCC hereby acknowledges and consents to the designation in this Section 3.2(b).

(c) The Government will ensure that any Program Assets or services funded

in whole or in part (directly or indirectly) by MCC Funding or GRDF Funding are used solely in furtherance of this Compact and the Program unless MCC agrees otherwise in writing.

(d) The Government will take all necessary or appropriate steps to achieve the Program Objective and the Project Objectives during the Compact Term (including, without limiting Section 2.6(a), funding all costs that exceed MCC Funding and are required to carry out the terms hereof and achieve such objectives, unless MCC agrees otherwise in writing).

(e) The Government will ensure that the Program is implemented and that the Government carries out its obligations hereunder with due care, efficiency and diligence in conformity with sound technical, financial, and management practices, and in conformity with this Compact, the Program Implementation Agreement, each other Supplemental Agreement and the Program Guidelines.

(f) The Government grants to MCC a perpetual, irrevocable, royalty-free, worldwide, fully paid, assignable right and license to practice or have practiced on its behalf (including the right to produce, reproduce, publish, repurpose, use, store, modify, or make available) any portion or portions of Intellectual Property as MCC sees fit in any medium, now known or hereafter developed, for any purpose whatsoever.

*Section 3.3 Policy Performance*

In addition to undertaking the specific policy, legal and regulatory reform commitments identified in Annex I (if any), the Government will seek to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the MCA Act, and the selection criteria and methodology used by MCC.

*Section 3.4 Accuracy of Information*

The Government assures MCC that, as of the date this Compact is signed by the Government, the information provided to MCC by or on behalf of the Government in the course of reaching agreement with MCC on this Compact is true, correct and complete in all material respects.

*Section 3.5 Implementation Letters*

From time to time, MCC may provide guidance to the Government in writing on any matters relating to this Compact, MCC Funding or implementation of the Program (each, an ''*Implementation Letter*''). The Government will use such guidance in implementing the Program. The Parties may also issue jointly agreed-upon Implementation Letters to confirm and record their mutual understanding on aspects related to the implementation of this Compact, the PIA or other related agreements.

*Section 3.6 Procurement and Grants*

(a) The Government will ensure that the procurement of all goods, works and services by the Government or any Provider to implement the Program will be in accordance with the MCC Program Procurement Guidelines posted from time to time on the MCC Web site (the ''*MCC Program Procurement Guidelines*''). The MCC Program Procurement Guidelines include the following requirements, among others:

(i) Open, fair, and competitive procedures must be used in a transparent manner to solicit, award and administer contracts and to procure goods, works and services;

(ii) solicitations for goods, works, and services must be based upon a clear and accurate description of the goods, works and services to be acquired;

(iii) contracts must be awarded only to qualified contractors that have the capability and willingness to perform the contracts in accordance with their terms on a cost effective and timely basis; and

(iv) no more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, will be paid to procure goods, works and services.

(b) Unless MCC otherwise consents in writing, the Government will ensure that any grant issued in furtherance of the Program (each, a ''*Grant*'') is awarded, implemented and managed pursuant to open, fair and competitive procedures administered in a transparent manner acceptable to MCC. In furtherance of this requirement, and prior to the issuance of any Grant, the Government and MCC will agree upon written procedures to govern the identification of potential Grant recipients, including, without limitation, appropriate eligibility and selection criteria and award procedures. Such agreed procedures will be posted on the MCA-Georgia Web site.

*Section 3.7 Records; Accounting; Covered Providers; Access*

(a) Government Books and Records. The Government will maintain, and will use its best efforts to ensure that all Covered Providers maintain accounting books, records, documents and other evidence relating to the Program adequate to show, to MCC's satisfaction, the use of all MCC Funding and the implementation and results of the Program (''*Compact Records*''). In addition, the Government will furnish or cause to be furnished to MCC, upon its request, originals or copies of such Compact Records.

(b) Accounting. The Government will maintain and will use its best efforts to ensure that all Covered Providers maintain Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with MCC's prior written approval, other accounting principles, such as those (i) prescribed by the International Accounting Standards Board, or (ii) then prevailing in Georgia. Compact Records must be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any applicable legal requirements.

(c) Providers and Covered Providers. Unless the Parties agree otherwise in writing, a ''*Provider*'' is (i) any entity of the Government that receives or uses MCC Funding or any other Program Asset in carrying out activities in furtherance of this Compact or (ii) any third party that receives at least US$50,000 in the aggregate of MCC Funding (other than as salary or compensation as an employee of an entity of the Government) during the Compact Term. A ''*Covered Provider*'' is (i) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$300,000 or more of MCC Funding in any Government fiscal year or any other non-United States person or entity that receives, directly or indirectly, US$300,000 or more of MCC Funding from any Provider in such fiscal year, or (ii) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$500,000 or more of MCC Funding in any Government fiscal year or any other United States person or entity that receives, directly or indirectly, US$500,000 or more of MCC Funding from any Provider in such fiscal year.

(d) Access. Upon MCC's request, the Government, at all reasonable times, will permit, or cause to be permitted, authorized representatives of MCC, an authorized Inspector General of MCC (''*Inspector General*''), the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or the Government to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect facilities, assets and activities

funded in whole or in part by MCC Funding.

*Section 3.8 Audits; Reviews*

(a) Government Audits. Except as the Parties may agree otherwise in writing, the Government will, on an annual basis (or on a more frequent basis if requested by MCC in writing), conduct, or cause to be conducted, financial audits of all disbursements of MCC Funding covering the period from signing of this Compact until the following December 31 and covering each twelve-month period thereafter ending December 31, through the end of the Compact Term. In addition, upon MCC's request, the Government will ensure that such audits are conducted by an independent auditor approved by MCC and named on the list of local auditors approved by the Inspector General or a United States-based certified public accounting firm selected in accordance with the *Guidelines for Financial Audits Contracted by the Millennium Challenge Corporation's Accountable Entities* (the ''*Audit Guidelines''*) issued and revised from time to time by the Inspector General, which are posted on the MCC Web site. Audits will be performed in accordance with the Audit Guidelines and be subject to quality assurance oversight by the Inspector General. Each audit must be completed and the audit report delivered to MCC no later than 90 days after the applicable audit period, or such other period as the Parties may otherwise agree in writing.

(b) Audits of Other Entities. The Government will ensure that MCC financed agreements between the Government or any Provider, on the one hand, and (i) a United States nonprofit organization, on the other hand, state that the United States nonprofit organization is subject to the applicable audit requirements contained in OMB Circular A–133, *Audits of States, Local Governments, and Non-Profit Organizations,* issued by the United States Office of Management and Budget; (ii) a United States for-profit Covered Provider, on the other hand, state that the United States for-profit organization is subject to audit by the applicable United States Government agency, unless the Government and MCC agree otherwise in writing; and (iii) a non-US Covered Provider, on the other hand, state that the non-US Covered Provider is subject to audit in accordance with the Audit Guidelines.

(c) Corrective Actions. The Government will use its best efforts to ensure that each Covered Provider (i) takes, where necessary, appropriate and timely corrective actions in response to audits; (ii) considers whether the results of the Covered Provider's audit necessitates adjustment of the Government's records; and (iii) permits independent auditors to have access to its records and financial statements as necessary.

(d) Audit by MCC. MCC will have the right to arrange for audits of the Government's use of MCC Funding.

(e) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any audits, reviews or evaluations required under this Compact.

**Article 4. Communications**

*Section 4.1 Communications*

Any document or communication required or submitted by either Party to the other under this Compact will be in writing and, except as otherwise agreed with MCC, in English. All such documents or communication must be submitted to the address of each Party set forth below or to such other address as may be designated by any Party in a written notice to the other Party.

To MCC:

Millennium Challenge Corporation, Attention: Vice President, Compact Operations, (with a copy to the Vice President and General Counsel), 875 Fifteenth Street NW., Washington, DC 20005, United States of America, Telephone: (202) 521–3600, Facsimile: (202) 521–3700, Email: *VPOperations@mcc.gov* (Vice President, Compact Operations), *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel).

To the Government:

Ministry of Finance, Attention: Minister of Finance, (with a copy to the Department of Public Debt and External Financing), 16, Vakhtang Gorgasali Street, Tbilisi 0114, Georgia, Telephone: +995 32 2261 444; +995 32 2261 461, Facsimile: +995 32 2261 088; +995 32 2261 461.

To MCA-Georgia:

MCA-Georgia, Attention: Chief Executive Officer, (with a copy to the General Counsel) 4, Sanapiro Street, Tbilisi 0105, Georgia, Telephone: +995 32 2281 185; +995 32 2281 174.

*Section 4.2 Representatives*

For all purposes of this Compact, the Government will be represented by the individual holding the position of, or acting as, Minister of Finance of Georgia, and MCC will be represented by the individual holding the position of, or acting as, Vice President, Compact Operations (each of the foregoing, a ''*Principal Representative''*). Each Party, by written notice to the other Party, may designate one or more additional representatives (each, an ''*Additional Representative''*) for all purposes of this Compact except as specified in Section 6.2. The Government hereby designates the Chief Executive Officer of MCA-Georgia as an Additional Representative. MCC hereby designates the Deputy Vice President, Department of Compact Operations, EAPLA, as an Additional Representative. A Party may change its Principal Representative to a new representative that holds a position of equal or higher authority upon written notice to the other Party.

*Section 4.3 Signatures*

Signatures to this Compact and to any amendment to this Compact will be original signatures appearing on the same page or in an exchange of letters or diplomatic notes. With respect to all documents arising out of this Compact (other than the Program Implementation Agreement and any other legally binding international agreement) and amendments thereto, signatures may be delivered by facsimile or electronic mail and in counterparts and will be binding on the Party delivering such signature to the same extent as an original signature would be.

**Article 5. Termination; Suspension; Expiration**

*Section 5.1 Termination; Suspension*

(a) Either Party may terminate this Compact without cause in its entirety by giving the other Party thirty (30) days' prior written notice. MCC may also terminate this Compact or MCC Funding without cause in part by giving the Government thirty (30) days' prior written notice.

(b) MCC may, immediately, upon written notice to the Government, suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation related thereto, if MCC determines that any circumstance identified by MCC, as a basis for suspension or termination (as notified in writing to the Government) has occurred, which circumstances include but are not limited to the following:

(i) The Government fails to comply with its obligations under this Compact or any other agreement or arrangement entered into by the Government in connection with this Compact or the Program;

(ii) an event or series of events has occurred that makes it probable that the Program Objective or any of the Project Objectives will not be achieved during the Compact Term or that the Government will not be able to perform its obligations under this Compact;

(iii) a use of MCC Funding or continued implementation of this Compact or the Program violates applicable law or United States Government policy, whether now or hereafter in effect;

(iv) the Government or any other person or entity receiving MCC Funding or using Program Assets is engaged in activities that are contrary to the national security interests of the United States;

(v) an act has been committed or an omission or an event has occurred that would render Georgia ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of such act or any other provision of law;

(vi) the Government has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Georgia for assistance under the MCA Act; and

(vii) the Government or another person or entity receiving MCC Funding or using Program Assets is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

*Section 5.2 Consequences of Termination, Suspension or Expiration*

(a) Upon the suspension or termination, in whole or in part, of this Compact or any MCC Funding, or upon the expiration of this Compact, the provisions of Section 4.2 of the Program Implementation Agreement will govern the post-suspension, post-termination or post-expiration treatment of MCC Funding, any related Disbursements and Program Assets. Any portion of this Compact, MCC Funding, the Program Implementation Agreement or any other Supplemental Agreement that is not suspended or terminated will remain in full force and effect.

(b) MCC may reinstate any suspended or terminated MCC Funding under this Compact if MCC determines that the Government or other relevant person or entity has committed to correct each condition for which MCC Funding was suspended or terminated.

*Section 5.3 Refunds; Violation*

(a) If any MCC Funding, any interest or earnings thereon, or any Program Asset is used for any purpose in violation of the terms of this Compact, then MCC may require the Government to repay to MCC in United States Dollars the value of the misused MCC Funding, interest, earnings, or asset, plus interest within thirty (30) days after the Government's receipt of MCC's request for repayment. Interest will accrue from the date of the violation and will be calculated at the 10-year U.S. Treasury Note rate prevailing as of the close of business in Washington, DC as of the date of MCC's request for payment. The Government will not use MCC Funding, proceeds thereof or Program Assets to make such payment.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under Section 5.3(a) to obtain a refund will continue during the Compact Term and for a period of (i) five (5) years thereafter, or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

*Section 5.4 Survival*

The Government's responsibilities under this Section and Sections 2.7, 3.2(f), 3.7, 3.8, 5.2, 5.3, and 6.4 will survive the expiration, suspension or termination of this Compact.

**Article 6. Compact Annexes; Amendments; Governing Law**

*Section 6.1 Annexes*

Each annex to this Compact constitutes an integral part hereof, and references to ''Annex'' mean an annex to this Compact unless otherwise expressly stated.

*Section 6.2 Amendments*

(a) The Parties may amend this Compact by written agreement. Such agreement will specify how it enters into force. The Additional Representatives will not represent the Parties for such purposes.

(b) Notwithstanding Section 6.2(a), the Parties may modify Annexes I–V, by written agreement signed by the Parties which will enter into force upon signature, to (i) suspend, terminate or modify any Project or Activity, or to create a new project; (ii) change the allocations of funds as set forth in Annex II as of the date hereof (including to allocate funds to a new project); (iii) modify the implementation framework described in Annex I; or (iv) add, delete or waive any condition precedent described in Annex IV; *provided that,* in each case, any such modification (1) is consistent in all material respects with the Program Objective and Project Objectives; (2) does not cause the amount of Program Funding to exceed the aggregate amount specified in Section 2.1 (as may be modified by operation of Section 2.2(e)); (3) does not cause the amount of Compact Implementation Funding to exceed the aggregate amount specified in Section 2.2(a); (4) does not reduce the Government's responsibilities or contribution of resources required under Section 2.6; and (5) does not extend the Compact Term.

*Section 6.3 Inconsistencies*

In the event of any conflict or inconsistency between:

(a) any Annex and any of Articles 1 through 7, such Articles 1 through 7, as applicable, will prevail; or

(b) this Compact and any other agreement between the Parties regarding the Program, this Compact will prevail.

*Section 6.4 Governing Law*

This Compact is an international agreement and as such will be governed by the principles of international law.

*Section 6.5 Additional Instruments*

Any reference to activities, obligations or rights undertaken or existing under or in furtherance of this Compact or similar language will include activities, obligations and rights undertaken by, or existing under or in furtherance of any agreement, document or instrument related to this Compact and the Program.

*Section 6.6 References to MCC Web site*

Any reference in this Compact, the PIA or any other agreement entered into in connection with this Compact, to a document or information available on, or notified by posting on the MCC Web site will be deemed a reference to such document or information as updated or substituted on the MCC Web site from time to time.

*Section 6.7 References to Laws, Regulations, Policies and Guidelines*

Each reference in this Compact, the PIA or any other agreement entered into in connection with this Compact, to a law, regulation, policy, guideline or similar document will be construed as a reference to such law, regulation, policy, guideline or similar document as it may, from time to time, be amended, revised, replaced, or extended and will include any law, regulation, policy, guideline or similar document issued under or otherwise applicable or related to such law, regulation, policy, guideline or similar document.

*Section 6.8 MCC Status*

MCC is a United States government corporation acting on behalf of the United States Government in the implementation of this Compact. MCC and the United States Government assume no liability for any claims or loss arising out of activities or omissions under this Compact. The Government

waives any and all claims against MCC or the United States Government or any current or former officer or employee of MCC or the United States Government for all loss, damage, injury, or death arising out of activities or omissions under this Compact, and agrees that it will not bring any claim or legal proceeding of any kind against any of the above entities or persons for any such loss, damage, injury, or death. The Government agrees that MCC and the United States Government or any current or former officer or employee of MCC or the United States Government will be immune from the jurisdiction of all courts of Georgia for any claim or loss arising out of activities or omissions under this Compact.

**Article 7. Entry Into Force**

*Section 7.1 Domestic Requirements*

Before this Compact enters into force, the Government will proceed in a timely manner to complete any domestic procedures necessary for entry into force of this Agreement.

*Section 7.2 Conditions Precedent to Entry Into Force*

Before this Compact enters into force:

(a) The Program Implementation Agreement must have been signed by the parties thereto;

(b) The Government must have delivered to MCC:

(i) A letter signed and dated by the Principal Representative of the Government, or such other duly authorized representative of the Government acceptable to MCC, confirming that the Government has completed its domestic requirements necessary for this Compact to enter into force and that the other conditions precedent to entry into force in this Section 7.2 have been met;

(ii) a signed legal opinion from the Ministry of Justice of Georgia (or such other legal representative of the Government acceptable to MCC), in form and substance satisfactory to MCC; and

(iii) complete, certified copies of all decrees, legislation, regulations or other governmental documents relating to the Government's domestic requirements necessary for this Compact to enter into force and the satisfaction of Section 7.1, which MCC may post on its Web site or otherwise make publicly available.

(c) The Government must have developed an implementation plan to build capacity in Georgian public universities to offer international standard STEM degrees and/or Accreditation Board for Engineering and Technology (''*ABET*'') accreditation for the STEM Higher Education Project in form and substance acceptable to MCC; and

(d) MCC shall not have determined that after signature of this Compact, the Government has engaged in a pattern of actions inconsistent with the eligibility criteria for MCC Funding.

*Section 7.3 Date of Entry Into Force*

This Compact will enter into force on the date of the letter from MCC to the Government in an exchange of letters confirming that MCC has completed its domestic requirements for entry into force of this Compact and that the conditions precedent to entry into force in Section 7.2 have been met.

*Section 7.4 Compact Term*

This Compact will remain in force for five (5) years after its entry into force, unless terminated earlier under Section 5.1 (the ''*Compact Term*'').

*Section 7.5 Provisional Application*

Upon signature of this Compact, and until this Compact has entered into force in accordance with Section 7.3, the Parties will provisionally apply the terms of this Compact; *provided that,* no MCC Funding, other than Compact Implementation Funding, will be made available or disbursed before this Compact enters into force.

In Witness Whereof, the undersigned, having been duly authorized, have signed this Compact.

Done at Tbilisi, Georgia, this 26th day of July, 2013, in the English language only.

For the United States of America, acting through the Millennium Challenge Corporation, Name: Daniel W. Yohannes, Title: Chief Executive Officer.

For Georgia, acting through its Government, Name: Maia Panjikidze, Title: Minister of Foreign Affairs.

**Annex I Program Description**

This Annex I describes the Program that MCC Funding will support in Georgia during the Compact Term.

*A. Program Overview*

1. Background and Consultative Process

(a) Background

This is the second MCC compact with Georgia, following a US$395 million compact, which entered into force in April 2006 and was completed in April 2011, and focused on certain infrastructure improvements (roads, water networks and energy rehabilitation) and rural private enterprise development through a grant program and an investment fund (the ''*First Compact*'').

The First Compact supplemented efforts by the Government to promote stability, good government and private enterprise development in the years following the 2004 Rose Revolution. The infrastructure development goals of the First Compact remain key facets of a broader Georgian strategy to reduce poverty in the country. Likewise, many of the investments made by the investment fund, the Georgia Regional Development Fund, survive and thereby continue to provide critical capital to small and medium enterprises. Among the lessons learned from the First Compact were the effectiveness of MCA-Georgia as an MCA Entity and a model for core operations such as procurement, finance, and government and public relations that offers significant advantages in terms of transparency and independence. The productive nature of MCC's partnership with the Government during the First Compact set the stage for the development of the second Compact. Georgia was selected eligible for this second Compact in December 2012 after an iterative three-year process, throughout which MCC encouraged the Government to continue working to refine its proposals.

Despite the advances achieved by the First Compact, the Government conducted an analysis of constraints to economic growth in spring 2011 and identified the low quality of human capital as a significant constraint to economic growth. The lack of human capital is particularly acute in the STEM fields. The Compact aims to reduce this human capital constraint to economic growth.

(b) Consultative Process

Throughout the development of the second Compact, the Government engaged in an inclusive consultative process, conducting consultations across Georgia and in the United States. Together with MCC in the course of compact development, the Government has utilized several formal mechanisms to solicit direct input to inform project selection and design from relevant stakeholders at different steps in the process.

The Government's analysis of constraints to economic growth was published in spring 2011 in draft form and open for public comment. At that stage formal consultations were held with non-governmental organizations and think tanks to solicit feedback. The Economic Policy Research Center, a Georgia-based non-governmental organization, provided written comments that helped shaped the project selection process, leading to

further investigation and exploration of projects across the education sector that could address the binding constraint of human capital. Other key consultations that took place during the early stages of compact development include three sets of consultative meetings with over 50 different international higher education institutions in Georgia and the U.S. to help define the STEM Higher Education Project.

The Georgian private sector was also consulted extensively, with Government and/or MCC officials meeting with more than 70 private sector representatives throughout compact development, primarily to discuss the areas where gaps in the supply of qualified potential employees/Georgian university graduates and the demands of the labor market were perceived. Private sector demand for skilled, educated technicians was gauged more formally through a wage survey of Georgian AmCham members conducted by a Georgia-based research institution, which contributed directly to the economic analysis.

Public consultations have and are expected to continue well into the design and implementation phase. As part of the Industry-led Skills and Workforce Development Project, an open invitation to interested parties in several Georgian cities resulted in several outreach sessions in December 2012, that were widely attended by a diverse group of private industry representatives, non-governmental organizations, and education institutions. Following a ''Call for Ideas,'' the Government received over 130 proposals for outlining priorities and proposed investments to improve professional training. These have been assessed by a panel to further define the MCC investment proposal.

2. Description of Program and Beneficiaries

(a) Description

The Program consists of three Projects: (i) The Improving General Education Quality Project; (ii) the Industry-led Skills and Workforce Development Project; and (iii) the STEM Higher Education Project. These projects respond to constraints to economic growth by aiming to improve the poor quality of human capital in Georgia.

Each Project is generally described in Part B of this Annex I. Part B also identifies one or more of the Activities that will be undertaken in furtherance of each Project as well as the various sub-activities within each Activity.

(b) Beneficiaries

Each Project of the Compact is intended to further poverty reduction through economic growth. Specific beneficiaries are identified in greater detail in the Project descriptions in Part B of this Annex I. A brief summary of the beneficiaries of each Project is as follows:

(i) The beneficiaries of the Improving General Education Quality Project in the first year of implementation are estimated to be approximately 186,400 students. Students entering these schools each year will add to the total number of beneficiaries with approximately 870,000 student beneficiaries projected over a 20 year project lifetime. Including family members over twenty years and adjusting for possible double counting, total beneficiaries are estimated at 1.6 million.

(ii) The number of beneficiaries of the Industry-led Skills and Workforce Development Project is estimated to be 26,000. Beneficiaries will likely be from poorer households, the population that has traditionally taken advantage of technical vocational training. This Project is also expected to strengthen sector policy, to facilitate the creation of new programs, and to promote the uptake of best practice throughout the sector.

(iii) The number of student beneficiaries from the STEM Higher Education Project over twenty years is estimated at 8,500. Including family members, total beneficiaries are estimated at 31,000.

3. Environmental and Social Safeguards

All of the Projects will be implemented in compliance with the MCC Environmental Guidelines, the International Finance Corporation Performance Standards on Environmental and Social Sustainability, and the MCC Gender Policy, and in a manner acceptable to MCC. The Government also will ensure that the Projects comply with all national environmental laws and regulations, licenses and permits, except to the extent such compliance would be inconsistent with this Compact. Specifically, the Government will: (a) Develop, adopt, and implement an Environment and Social Management System for MCA-Georgia and other Government agencies, as necessary, for all Compact activities, which will be in form and substance satisfactory to MCC; (b) cooperate with or complete, as the case may be, any ongoing environmental and social impact assessments, or if necessary undertake and complete any additional environmental and social assessments, environmental and social management plans, environmental and social audits, resettlement policy frameworks, and resettlement action plans, each in form and substance satisfactory to MCC; (c) ensure that Project-specific environmental and social management plans are developed and all relevant measures contained in such plans are integrated into project design, and the applicable procurement documents and associated finalized contracts, in each case, in form and substance satisfactory to MCC; and (d) implement to MCC's satisfaction appropriate environmental and social mitigation measures identified in such assessments or plans or developed to address environmental and social issues identified during compact implementation. Unless MCC agrees otherwise in writing, the Government will fund all necessary costs of environmental and social mitigation measures (including, without limitation, costs of resettlement) not specifically provided for, or that exceed the MCC Funding specifically allocated for such costs in, the Detailed Financial Plan for any Project.

To maximize the positive social impacts of the Projects, address cross-cutting social and gender issues such as human trafficking, child and forced labor, and HIV/AIDS, and ensure compliance with the MCC Gender Policy the Government will: (x) Develop a comprehensive social and gender integration plan which, at a minimum, incorporates the findings of a comprehensive social and gender analysis, identifies approaches for regular, meaningful and inclusive consultations with women and other vulnerable/underrepresented groups, consolidates the findings and recommendations of Project-specific social and gender analyses and sets forth strategies for incorporating findings of the social and gender analyses into final Project designs as appropriate (''*Social and Gender Integration Plan*''); and (y) ensure, through monitoring and coordination during implementation, that final Activity designs, construction tender documents, other bidding documents and implementation plans are consistent with and incorporate the outcomes of the social and gender analyses and Social and Gender Integration Plan.

*B. Description of Projects*

Set forth below is a description of each of the Projects that the Government will implement, or cause to be implemented, using MCC Funding to

advance the applicable Project Objective. In addition, specific activities that will be undertaken within each Project (each, an ''*Activity*''), including sub-activities, are also described.

1. Improving General Education Quality Project

(a) Summary of Project and Activities

The Improving General Education Quality Project consists of three Activities that target areas where the Georgian education sector needs the most support: Physical environment, secondary school teacher subject knowledge and pedagogical skills, school management capacity, and education assessments.

To increase the impact and sustainability of the Improving General Education Quality Project, MCA-Georgia will work to develop partnerships with the private sector to promote private investment in and around the Project. Areas for partnership include but are not limited to teacher and school leader professional development, curriculum and learning platforms, and other innovations in STEM, ICT, and English-language education.

(i) Improved Learning Environment Infrastructure Activity

The Improved Learning Environment Infrastructure Activity will rehabilitate approximately 130 existing Georgian public school facilities. Many Georgian public schools were built in the Soviet era and have been largely neglected due to the absence of any significant maintenance program. This has resulted in the school facilities being in a very poor physical condition including internal utilities such as heating, electrical, water supply and sanitation systems. The Government formed the Educational and Scientific Infrastructure Development Agency (''*ESIDA*'') within the Ministry of Education and Science of Georgia (''*MoES*'') to address issues related to school maintenance, rehabilitation and building of new school facilities.

The Improved Learning Environment Infrastructure Activity will involve the full internal and external rehabilitation of selected school facilities, utility upgrades, and provision of laboratories. Such an approach addresses the key elements correlating with improved educational performance, including human comfort, indoor air quality, and adequate lighting.

Using a transparent school selection process, the Government and MCC identified well-utilized schools in poor physical condition that served a high share of Socially Vulnerable students; these schools will be targeted for rehabilitation under this Activity over the course of the Compact Term. This selection of schools was based on a formula that prioritizes schools according to their physical condition (dilapidated physical infrastructure), social vulnerability (higher proportion of Socially Vulnerable students), number of students enrolled and utilization rate.

MCA-Georgia and ESIDA will develop and enter into an Implementing Entity Agreement (in form and substance satisfactory to MCC) that will establish the duties and obligations associated with implementation. For the first phase of work, MCA-Georgia will manage the financial resources for this Activity.

The establishment of an Operations and Maintenance (''*O&M*'') program in the Georgian school system is critical for ensuring the sustainability of MCC's investment and more broadly to the viability of Georgian schools. The Government has committed to developing and funding a strategy to address school O&M and a plan for its implementation (collectively, a ''*School O&M Plan*'') with MCC support. Key elements of this School O&M Plan include hiring permanent dedicated and technically qualified staff to develop and implement the School O&M Plan.

Establishing an MCC incentive fund. MCC will support this effort via an incentive fund of up to US$2,500,000 (Two Million, Five Hundred Thousand United States Dollars) to support school O&M activities. This funding will be contingent upon Government implementation of the School O&M Plan in a manner satisfactory to MCC. On an annual basis, MCC will evaluate ESIDA's performance against the School O&M Plan and will build on satisfactory performance by contributing MCC funding to O&M activities in the following year.

(ii) Training Educators for Excellence Activity

The objectives of the Training Educators for Excellence Activity are to: (1) Improve math, science, information and communication technology (''*ICT*''), and English teaching and learning in Grades 7–12; and (2) improve school management. This Activity will achieve the first objective by training approximately 23,400 math, science, ICT, and English teachers and improving upon the existing system of continuous professional development. To improve school-based professional development, the Activity will train up to one school-based professional development coordinator per public school, or approximately 2,000 such coordinators. Training these coordinators will provide new teacher orientation and continued school-based professional development to support the adoption of new knowledge and good teaching practices. To meet the second objective, this Activity will support the development of a continuous professional development framework for school principals and will provide training for up to 2,000 public school principals in Georgia.

The Implementing Entity for the Training Educators for Excellence Activity will be the Teacher Professional Development Center (''*TPDC*''), the MoES entity currently responsible for managing teacher professional development. Compact funding will support capacity building for TPDC, the development and provision of training materials and equipment, and the implementation of training courses. This Activity will also support the provision of appropriate teaching/learning technology and equipment for both schools and TPDC.

(iii) Education Assessment Support Activity

A rigorous testing and assessment system is needed to track student progress as well as to hold teachers, administrators, and national authorities accountable to Georgian stakeholders for achieving outcomes. National testing systems will be supplemented by participating in international benchmarking assessments such as the OECD's ''Program for International Student Assessment'' and Institute of Education Science's ''Trends in International Math and Science Study'' not only to verify national results but also to track the country's performance relative to the international community. Furthermore, international assessments can help Georgia monitor system-level achievement trends in a global context over time and to further improve teaching and learning through research and analysis of assessment data.

The National Assessment and Examination Center (''*NAEC*'') will be the Implementing Entity and a direct beneficiary of this Activity. This investment will support NAEC to carry out (1) national; (2) international; and (3) classroom assessments of student learning, with a focus on using the results for improving the quality of general education. The investment will support the effective implementation of approximately six national assessments, including secondary school mathematics and selected sciences. This Activity will fund preparation for and participation in five international assessments aimed at measuring student

and teacher performance in secondary school math, science, and ICT. Finally, NAEC will create a classroom assessment system for secondary school math and science teachers that will enable those teachers to assess their students' learning and use the results to improve teaching and learning in their classrooms. This system will build upon current USAID work in classroom assessment tools for primary school teachers described in paragraph (f) below.

The Government will submit for MCC review and approval a plan to address the recurrent, operational costs associated with MCC investments in the Training Educators for Excellence Activity and the Education Assessment Support.

(b) Beneficiaries

In general, beneficiaries of the Improving General Education Quality Project will be Georgian public school students in grades 7–12, who will benefit from both student assessments and teacher professional development. A smaller subset of students in grades 1–12 will also benefit from improvements to the physical infrastructure of their schools. Estimates for the number of beneficiaries will be established in more depth after detailed design. Identification of beneficiaries for each Activity is set forth below.

(i) Improved Learning Environment Infrastructure Activity

Assuming that approximately 130 schools are rehabilitated, with an average enrollment of 350 students per school, the initial beneficiaries of this Activity will be approximately 45,500 students. New students entering these schools each year will add to the total number of beneficiaries over a twenty year project lifetime. Most rehabilitated schools will have twelve grades; hence the average intake of new students each year is approximately 29 students per school, and will be approximately 3,800 students across 130 schools. Over a twenty year project lifetime this will add approximately 72,000 additional students for a total of 117,500 student beneficiaries. The Improved Learning Environment Infrastructure Activity has targeted poverty-reducing outcomes by balancing questions of economic efficiency, social equity, and stakeholder engagement. Half the beneficiaries will be girls and over 25 percent will be students from Socially Vulnerable families, and ethnic minorities.

(ii) Training Educators for Excellence Activity

The beneficiaries of this Activity will be students whose teachers take part in professional development. It is envisioned that public secondary school math, science, ICT and English teachers will receive training, benefitting students in grades 7–12 over the twenty-year expected lifetime of the Activity. In 2012, total enrollment in grades 7–9 was 134,900 and in grades 10–12, 113,600 students. Assuming an implementation success rate of 75 percent, 101,200 lower-secondary and 85,200 upper-secondary students (a total of 186,400 secondary students) will initially benefit from this program. With an annual intake into secondary grade 7 of approximately 48,000 students, and a 75 percent implementation rate, roughly 36,000 new student beneficiaries will enter secondary school each year. Over a twenty-year project lifetime, this will add an additional 684,000 student beneficiaries, for a total of 870,400 student beneficiaries. Including family members and adjusting for possible double counting, total beneficiaries are estimated at 1.6 million individuals over twenty years.

(iii) Education Assessment Support Activity

Beneficiaries will be the NAEC staff receiving capacity building and training. All teachers and students in Georgia may benefit from improved classroom assessments and improved policy due to the systemic feedback generated from national and international assessments. Key stakeholders within the Government will benefit from having information that allows them to make better-informed policy decisions.

(c) Environmental and Social Mitigation Measures

According to MCC Environmental Guidelines, the Improving General Education Quality Project is considered a ''Category B'' project. An Environmental and Social Assessment will be undertaken and an Environmental and Social Management Framework developed to address: the overall environmental and social issues associated with the school rehabilitation program; identify, screen and assess key risks; and propose appropriate measures to manage such risks and impacts. A Hazardous Waste Management Plan and an Occupational Health and Safety Plan will be required as part of the MCC-funded consultancy for feasibility and design. Effective measures for improving efficiency in the consumption of energy, water, and other resources and material inputs will be identified and incorporated into the design for rehabilitation.

No resettlement is anticipated in this Project since there is no requirement for new land or building additions at the existing schools.

(d) Corporate Social Responsibility

MCA-Georgia will develop a corporate, community, and social responsibility program that enables schools, community organizations and businesses to form partnerships to create enhanced environments for learning. This program will operate on principles of volunteerism, sponsorship and mentorship with the goal of increased support for education and improved classroom and school environments within the partner schools and the communities where they are located.

(e) Donor Coordination

The World Bank, USAID, German Society for International Cooperation (''*GIZ*''), United Nations Development Programme, and the European Union have recently funded activities including school construction and supporting the Government in refining general education financing. MCC and Government consultations with other donors involved in the education sector are expected to continue through the Compact term, ensuring that investments in the sector continue to be strategic and focused on the ultimate goal of increasing future incomes for Georgians. Beyond general coordination, the Education Assessment Support Activity is expected to build on the World Bank's national assessment support to the NAEC as well as the USAID primary school classroom assessment project.

(f) USAID

USAID recently performed a school rehabilitation project in Georgia and has provided valuable data and lessons learned from this work. In addition, USAID's Georgia Primary Education Project (''*G-PriEd*'') is supporting a variety of activities in the education sector including classroom diagnostic assessments in grades 1–6. G-PriEd provided a tool for Georgian teachers to assess students' knowledge and skills in critical competency areas of reading and mathematics. It will be used by teachers in the classroom to ensure that children are on track to meet standards. While the Georgian national standards in reading and mathematics include a framework for formative assessment, there is no systematic assessment approach for diagnosing students'

performance in core reading and math competencies. G-PriEd's diagnostic assessment approach will be used to target skills in critical competency areas of reading and mathematics in the Georgian national curriculum and thus have a direct relation with curricula and instruction in Georgian schools. Teachers will be trained to carry out classroom diagnostics and will be able to use the tool for feedback to adjust ongoing teaching and learning in order to improve students' achievement of intended instructional outcomes. MCC plans to incorporate this approach and the lessons learned as part of its support for classroom assessments in grades 7–12. Building on USAID's work described above, MCC will strengthen NAEC to design and facilitate effective strategies for classroom-based assessments and develop materials, including sample tasks and tests that can be used by teachers to improve their own assessment practices.

(g) Sustainability

Use of the Implementing Entities (ESIDA, TPDC, and NAEC), an approach replicating that employed with success in the First Compact, will help to develop long-term organizational capacity in Georgia. Building organic capabilities is an important objective in order to increase the probability of the Project's sustainability.

The School O&M Plan to be developed by ESIDA will promote long-term maintenance for rehabilitated schools in order to maximize the useful life of investments.

(i) Improved Learning Environment Infrastructure Activity

The development and implementation of a comprehensive School O&M Plan, maintenance standards, institutional arrangement and budgetary process is a critical element of this Activity. The proposed School O&M Plan will be performed in close coordination with ESIDA to ensure human resources, program activities, implementation mechanisms and budgetary processes are well integrated and sustainable. ESIDA will hire sufficient technical staff dedicated to the Compact activities as well as provide the necessary office facilities to conduct the design activities.

(ii) Training Educators for Excellence Activity

This Activity will improve TPDC's capacity to engage in a broad range of teacher and principal continuing professional development. In the future, TPDC will be able to use experience gained during the Compact term to expand this model to all teachers. Increased Government funding dedicated to professional development will promote the long-term sustainability of professional development.

(iii) Education Assessment Support Activity

Over the course of the Compact, the staff of the NAEC will have executed a number of national and international assessments, gaining experience in planning and implementing ongoing assessments. This will help ensure that national and international assessments contribute to continued improvement of the general education system, particularly in support of ongoing curriculum revision and reform. A system for classroom assessments will have been created and NAEC will have built initial experience in running this system. Increased Government funding dedicated to assessments will promote the long-term sustainability of NAEC activities.

(h) Policy, Legal and Regulatory Reforms

MCC and the Government have focused on two areas in planning for policy reform relevant to the Compact: Operations and maintenance of infrastructure investments and international assessments.

(i) Improved Learning Environment Infrastructure Activity

With respect to future operations and maintenance of school infrastructure rehabilitated under this Project, the Government (specifically, ESIDA, and the Georgian Ministry of Finance) has agreed to develop and fund the School O&M Plan for the entire public school system, during and after the Compact term. This funding will be complemented by Compact-funded technical assistance to create and implement for the School O&M Plan and a matching O&M incentive fund through the Compact term. MCC and the Government will work together to transform O&M management practices to increase the sustainability of infrastructure investments.

(ii) Education Assessment Support Activity

High quality national and international assessments provide valuable information for monitoring learning achievement, such as the gaps between boys and girls or between urban and rural students. Support to NAEC will enable it to analyze educational outcomes, including gender and social differences in achievement, and to provide the MoES useful information for policymaking.

2. Industry-led Skills and Workforce Development Project

(a) Summary of Project and Activities

The Industry-led Skills and Workforce Development Project aims to improve the linkage between market-demanded skills and the supply of Georgians with technical skills relevant to the local economy. Investments to support Technical Vocational Education and Training (''*TVET*'') are necessary to address industry demand for skilled technicians and to reach potential beneficiaries who may not have the opportunity to obtain further education and training. The two activities proposed under this Project are therefore designed to (1) solicit innovative proposals from Georgian TVET providers for the establishment of new or the expansion of existing training programs to meet industry needs; and (2) to strengthen the Georgian TVET sector's national policy and provider practice with respect to industry engagement.

(i) Competitive Program Improvement Grants Activity

The objective of this Activity will be to provide an initial investment in programs that develop and expand innovative and effective approaches to employment-oriented skills development in Georgia through a competitive grants program. Given the complexities and dynamics of the Georgian labor market, a competitive grants program aims to incentivize TVET providers to engage local industry and will provide the necessary funding and technical assistance to overcome financial and capacity barriers to market entry, particularly in the more costly and complex STEM fields and agriculture.

The Competitive Program Improvement Grants Activity will award grants to develop new or expand existing TVET programs. This may include support to the following types of activities: curriculum development, new program piloting, instructor training, internship and job placement programs, teaching and learning materials, equipment modernization, and limited facilities rehabilitation. In addition to this development capital, technical assistance will be provided to promote quality proposals, build capacity, and ensure compliance with MCC policies. To receive grants, TVET providers and their industry partners will be required to show commitment through cash or in-kind contributions.

MCA-Georgia will work to ensure industry engagement through outreach and support for linking industry and providers.

(ii) Strengthening Sector Policy and Provider Practice Activity

In addition to direct support to TVET programs, there is a need to strengthen sector policy and provider practice with respect to industry engagement. At the national level, this Activity will provide technical assistance to the Government to strengthen sector policy to support industry engagement. At the provider level, existing good practices in industry engagement such as tracer studies and industry advisory boards will be identified and promoted across the sector to foster linkages and responsiveness to labor market needs.

Sector Strengthening: Building on the Government's recent reforms, a number of areas have been identified at the sector policy level where specific technical assistance to improve industry engagement and education quality may provide substantial systemic returns. The Government will ensure that targeted sector interventions build on past and on-going technical assistance provided by other donors.

Provider Practice: The Strengthening Sector Policy and Provider Practice Activity will identify and promote existing but isolated internationally accepted good practice within the sector. This will be achieved by supporting industry recognition awards, and strengthening, documenting, and disseminating these practices to other providers. Conferences in Georgia will be hosted to showcase and promote good practice. Technical assistance will be offered to providers interested in adopting good practice at their institutions.

Practices supported by the Strengthening Sector Policy and Provider Practice Activity will be linked to sector strengthening technical assistance. These linkages will provide a local context for industry engagement and local examples of how to enhance engagement in the Georgian TVET sector. Thus, national technical assistance will not be provided in isolation but together with developing provider practice.

(b) Beneficiaries

Estimates for the number of beneficiaries will be established in more depth after detailed design, though currently the number is approximately 26,000. Generally, beneficiaries will likely be from economically disadvantaged households, because that is the population that has traditionally taken advantage of technical vocational training.

Both TVET program improvements and wider usage of TVET best practice will benefit staff, teachers, and students of supported programs. The most direct impact will be to students who are able to obtain well-paid employment following their training. Industry will benefit from having a supply of trained labor to meet market demand. The target beneficiaries for the sector strengthening technical assistance will be the staff of the national policy entities and indirectly all provider staff, teachers, and students involved in the sector.

(c) Environmental and Social Mitigation Measures

According to MCC Environmental Guidelines, the Industry-led Skills and Workforce Development Project is considered a ''Category D'' project. MCA-Georgia and the grants manager will be required to develop and implement the Competitive Program Improvement Grants Activity in accordance with operational procedures that address environmental and social performance issues, including the screening and assessment of key environmental and social impacts, the development of appropriate mitigation measures for proposed investments, the monitoring of the adequacy of implementation of mitigation measures, and periodic reporting of environmental and social performance to MCA-Georgia. While the Project does not anticipate major TVET infrastructure rehabilitation, proposed investments will be assessed in broad terms to ensure that technical and environmental supporting infrastructure, such as sufficient structural capacity and adequate electrical, gas, water supply and sanitation facilities, is in place for the investments. Resettlement is not anticipated as part of this Project.

Given the importance of increasing employment in high demand technical areas, integration of gender and social equity objectives in technical and vocational education is a critical part of ensuring successful overall project outcomes. Substantial gender differences in STEM program participation, and in employment and remuneration, also point to the importance of TVET career counseling. Gender and social issues will be addressed through technical assistance and resources for implementing (i) national policies, and (ii) high priority TVET qualification providing programs. Social and gender integration will be a critical component of grant evaluation and of technical assistance to grant recipients. Guidelines for the competitive grants program will require that proposed program providers specify their strategies and approaches for ensuring that women and members of disadvantaged groups are equitably represented in these priority programs, drawing from the results of an MCC study on barriers to participation for women and vulnerable groups.

(d) Donor Coordination

There are a number of local and international donors active in the TVET sector. In the planning processes for this Compact MCC and MCA-Georgia have met regularly with donors, including UNDP, the World Bank, GIZ, the European Union, and other donors to ensure coordination of planning and leverage of existing donor activity in the design of activities. One example is the proposal for work in the Strengthening Sector Policy and Provider Practice Activity to build an industry engagement component to enhance the TVET strategy document completed by another donor. Engagement with other donors will be on-going.

(e) Sustainability

By creating stronger linkages between labor supply and demand at the national and provider-levels, investing in a knowledge system to identify and promote best practice, and rewarding industry-led program design, the Industry-led Skills and Workforce Development Project will promote sustainability of the programs financed through the Compact, as well as future programs in Georgia. Additionally, programs receiving grants must have a sustainability plan to ensure that Compact investments will result in programs that continue beyond the period of grant financing.

3. STEM Higher Education Project

(a) Summary of Project

Georgia has industrial, infrastructure, information technology, and transport related economic growth that requires well-educated graduates from STEM degree programs. While access to higher education is widespread, institutions in Georgia with STEM programs are not historically well-equipped to provide the skilled graduates needed by industry. In particular, there are two factors impeding the establishment of quality STEM programs in Georgia: (1) Outdated knowledge and approach of faculty educated largely under the Soviet system; and (2) the substantial cost in facilities and equipment necessary to establish a modern STEM program.

In order to achieve the delivery of high-quality STEM degree programs to

boost productivity and growth and increase employment opportunities, the STEM Higher Education Project plans to attract international university partner(s) to support the Government's effort to modernize STEM education. The objectives of this Project will be to build capacity in Georgian public universities and to offer international standard STEM degrees and/or Accreditation Board for Engineering and Technology (''*ABET*'') accreditation. International university partner(s) will also bring the needed experience to promote equitable participation for women and minorities in STEM programs.

(i) International Partner Selection

MCA-Georgia launched an open and competitive RFP to identify international universities interested in partnering with Georgian universities to offer STEM degrees. The RFP solicited proposals from international universities, alone or in consortia, that could offer international university STEM bachelor degree(s) in partnership with Georgian public universities. A technical evaluation panel selected three proposals from U.S. universities that will undertake detailed program development analyses and tasks that will be completed using Compact Implementation Funding, including development of a full technical implementation plan.

(ii) ABET Accreditation

MCC may also support STEM programs at Georgian public universities in obtaining accreditation from ABET in conjunction with or as an alternative to international university STEM bachelor degree(s) to achieve quality STEM education outcomes. ABET is the U.S. association that accredits university programs in applied science, computing, engineering, and engineering technology. ABET accreditation for Georgian institutions may require facility and equipment upgrades, curriculum development, professional development for professors, and institutional support.

(iii) Georgia Regional Development Fund

The Georgia Regional Development Fund is an independently managed investment fund created under the First Compact to provide capital to Georgian small and medium enterprises in the agribusiness and tourism sectors. Concurrently with the First Compact's expiration, GRDF began a five year wind-down period that will conclude on April 7, 2016, and as part of the conclusion of the First Compact the ownership interest in GRDF was transferred to the Service Agency of the Ministry of Finance of Georgia. Prior to its complete wind-down, GRDF may make distributions to the holder of the ownership interest, and at the conclusion of the wind-down will liquidate all of its assets and make a final distribution of the liquidation proceeds to the holder of the ownership interest. The Parties have agreed that proceeds from GRDF will be used to support the activities of the STEM Higher Education Project.

To facilitate GRDF's support of the STEM Higher Education Project, the Parties anticipate that its ownership interest will be transferred to MCA-Georgia and that MCA-Georgia will assume responsibility for managing the proceeds of GRDF distributions, provided that the Service Agency of the Ministry of Finance will remain responsible for any liabilities associated with the ownership interest that arose prior to the date of transfer. The management of GRDF is responsible for collection of proceeds. The ownership interest transfer, along with modifications to existing GRDF operational documents will be made pursuant to one or more agreements that must be in form and substance satisfactory to the Parties. In addition, MCC and the Government must agree to the specific uses of the GRDF proceeds in the Project before any expenditure of such proceeds. The Parties anticipate signing a Supplemental Agreement that will specify the terms of MCC and the Government's agreement on the use of GRDF proceeds, and that MCA-Georgia will develop operational guidelines for its management of the funds (including requirements for internal controls, auditing and reporting), all of which must be satisfactory in form and substance to MCC (collectively, the ''*New GRDF Operational Documents*''). In the event that MCA-Georgia receives a distribution from GRDF before the New GRDF Operational Documents have been finalized, MCA-Georgia will hold such proceeds in a segregated bank account at a financial institution acceptable to MCC. If any of the GRDF proceeds remain at the end of the Compact Term, they will be allocated to such uses as MCC and the Government may agree as part of the compact closure process.

(b) Beneficiaries

Beneficiaries are the students who will obtain a high-quality undergraduate degree in STEM disciplines. This will provide them with improved employment opportunities, higher salaries, and improved long-term prospects for professional growth in a STEM sector. The Project will focus on recruiting women as well as Socially Vulnerable students. Taking the average cohort size provided by the three selected respondents, an estimated 8,500 students would pass through the higher education program over twenty years. Including family members of the students, total beneficiaries are estimated at approximately 31,000 individuals. Estimates for the number of beneficiaries will be established in more depth after the program design phase.

(c) Environmental and Social Mitigation Measures

(i) Environmental and Social Performance

According to MCC Environmental Guidelines, this Activity is considered to be a ''Category B'' project, as minor environmental impacts may occur. Appropriate environmental and social assessment and mitigation measures and proper due diligence will be implemented in accordance with MCC Environmental Guidelines in order to ensure that these programs are well designed and will not result in adverse environmental health and safety impacts. Proposed investments should be assessed in broad terms to ensure that technical and environmental supporting infrastructure is in place for the investments, such as sufficient structural capacity and adequate electrical, gas, water supply and sanitation facilities. Based on the assessments, participating universities and Government agencies, as necessary, will develop and implement an environmental and social operations manual to ensure use of best practices regarding waste management, emergency preparedness, and occupational health and safety.

(ii) Access

A major challenge in higher education is women's self-selection into non-STEM concentrations (e.g., women were 27 percent of enrollees in engineering in 2009) and the low share of language minority and Socially Vulnerable students pursuing higher education. Disadvantaged students, who often cannot afford higher education and/or lack the level of general education needed to access it, may not benefit from this Project. This risk will be partially mitigated through the proposed Improving General Education Quality Project, designed to enable access to higher education for traditionally disadvantaged students.

MCA-Georgia also will help the international university partner to

develop private sector support for scholarships and endowments to help disadvantaged students. The Government has also expressed a commitment to providing scholarships to students. One criterion for selecting the three qualified international universities was their demonstrated experience in recruiting and retaining female and Socially Vulnerable students into STEM programs. In addition, the Project will address gender and social imbalances in supported STEM programs by (1) implementing activities based on the findings and recommendations of studies that identify barriers to female and Socially Vulnerable students' participation in STEM programs; (2) ensuring that higher education programs supported by the Compact include specific activities for outreach, mentoring, and career counseling programs directed toward women, minorities, and disadvantaged student populations; and (3) needs-based scholarships. Ethnic minority students accepted into the program will have a year to study Georgian before starting classes, in line with the current Government policy.

(d) Sustainability

The universities and their Georgian partners will be required to present clear and feasible business plans for how the programs will be maintained after the Compact funding period. Program proposals must demonstrate the long-term viability of programs at sustainable operating cost levels. The capacity building of Georgian public universities will improve their ability to provide high-quality STEM education in the future or to achieve and maintain ABET accreditation. To promote sustainability, the Government has committed to provide funding for universities over twenty years, tied to student enrollment, in line with Government policy. Moreover, as noted above, the Government has agreed that proceeds from GRDF will be allocated to support the long term sustainability of the STEM Higher Education Project.

To further increase the impact and sustainability of the STEM Higher Education Project, MCA-Georgia will work to develop private sector engagement and partnerships between the selected consortium and businesses. Examples of these partnerships may include arrangements in which companies advise the university partner on needed professional skills, contribute equipment and knowledge that the university needs to develop these skills, sponsor students and faculty with scholarships and endowments, and hire interns and graduating students.

Additionally, university partners have a strong interest in training professionals and helping them find jobs. The universities may carry out tracer studies to better understand job uptake and adjust programs accordingly. MCA-Georgia will also help university partner(s) to develop ties with businesses to assess market demand and place students in jobs.

(e) Policy, Legal and Regulatory Reforms

(i) University Accreditation Policy

Tertiary institutions obtain authorization and accreditation to deliver programs of study and issue diplomas and certificates recognized by Government and industry. Authorization decisions are made by the National Centre for Education Quality Enhancement (''*NCEQE*'') Council on Authorization of Education Institutions. Accreditation is an external evaluation process conducted by the NCEQE Educational Program Accreditation Council, which determines the compliance of an educational program with established standards. Only accredited programs are eligible to receive Government funding. MCC will work with NCEQE to strengthen capacity to carry out authorization and accreditation of higher education institutions.

*C. Implementation Framework*

*1. Accountable Entity*

(a) Structure and Establishment

The Government established an accountable entity, MCA-Georgia, as a legal entity of public law under the laws of Georgia. MCA-Georgia will act as the Government's permitted designee under the Compact. MCA-Georgia is not under the control of any state controlling body and it will have operational and legal independence, including, *inter alia,* the ability to (i) enter into contracts in its own name; (ii) sue and be sued; (iii) establish a bank account in its own name; (iv) expend MCC Funding; and (v) engage contractors, consultants and/or grantees, including, without limitation, a procurement and fiscal agent.

MCA-Georgia's internal operations are governed by a charter, which was required as part of the governmental decree establishing MCA-Georgia and by bylaws, which provide further detail on the internal operations of MCA-Georgia.

MCA-Georgia is administered, managed, and supported by the following bodies: (x) A supervisory board (the ''*Supervisory Board*''); (y) a management team (the ''*Management Team*''); and (z) one or more Stakeholders Committees (as defined below).

(b) Supervisory Board

The Supervisory Board will have ultimate responsibility for the oversight, direction, and decisions of MCA-Georgia, as well as the overall implementation of the Compact. It is comprised of seven voting members, plus two non-voting members. The Supervisory Board includes the following representatives/offices:

(i) Prime Minister (Chairman of the Supervisory Board);
(ii) Minister of Finance of Georgia;
(iii) Minister of Education and Science of Georgia;
(iv) Minister of Justice of Georgia;
(v) Minister of Foreign Affairs of Georgia;
(vi) Private sector representative; and
(vii) Civil (non-government) society representative.

In addition, an MCC representative and MCA-Georgia's Chief Executive Officer (CEO) serve as non-voting members of the Supervisory Board. The private sector and civil society representatives will be chosen by a transparent selection process approved by MCC.

(c) Management Team

The Management Team reports to the Supervisory Board and has principal responsibility for the day-to-day operations management of the Compact, including contracting, program management, financial management, reporting, and monitoring and evaluation. The Management Team is led by a CEO and as of the date of Compact signature is composed of the following directors and officers:

(i) Chief Executive Officer;
(ii) Chief Financial Officer;
(iii) Improving General Education Quality Project Director;
(iv) Tertiary Education Project Director;
(v) Chief Infrastructure Engineer;
(vi) Procurement Director;
(vii) Environmental and Social Performance Director;
(viii) General Counsel;
(ix) Monitoring and Evaluation Director;
(x) Gender and Social Assessment Director; and
(xi) Business, Government and Public Relations Director.

(d) Stakeholders' Committee(s)

MCA-Georgia will be assisted by one or more stakeholders' committees, the composition of which is currently under discussion with the Government (the ''*Stakeholders' Committee*''). The

Stakeholders' Committee(s) will be responsible for continuing the consultative process throughout implementation of the Compact. While the Stakeholders' Committee(s) will not have any decision-making authority, the Stakeholders' Committee(s) will be responsible for reviewing, at the request of the Board or the management unit, certain reports, agreements, and documents related to the implementation of the Compact in order to provide advice and input to MCA-Georgia regarding the implementation of the Program. The Stakeholders' Committee(s) may be composed of, *inter alia,* program beneficiaries, regional and local government representatives, entities with an interest or involvement in the implementation of the Compact, key NGOs, and any applicable civil society and private sector representatives.

2. Implementing Entities

Subject to the terms and conditions of this Compact, the Program Implementation Agreement and any other related agreement entered into in connection with this Compact, as noted above the Government intends to engage several entities of the Government to implement and carry out specified Activities (or a component thereof) under this Compact (each, an ''*Implementing Entity*''). The appointment of any Implementing Entity will be subject to review and approval by MCC. The Government will ensure that the roles and responsibilities of each Implementing Entity and other appropriate terms are set forth in an agreement, in form and substance satisfactory to MCC (each an ''*Implementing Entity Agreement*'').

3. Fiscal Agent

Unless MCC agrees otherwise in writing, the Government will engage a fiscal agent (a ''*Fiscal Agent*'') which will be responsible for assisting the Government with its fiscal management and assuring appropriate fiscal accountability of MCC Funding, and whose duties will include those set forth in the Program Implementation Agreement and such agreement as the Government enters into with the Fiscal Agent, which agreement will be in form and substance satisfactory to MCC.

4. Procurement Agent

Based upon an assessment of local capacity and previous experience from the First Compact, an internal MCA-Georgia procurement unit will manage Compact procurements. A procurement director who has the requisite skills and experience to manage the procurement processes planned for this Compact (the ''*Procurement Director*'') has been hired by MCA-Georgia. In addition, a budget for procurement support consulting services is included for the first two years of the Compact to assist with the greater workload during this period. The Procurement Director will assure that MCA-Georgia adheres to the procurement standards set forth in the MCC Program Procurement Guidelines and ensure procurements are consistent with the procurement plan adopted by the Government pursuant to the Program Implementation Agreement, unless MCC agrees otherwise in writing. MCC may require that the Government engage an independent Procurement Agent during the Compact Term.

**Annex II Multi-Year Financial Plan Summary**

This Annex II summarizes the Multi-Year Financial Plan for the Program.

*1. General*

A multi-year financial plan summary (''*Multi-Year Financial Plan Summary*'') is attached hereto as Exhibit A to this Annex II. By such time as specified in the Program Implementation Agreement, the Government will adopt, subject to MCC approval, a multi-year financial plan that includes, in addition to the multi-year summary of estimated MCC Funding and the Government's contribution of funds and resources, the annual and quarterly funding requirements for the Program (including administrative costs) and for each Project, projected both on a commitment and cash requirement basis.

*2. Government Contribution*

During the Compact Term, the Government will make contributions, relative to its national budget and taking into account prevailing economic conditions, as are necessary to carry out the Government's responsibilities under Section 2.6(a) of this Compact. These contributions may include in-kind and financial contributions (including obligations of Georgia on any debt incurred toward meeting these contribution obligations). To meet this obligation the Government has developed a budget over the Compact Term to allocate resources to each of the Projects including financial support for (a) implementing entity costs related to the management of the School O&M Plan; (b) the development of higher education STEM degrees; (c) capital equipment for MCC rehabilitated schools; (d) teacher training and assessments; (e) rehabilitation of public TVET facilities; (f) computers for educator professional development, as well as in-kind contributions of real property to be used for Program purposes; and (g) forgone taxes related to GRDF proceeds. The Government anticipates making contributions of approximately US$21,000,000 (or 15 percent of the amount of MCC Funding provided under this Compact) over the Compact Term. Such contribution will be in addition to the Government's spending allocated toward such activities in its budget for the year immediately preceding the establishment of this Compact. The Government's contribution will be subject to any legal requirements in Georgia for the budgeting and appropriation of such contribution, including approval of the Government's annual budget by its legislature. The Parties may set forth in the Program Implementation Agreement or other appropriate Supplemental Agreements certain requirements regarding this Government contribution, which requirements may be conditions precedent to the Disbursement of MCC Funding. During implementation of the Program, the Government's contributions may be changed or new contributions added with MCC approval; *provided that,* the modified or new contributions continue to advance the Project Objectives.

EXHIBIT A—MULTI-YEAR FINANCIAL PLAN SUMMARY

[US$]

| Component | CIF | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Total |
|---|---|---|---|---|---|---|---|
| 1. Improving General Education Quality Project: | | | | | | | |
| (A) Improved Learning Environment Infrastructure Activity | ..... | 5,400,000 | 16,200,000 | 16,200,000 | 16,200,000 | ..... | 54,000,000 |
| (i) Operations and Maintenance Sub-activity | ..... | ..... | ..... | 500,000 | 1,000,000 | 1,000,000 | 2,500,000 |
| (B) Training Educators for Excellence Activity | ..... | 1,100,000 | 3,150,000 | 4,250,000 | 4,250,000 | 1,250,000 | 14,000,000 |

EXHIBIT A—MULTI-YEAR FINANCIAL PLAN SUMMARY—Continued

[US$]

| Component | CIF | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Total |
|---|---|---|---|---|---|---|---|
| (C) Education Assessment Support Activity | 350,000 | 750,000 | 1,000,000 | 1,450,000 | 1,950,000 | 500,000 | 6,000,000 |
| Subtotal | 350,000 | 7,250,000 | 20,350,000 | 22,400,000 | 23,400,000 | 2,750,000 | 76,500,000 |
| 2. STEM Higher Education Project: | 1,000,000 | 4,000,000 | 7,500,000 | 9,000,000 | 6,000,000 | 2,500,000 | 30,000,000 |
| Subtotal | 1,000,000 | 4,000,000 | 7,500,000 | 9,000,000 | 6,000,000 | 2,500,000 | 30,000,000 |
| 3. Industry-led Skills and Workforce Development Project: | | | | | | | |
| (A) Competitive Program Improvement Grants Activity | 200,000 | 1,000,000 | 1,750,000 | 3,800,000 | 3,600,000 | 1,650,000 | 12,000,000 |
| (B) Strengthening Sector Policy and Provider Practice Activity | ..... | 500,000 | 900,000 | 1,200,000 | 900,000 | 500,000 | 4,000,000 |
| Subtotal | 200,000 | 1,500,000 | 2,650,000 | 5,000,000 | 4,500,000 | 2,150,000 | 16,000,000 |
| 4. Monitoring and Evaluation: | | | | | | | |
| Monitoring and Evaluation Activity | 350,000 | 370,000 | 985,000 | 385,000 | 685,000 | 725,000 | 3,500,000 |
| Subtotal | 350,000 | 370,000 | 985,000 | 385,000 | 685,000 | 725,000 | 3,500,000 |
| 5. Program Management and Oversight: | | | | | | | |
| (A) MCA-Georgia | 680,000 | 1,520,571 | 1,520,571 | 1,520,571 | 1,520,571 | 2,107,716 | 8,870,000 |
| (B) Fiscal Agent | 650,000 | 669,500 | 689,585 | 710,273 | 731,581 | 629,061 | 4,080,000 |
| (C) Procurement Oversight | 120,000 | 225,000 | 105,000 | 35,000 | 35,000 | 30,000 | 550,000 |
| (D) Audit | ..... | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 500,000 |
| Subtotal | 1,450,000 | 2,515,071 | 2,415,156 | 2,365,844 | 2,387,152 | 2,866,777 | 14,000,000 |
| Total Compact Budget | 3,350,000 | 15,635,071 | 33,900,156 | 39,150,844 | 36,972,152 | 10,991,777 | 140,000,000 |

**Annex III Description of Monitoring and Evaluation Plan**

This Annex III generally describes the components of the Compact monitoring and evaluation plan (''*M&E Plan*''). The actual structure and content of the M&E Plan will be agreed to by MCC and the Government in accordance with MCC's Policy for Monitoring and Evaluation of Compacts and Threshold Programs (the ''*MCC M&E Policy*'') and may be modified as described in the MCC M&E Policy with MCC approval without requiring an amendment to this Annex III. The M&E Plan will be posted publicly on the MCC Web site and updated as necessary.

*1. Overview*

MCC and the Government will formulate and agree to, and the Government will implement or cause to be implemented, an M&E Plan that specifies: (a) How progress toward the Compact Goal and Project Objectives will be monitored (''*Monitoring Component*''); (b) a process and timeline for the monitoring of planned, ongoing, or completed Activities to determine their efficiency and effectiveness; and (c) a methodology for assessment and rigorous evaluation of the outcomes and impact of the Program (''*Evaluation Component*''). The Monitoring Component and Evaluation Component are complementary activities that together provide a comprehensive plan for tracking progress and impacts. Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as progress and other reports, will be made publicly available on the Web site of MCC, MCA-Georgia and elsewhere.

*2. Program Logic*

The M&E Plan will be built on a logic model that illustrates how the Projects and Activities contribute to the Compact Goal and the Project Objectives. A description of the logic underlying the proposed Compact Projects is included below, and a visualization of the logic model is included in Figure III.1 and III.2. This logic model is subject to change and will be updated and revised in the M&E Plan.

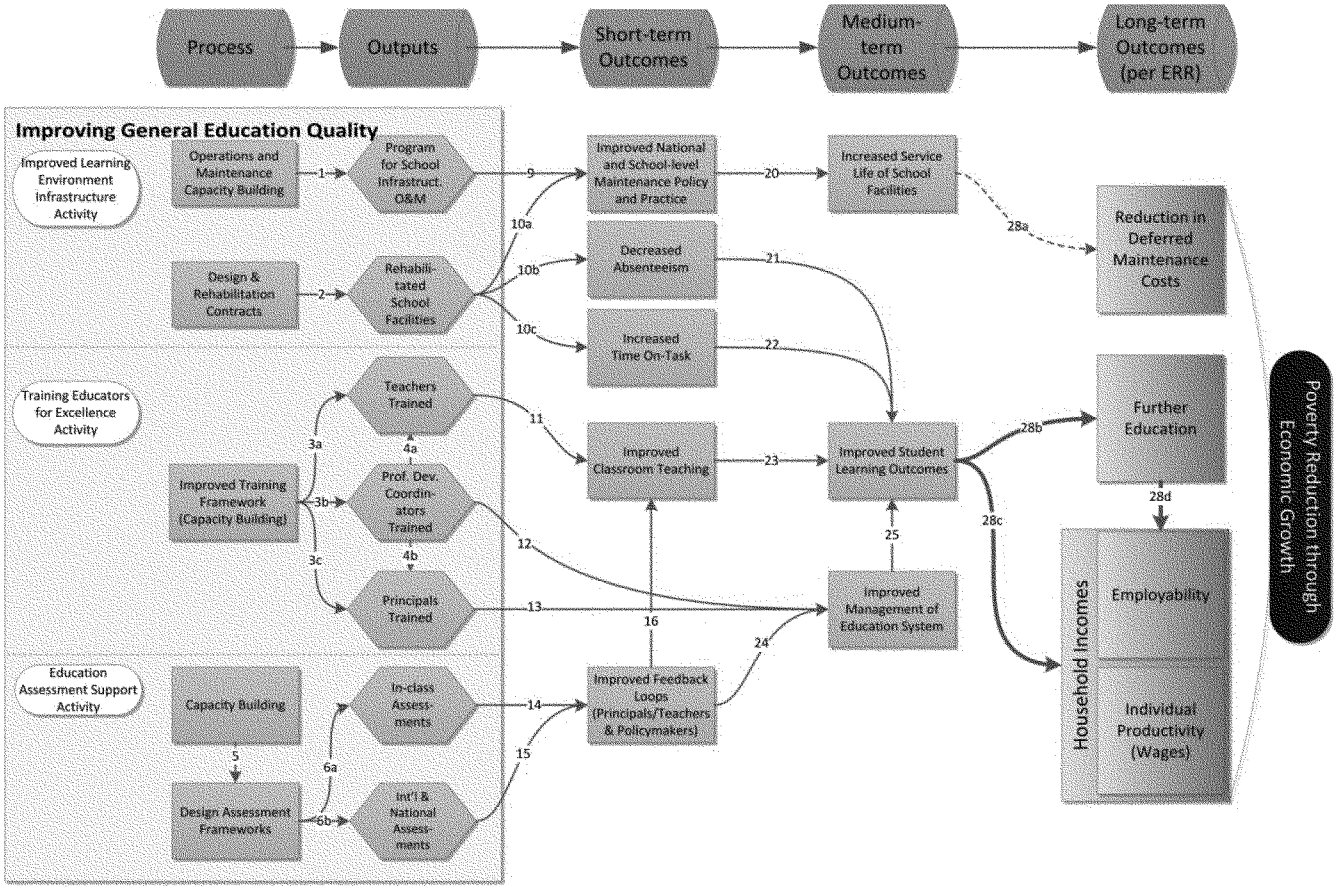
(a) The objective of the Improving General Education Quality Project is to improve student learning outcomes, which is expected to lead to further education, higher employability higher productivity, and higher earnings for project beneficiaries. The Improved Learning Environment Infrastructure Activity is expected to produce improved student learning outcomes through learning environments that facilitate increased time on task and increased attendance. The Training Educators for Excellence Activity is expected to yield improved classroom teaching and better management of the educational system through the support of teachers' and principals' continued professional development. The Education Assessment Support Activity is expected to yield improved classroom teaching and better management of the educational system through better supply of classroom, national, and international assessment information.

(b) The objective of the Industry-led Skills and Workforce Development Project is to increase the availability of STEM technicians to meet industry demand, which is expected to lead to higher productivity, employability and earnings for project beneficiaries. The Strengthening Sector Policy and Provider Practice Activity is expected to identify existing good practice through industry recognition awards, and strengthen, document, and disseminate these practices to other providers. In addition, this Activity is expected to identify and implement target policy reforms in the sector which promote a TVET sector with improved industry engagement. The Competitive Program Improvement Grants Activity is expected to increase the provision of high-quality TVET programming, especially in higher levels of TVET qualifications.

(c) The objective of the STEM Higher Education Project is to increase the availability of quality engineers and professionals from other STEM disciplines in the Georgian labor market, which is expected to increase the productivity, employability and earnings of project beneficiaries. In addition, the project expects to reduce the number of Georgian students studying abroad (i.e. by the proportion

of project beneficiaries who would have otherwise pursued a degree abroad) and to reduce the number of foreign workers hired by Georgian firms (i.e. the number of STEM jobs which are filled locally, but would have otherwise required the procurement of a foreign specialist). In order to achieve the above objectives, the STEM Higher Education Project expects to create improved incentives and support structures for world-class researchers/professors, which will be achieved either through support for ABET accreditation, providing degrees from U.S. institutions within Georgia, or a combination thereof.

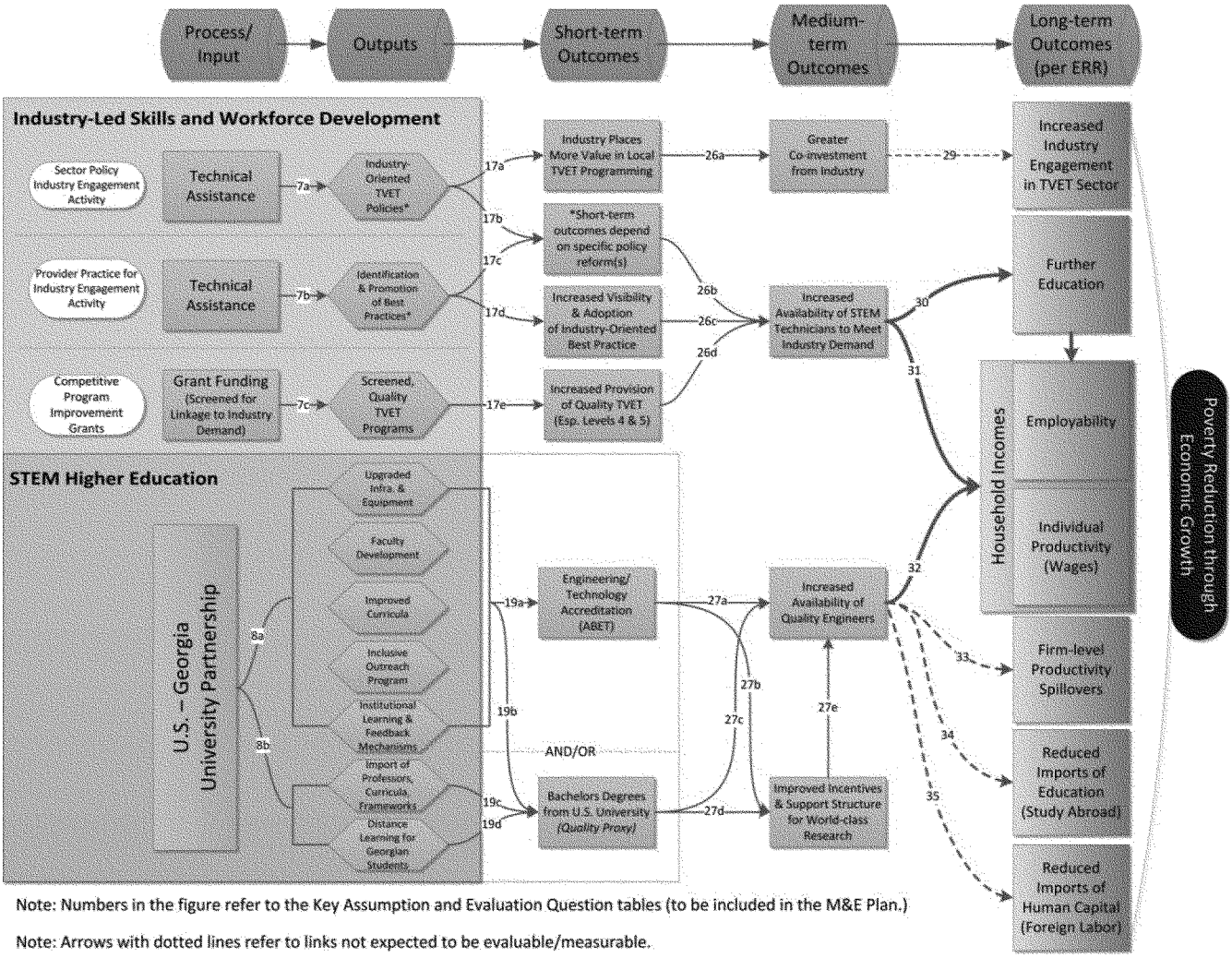
*Figure III.1 – Compact-wide Program Logic (1 of 2)*




Note: Numbers in the figure refer to the Key Assumption and Evaluation Question tables (to be included in the M&E Plan.)

Note: Arrows with dotted lines refer to links not expected to be evaluable/measurable.

*Figure III.2 – Compact-wide Program Logic (2 of 2)*




Note: Numbers in the figure refer to the Key Assumption and Evaluation Question tables (to be included in the M&E Plan.)

Note: Arrows with dotted lines refer to links not expected to be evaluable/measurable.

*3. Monitoring Component*

To monitor progress toward the achievement of the objectives of the Compact, the Monitoring Component of the M&E Plan will identify: (i) The Indicators (as defined below); (ii) the definitions of the Indicators; (iii) the sources and methods for data collection; (iv) the frequency for data collection; (v) the party or parties responsible for collecting and analyzing relevant data; and (vi) the timeline for reporting on each Indicator to MCC.

Further, the Monitoring Component will track changes in the selected Indicators for measuring progress towards the achievement of the Project Objectives during the Compact Term. MCC and the Government intend to continue monitoring and evaluating the long-term impacts of the Compact after Compact expiration. The M&E Plan will establish baselines which measure the situation prior to a development intervention, against which progress can be assessed or comparisons made (each, a ''*Baseline*''). The Government will collect Baselines on the selected Indicators or verify already collected Baselines where applicable and as set forth in the M&E Plan.

(a) Indicators

The M&E Plan will measure the results of the Program using quantifiable, objective and reliable data (''*Indicators*''). Each indicator will have benchmarks that specify the expected value and the expected time by which that result will be achieved (''*Target*''). The M&E Plan will be based on a logical framework approach that classifies indicators as goal, outcome, output, and process. The Compact Goal indicators (''*Goal Indicators*'') will indirectly measure the economic growth and poverty reduction goal for each Project. Second, Outcome Indicators (''*Outcome Indicators*'') will measure the intermediate results of the Project Activities. Output Indicators (''*Output Indicators*'') will directly measure Project Activities, and finally Process Indicators (''*Process Indicators*'') will measure progress toward the completion of Project Activities. For Outcome Indicators and Goal Indicators, the M&E Plan will define a strategy for obtaining and verifying the value of the baselines values, as necessary. All indicators will be disaggregated by gender, ethnic group and other beneficiary types to the extent practical. Subject to prior written approval from MCC, MCA-Georgia may add indicators or refine the definitions, baselines and Targets of existing indicators.

(i) Compact Indicators

(1) Goal. The Program will contribute to economic growth and poverty

reduction nationwide, but the results are attributable to many factors in the economy. The M&E Plan will contain the following Indicators related to the Compact Goal:

(A) Higher (lifetime) earnings for Project beneficiaries;

(B) Improved employability of Project beneficiaries; and

(C) Increased household investments in education (i.e. increases in years of education attained).

(2) Outcome, Output, and Process Indicators. The M&E Plan will contain the Indicators listed in the following tables. Indicators that can be reported on at least an annual basis will be included in quarterly monitoring indicator reports, while indicators that require survey data or a longer time period to track will be tracked for evaluation purposes. Goal and Outcome Indicators will be used for evaluation purposes, whether during or after the Compact period, but will not be tracked for regular monitoring efforts. The M&E Plan will reflect revisions to indicators in Annex III as well as additional indicators identified as useful for project monitoring. MCC's Common Indicators for Education will also be included in the M&E Plan, as relevant.

IMPROVING GENERAL EDUCATION PROJECT: IMPROVED LEARNING ENVIRONMENT INFRASTRUCTURE ACTIVITY

| Result | Indicator | Definition | Unit | Baseline | Compact target |
|---|---|---|---|---|---|
| | | Goal Indicators | | | |
| Further Education ... | Transition rate from 9th to 10th grade. | The number of students who enter 10th grade divided by number of students who completed 9th grade. | Percentage ..... | TBD ..... | TBD. |
| | Percentage of 10th grade entrants who graduate from 12th grade. | The number of 12th grade students who take and pass the 11th–12th grade exit examinations in math and science, divided by the number of 10th grade entrants in same cohort. | Percentage ..... | TBD ..... | TBD. |
| | Percent of high school graduates who enter university studies. | The number of 12th grade students who take the university entrance examination and are placed in a university program, divided by the number of 12th grade students who take the 12th grade exit exam. | Percentage ..... | TBD ..... | TBD. |
| | | Outcome Indicators | | | |
| Decreased Absenteeism. | Student attendance rates. | To be defined in collaboration with standard measurement practices in Georgia (e.g. average percentage of enrolled students marked as present during one-month period of analysis). | Percentage ..... | TBD ..... | TBD (increase over baseline). |
| | Teacher attendance rates. | To be defined in collaboration with standard measurement practices in Georgia (e.g. average percentage of teachers marked as present during one-month period of analysis). | Percentage ..... | TBD ..... | TBD (increase over baseline). |
| Improved Student Learning Outcomes. | Average Standardized Test Scores. | Specific evaluation strategies will be employed to track improvements in TIMSS (Trends in Mathematics and Science Study), PISA (Programme for International Student Assessment), ICILS (International Computer and Information Literacy Study), TALIS (Teaching and Learning International Survey), Classroom Assessments, and National Assessments. | Number ..... | TBD ..... | TBD. |
| Increased Time On-Task. | Time study of students' daily time allocation. | Measurement of changes in proportion of time spent on various education-enhancing activities as well as overall amount of time spent at school. | Percentage ..... | TBD ..... | TBD. |
| Rehabilitated School Facilities. | Average classroom temperature differential in winter. | Average temperature of completed classrooms during a one-month sample of observations with respect to comparison classroom. | Degrees Celsius | TBD ..... | TBD (increase over baseline). |
| | | Output Indicators | | | |
| Rehabilitated School Facilities. | # of schools fully rehabilitated. | The number of educational facilities constructed or rehabilitated according to standards stipulated in MCA contracts signed with implementers. | Number ..... | 0 ..... | 130. |

IMPROVING GENERAL EDUCATION PROJECT: IMPROVED LEARNING ENVIRONMENT INFRASTRUCTURE ACTIVITY—Continued

| Result | Indicator | Definition | Unit | Baseline | Compact target |
|---|---|---|---|---|---|
| | # of science labs installed and equipped. | The total number of science labs installed through MCC-funded school rehabilitations. Science lab must be operational in order to be counted. | Number | 0 | 130. |
| Process Indicators | | | | | |
| Rehabilitated School Facilities. | Signing of Phase 1 Construction Contracts. | Quarter in which Phase 1 construction contracts are signed. | Date | n/a | Q2. |
| | Installation of Phase 1 Science Labs. | Quarter in which all Phase 1 schools' science laboratories are installed. | Date | n/a | Q4. |

IMPROVING GENERAL EDUCATION PROJECT: TRAINING EDUCATORS FOR EXCELLENCE ACTIVITY

| Result | Indicator | Definition | Unit | Baseline | Compact target |
|---|---|---|---|---|---|
| Outcome Indicators | | | | | |
| Improved Classroom Teaching. | Teacher improvement of content knowledge over baseline score. | Pre-test, post-test comparison of trained teachers' knowledge in training-relevant content areas. | Number | TBD | TBD (increase over baseline). |
| Improved Student Learning Outcomes. | Improved internal efficiency measures (repetition rates, internal transition rates, etc.). | As possible, evaluation strategy will attempt to measure changes in schools' internal efficiency which are attributable to compact training activity. | Number | TBD | TBD (increase over baseline). |
| Improved Student Learning Outcomes. | Students' standardized test scores. | As possible, evaluation strategy will attempt to measure attributable changes in average student score on test instrument related to areas relevant to teacher training. | Number | TBD | 0.18 SD increase over baseline. |
| Output Indicators | | | | | |
| School-based Professional Development Coordinators Trained. | # school-based professional development coordinators trained. | The number of school-based professional development coordinators who complete MCC-supported training focused on supporting principals and teachers in implementing new techniques. | Number | 0 | 2,000. |
| Principals Trained | # school principals trained. | The number of school principals who complete MCC-supported training focused on supporting teachers in implementing new techniques. | Number | 0 | 2,000. |
| Teachers Trained | # science, math, English, and ICT instructors trained. | The number of science, math, English, and ICT instructors who complete MCC-supported training focused on instructional quality as defined by the compact training activity. | Number | 0 | 23,400. |
| | % of teachers enrolled in training who complete training course. | Calculated as the number of teachers completing compact's designed training course divided by total number of training enrollees. | Percentage | 0 | 74%. |
| Process Indicators | | | | | |
| Teachers Trained | Completion of first cohort of teacher training. | Defined as the Quarter in which first cohort of at least 100 teachers completes training activity. | Date | n/a | Q6. |
| Improved Training Framework (Capacity Building). | Completion of teacher training design framework. | Defined as the Quarter in which design consultant's final activity design deliverable is formally approved by MCA. | Date | n/a | Q4. |

IMPROVING GENERAL EDUCATION PROJECT: EDUCATION ASSESSMENT ACTIVITY

| Result | Indicator | Definition | Unit | Baseline | Compact target |
|---|---|---|---|---|---|
| Outcome Indicators | | | | | |
| Improved Classroom Teaching. | % of secondary teachers implementing in-class assessment tools. | # of secondary teachers implementing in-class assessments divided by total number of secondary teachers. | Percentage | 0 | 50%. |
| Output Indicators | | | | | |
| Capacity Building | # of Ministry officials trained (including at sub-Ministry agencies, e.g. NCEQE). | Number of staff trained by MCC-funded, assessment-relevant activities at Ministry and sub-Ministry entities. | Number | 0 | TBD. |

IMPROVING GENERAL EDUCATION PROJECT: EDUCATION ASSESSMENT ACTIVITY

| Result | Indicator | Definition | Unit | Baseline | Compact target |
|---|---|---|---|---|---|
| Design Assessment Frameworks. | # of national assessment/testing frameworks. | # of national assessments/testing frameworks developed and implemented with MCC funding. | Number | 0 | TBD. |
| Int'l & National Assessments. | # of international assessments. | # of international assessments implemented with MCC funding. Indicator will be counted upon completion of full reporting cycle specific to each international assessment (TIMSS, TIMSS Adv., PISA, ICILS and TALIS). | Number | 0 | 5. |
| In-class Assessments. | # of secondary teachers implementing in-class assessments. | # of secondary classrooms documented by regional ministerial staff as having implemented MCC-funded in-class assessments. | Number | 0 | TBD. |
| Process Indicators | | | | | |
| Int'l & National Assessments. | Completion of pilot testing of national assessment instruments. | Quarter in which MCC-funded national assessment instruments are implemented in pilot form for feedback and further development. | Date | n/a | Q8. |
| | Full-scale implementation of national assessment instrument. | Quarter in which MCC-funded national assessment instruments are implemented at full scale, as determined in the compact assessment activity. | Date | n/a | Q12. |

INDUSTRY-LED SKILLS AND WORKFORCE DEVELOPMENT PROJECT

| Result | Indicator | Definition | Unit | Baseline | Compact target |
|---|---|---|---|---|---|
| Goal Indicators | | | | | |
| Employability | Employment rate differential of graduates of MCC-supported grantee programs. | Average post-graduation employment rate of graduates of MCC-supported grantee programs with respect to students graduating from non-priority areas (one year after graduation). | Percentage | n/a | 9% increase over comparison group. |
| Individual Wages | Wage differential of graduates of MCC-supported grantee programs. | Average wage differential of graduates of MCC-supported grantee programs with respect to students graduating from non-priority areas (one year after graduation). | Number | n/a | 23% increase over comparison group. |
| Outcome Indicators | | | | | |
| Increased Provision of Quality TVET (Esp. Qualifications-granting Levels). | Enrollment in qualifications-granting programs (as a % of total TVET enrollment). | Nationwide enrollment in qualifications-granting TVET programs, especially level IV and V coursework. | Percentage | TBD | TBD. |

INDUSTRY-LED SKILLS AND WORKFORCE DEVELOPMENT PROJECT—Continued

| Result | Indicator | Definition | Unit | Baseline | Compact target |
|---|---|---|---|---|---|
| Increased Industry Co-investment in TVET. | Industry co-investment in TVET provision. | Industry co-investment in supported programs, including both cash and in kind support. | US Dollars | 0 | 30% of grant outlays. |
| Output Indicators | | | | | |
| Increased Provision of Quality TVET (Esp. Qualifications-granting Levels). | Number of TVET grants fully disbursed. | Number of competitive grants whose full amount is disbursed before the compact end date. | Number | 0 | TBD. |
| Screened, Quality TVET Programs. | # of graduates per year. | Number of students graduating in one year from all program recipients of Program development grant funding. | Number | 0 | 420. |
| Process Indicators | | | | | |
| Grant Funding (Screened for Linkage to Industry Demand). | Date first grant agreement is signed. | Quarter in which first grant agreement is signed with the winner of competitively-selected TVET provider. | Date | n/a | Q5. |
| | Date final grant agreement is signed. | Quarter in which final grant agreement is signed with the winner of competitively-selected TVET provider. | Date | n/a | Q16. |
| | Total grant outlays | Total disbursement of grant funding under compact's competitive grant facility. | US Dollars | 0 | TBD. |

STEM HIGHER EDUCATION PROJECT

| Result | Indicator | Definition | Unit | Baseline | Compact target |
|---|---|---|---|---|---|
| Goal Indicators | | | | | |
| Individual Wages | Wage differential of the graduates of MCC-supported Bachelor's program. | Average wage differential of graduates of MCC-supported Bachelor's program with respect to average wage of comparable graduates (one year after graduation). | Number | TBD | TBD (44% increase over top Georgian degree). |
| Outcome Indicators | | | | | |
| Engineering/Technology Accreditation (ABET). | Formal ABET accreditation for Georgian degree program. | This indicator assumes that the option of ABET accreditation is pursued. This indicator is not relevant if this option is not pursued with Compact funds. | Date | n/a | TBD. |
| Reduced Imports of Human Capital (Foreign Labor). | Proportion of imported workers in relevant fields. | Evaluation of the number of foreign workers hired in relevant fields. "Relevant fields" will be the specific fields in which the University Partnership will be granting Bachelor's degree. | Percentage | TBD | TBD. |
| Reduced Imports of Education (Study Abroad). | Proportion of Bachelor's-level students who study abroad in relevant fields. | Evaluation of the number of Georgian students studying abroad in relevant fields. "Relevant fields" will be the specific fields in which the University Partnership will be granting Bachelor's degree. | Percentage | TBD | TBD. |
| Output Indicators | | | | | |
| Bachelor's Degrees from U.S. University (Quality Proxy). | Number of enrolled degree candidates. | The total number of students enrolled in MCC degree program in during the quarter data is reported. | Number | 0 | 1018. |
| Process Indicators | | | | | |
| U.S.-Georgia University Partnership. | Signing of partnership agreement. | The quarter in which a formal partnership agreement is signed between U.S. institution(s) and Georgian institution(s). | Date | n/a | EIF. |

STEM HIGHER EDUCATION PROJECT—Continued

| Result | Indicator | Definition | Unit | Baseline | Compact target |
|---|---|---|---|---|---|
| Increased Availability of Quality Engineers. | First cohort of students enters MCC-funded Bachelor's program. | The quarter in which a cohort of incoming students begins study in an MCC-funded Bachelor's program. | Date ..... | n/a ..... | Q7. |

(b) Data Collection and Reporting. The M&E Plan will establish guidelines for data collection and reporting, and identify the responsible parties. Compliance with data collection and reporting timelines will be conditions for Disbursements for the relevant Activities as set forth in the Program Implementation Agreement. The M&E Plan will specify the data collection methodologies, procedures, and analysis required for reporting on results at all levels. The M&E Plan will describe any interim MCC approvals for data collection, analysis, and reporting plans.

(c) Data Quality Reviews. As determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan will be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection.

(d) Management Information System. The M&E Plan will describe the information system that will be used to collect data, store, process and deliver information to relevant stakeholders in such a way that the Program information collected and verified pursuant to the M&E Plan is at all times accessible and useful to those who wish to use it. The system development will take into consideration the requirements and data needs of the components of the Program and will be aligned with existing MCC systems, other service providers, and ministries.

(e) Role of MCA-Georgia. The monitoring and evaluation of this Compact spans three discrete Projects and will involve a variety of governmental, nongovernmental, and private sector institutions. In accordance with the designation contemplated by Section 3.2(b) of this Compact, MCA-Georgia is responsible for implementation of the M&E Plan. MCA-Georgia will oversee all Compact-related monitoring and evaluation activities conducted for each of the Projects, ensuring that data from all implementing entities is consistent, accurately reported and aggregated into regular Compact performance reports as described in the M&E Plan.

(f) Role of other Implementing Partners. During the finalization of the M&E Plan prior to the entry into force of the Compact, the potential monitoring and evaluation role of other agencies and Implementing Entities, including but not limited to GeoStat, EMIS, ESIDA, TPDC, and NAEC will be assessed. The Government and MCC will make every effort to leverage agency missions, expertise, and data-collection services to support the Compact. This may result in specific responsibilities being assumed by one or more of these agencies, as appropriate.

*4. Evaluation Component*

The Evaluation Component of the M&E Plan will contain three types of evaluations: (i) Impact evaluations; (ii) performance evaluations; and (iii) special studies. The Evaluation Component of the M&E Plan will describe the purpose of the evaluation, methodology, timeline, required MCC approvals, and the process for collection and analysis of data for each evaluation. The results of all evaluations will be made publicly available in accordance with MCC's Policy for Monitoring and Evaluation of Compacts and Threshold Programs.

(a) Independent Evaluations. The M&E Plan will include a description of the methods to be used for impact evaluations and plans for integrating the evaluation method into Project design. Based on in-country consultation with stakeholders, the strategies outlined below were jointly determined as having the strongest potential for rigorous impact evaluation. The M&E Plan will further outline in detail these methodologies. Comprehensive impact evaluation strategies are to be included in the M&E Plan. The following is a summary of the potential impact evaluation methodologies:

(i) Improving General Education Quality Project

(1) Improved Learning Environment Infrastructure Activity. This Activity is expected to receive independent impact evaluation in which outcomes of this Activity will be rigorously assessed and attributed to MCC investments in school rehabilitation. MCC and MCA-Georgia have developed plans to employ a Regression Discontinuity Design (*''RDD''*) evaluation to assess the impact of this Activity. This RDD design utilizes a scoring system to rank the program's target population by priority for rehabilitation and through which a cutoff may be determined. The schools scoring above this cutoff will be selected as the treatment group for this Activity. The concept driving the RDD method is that those schools near the cutoff, whether above (treatment) or below (control) will be statistically comparable, allowing for an estimation of program impact.

In order to ensure the validity of the Activity's evaluation methodology, the Government will ensure that:

(A) no school facility designated as ''Comparison/Control'' within the impact evaluation framework will receive Government- or donor-funded rehabilitation beyond those expenditures necessary for continuing operations, insomuch as donor-funded rehabilitations are within the control of the Government;

(B) schools selected as beneficiaries of MCC rehabilitation will neither be systematically targeted nor systematically precluded from other Government activities, funding, or support; and

(C) schools designated as ''Comparison/Control'' will neither be systematically targeted nor systematically precluded from other Government activities, funding, or support.

(2) Training Educators for Excellence Activity. The component of this Activity which focuses on the implementation of teacher training is amenable to impact evaluation, yet further development of the implementation structure and timelines will be necessary in order to determine the specific methodology. MoES and TPDC will collaborate with MCC and MCA-Georgia to determine the ideal design of this activity which enables the rigorous evaluation of the projected outcomes, namely, improved

teacher knowledge and improved student learning outcomes.

(3) Education Assessment Support Activity. As this Activity will be focused on improving the information basis for policy decisions, rigorous evaluation will not be viable for this Activity. Nevertheless, the outputs of this Activity (i.e. the various results of assessment tools) will be a key input into the evaluations of the two preceding evaluations, and the interaction between this Activity and the M&E Plan's evaluation framework will be key to the successful evaluation of the Improving General Education Quality Project as a whole.

(ii) Industry-Led Skills and Workforce Development Project

(1) Plans are being developed to designate evaluation resources for grant proposals which develop a rigorous plan for the evaluation of the grant recipients' beneficiaries. In addition, all grant proposals will be required to include an evaluation plan, whether for rigorous impact evaluation or not (i.e. performance evaluation).

(ii) STEM Higher Education Project

(1) As the recreation of counterfactual scenarios would be difficult, rigorous impact evaluation is not expected to be feasible for this Project as a whole. Plans are being developed for tracer studies to detect impacts on beneficiaries (tertiary graduates) in comparison to non-beneficiaries with similar characteristics. Furthermore, any potential scholarship-granting component may yield the opportunity to rigorously compare the outcomes between beneficiaries and non-beneficiaries. Finally, plans are in place for an evaluation which focuses on the processes through which the Project was able to produce anticipated outputs.

(b) Final Evaluation. The M&E Plan will make provision for final Project level evaluations (*''Final Evaluations''*). With the prior written approval of MCC, the Government will engage independent evaluators to conduct the Final Evaluations at or near the end of each Project. The Final Evaluations will review progress during Compact implementation and provide a qualitative context for interpreting monitoring data and evaluation findings. They must at a minimum (i) evaluate the efficiency and effectiveness of the Activities; (ii) determine if and analyze the reasons why the Compact Goal and Project Objective(s), outcome(s) and output(s) were or were not achieved; (iii) identify positive and negative unintended results of the Program; (iv) provide lessons learned that may be applied to similar projects; and (v) assess the likelihood that results will be sustained over time.

(c) Special Studies. The M&E Plan will include a description of the methods to be used for special studies, as necessary, funded through this Compact or by MCC. Plans for conducting the special studies will be determined jointly between the Government and MCC before the approval of the M&E Plan. The M&E Plan will identify and make provision for any other special studies, *ad hoc* evaluations, and research that may be needed as part of the monitoring and evaluating of this Compact. Examples of potential special studies are further studies of absenteeism in Georgia, the demand for and utilization of science labs, and/or further analysis of the constraints to industry engagement in TVET. As necessary, MCC or the Government may request special studies or *ad hoc* evaluations of Projects, Activities, or the Program as a whole prior to the expiration of the Compact Term. When MCA-Georgia engages an evaluator, the engagement will be subject to the prior written approval of MCC. For all evaluations of Compact Projects, whether commissioned by MCC, MCA-Georgia or the Government, contract terms shall ensure non-biased results and the publication of results.

(d) Request for Ad Hoc Evaluation or Special Study. If the Government requires an *ad hoc* independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Activity or to seek funding from other donors, no MCC Funding resources may be applied to such evaluation or special study without MCC's prior written approval.

*5. Other Components of the M&E Plan*

In addition to the monitoring and evaluation components, the M&E Plan will include the following components for the Program, Projects and Activities, including, where appropriate, roles and responsibilities of the relevant parties and providers:

(a) Costs. A detailed cost estimate for all components of the M&E Plan; and

(b) Assumptions and Risks. Any assumption or risk external to the Program that underlies the accomplishment of the Project Objectives and Activity outcomes and outputs. However, such assumptions and risks will not excuse any Party's performance unless otherwise expressly agreed to in writing by the other Party.

*6. Approval and Implementation of the M&E Plan*

The approval and implementation of the M&E Plan, as amended from time to time, will be in accordance with the Program Implementation Agreement, any other relevant Supplemental Agreement and the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs.

*7. Post-Compact M&E Plan*

In conjunction with the Program Closure Plan, MCC and MCA will develop a Post-Compact M&E Plan designed to observe the persistence of benefits created under the Compact. This plan should describe future monitoring and evaluation activities, identify the individuals and organizations that would undertake these activities, and provide a budget framework for future monitoring and evaluation which would draw upon both MCC and country resources, as agreed by each party. The Post-Compact M&E Plan should build directly off the Compact M&E Plan.

**Annex IV Conditions Precedent to Disbursement of Compact Implementation Funding**

This Annex IV sets forth the conditions precedent applicable to Disbursements of Compact Implementation Funding (each a *''CIF Disbursement''*). Capitalized terms used in this Annex IV and not defined in this Compact will have the respective meanings assigned thereto in the Program Implementation Agreement. Upon execution of the Program Implementation Agreement, each CIF Disbursement will be subject to the terms of the Program Implementation Agreement.

*1. Conditions Precedent to Initial CIF Disbursement*

Each of the following must have occurred or been satisfied prior to the initial CIF Disbursement. The Government (or MCA-Georgia) has delivered to MCC:

(a) an interim fiscal accountability plan acceptable to MCC; and

(b) a CIF procurement plan acceptable to MCC.

*2. Conditions Precedent to all CIF Disbursements (Including Initial CIF Disbursement)*

Each of the following must have occurred or been satisfied prior to each CIF Disbursement:

(a) The Government (or MCA-Georgia) has delivered to MCC the following documents, in form and substance satisfactory to MCC:

(i) A completed Disbursement Request, together with the applicable Periodic Reports, for the applicable Disbursement Period, all in accordance with the Reporting Guidelines;

(ii) a certificate of the Government (or MCA-Georgia), dated as of the date of the CIF Disbursement Request, in such form as provided by MCC;

(iii) if a Fiscal Agent has been engaged, a Fiscal Agent Disbursement Certificate; and

(iv) if a Procurement Agent has been engaged, a Procurement Agent Disbursement Certificate.

(b) If any proceeds of the CIF Disbursement are to be deposited in a bank account, MCC has received satisfactory evidence that (i) the Bank Agreement has been executed and (ii) the Permitted Accounts have been established;

(c) Appointment of an entity or individual to provide fiscal agent services, as approved by MCC, until such time as the Government provides to MCC a true and complete copy of a Fiscal Agent Agreement, duly executed and in full force and effect, and the fiscal agent engaged thereby is mobilized;

(d) Appointment of a Procurement Director of MCA-Georgia, as approved by MCC, until such time as the Government provides to MCC a true and complete copy of a Procurement Operations Manual, duly executed and in full force and effect;

(e) MCC is satisfied, in its sole discretion, that (i) the activities being funded with such CIF Disbursement are necessary, advisable or otherwise consistent with the goal of facilitating the implementation of the Compact and will not violate any applicable law or regulation; (ii) no material default or breach of any covenant, obligation or responsibility by the Government, MCA-Georgia or any Government entity has occurred and is continuing under this Compact or any Supplemental Agreement; (iii) there has been no violation of, and the use of requested funds for the purposes requested will not violate, the limitations on use or treatment of MCC Funding set forth in Section 2.7 of this Compact or in any applicable law or regulation; (iv) any Taxes paid with MCC Funding through the date 90 days prior to the start of the applicable Disbursement Period have been reimbursed by the Government in full in accordance with Section 2.8(c) of this Compact; and (v) the Government has satisfied all of its payment obligations, including any insurance, indemnification, tax payments or other obligations, and contributed all resources required from it, under this Compact and any Supplemental Agreement;

(f) For any CIF Disbursement occurring after this Compact has entered into force in accordance with Article 7: MCC is satisfied, in its sole discretion, that (i) MCC has received copies of any reports due from any technical consultants (including environmental auditors engaged by MCA-Georgia) for any Activity since the previous Disbursement Request, and all such reports are in form and substance satisfactory to MCC; (ii) the Implementation Plan Documents and Fiscal Accountability Plan are current and updated and are in form and substance satisfactory to MCC, and there has been progress satisfactory to MCC on the components of the Implementation Plan for any relevant Projects or Activities related to such CIF Disbursement; (iii) there has been progress satisfactory to MCC on the M&E Plan and Social and Gender Integration Plan for the Program or relevant Project or Activity and substantial compliance with the requirements of the M&E Plan and Social and Gender Integration Plan (including the targets set forth therein and any applicable reporting requirements set forth therein for the relevant Disbursement Period); (iv) there has been no material negative finding in any financial audit report delivered in accordance with this Compact and the Audit Plan, for the prior two quarters (or such other period as the Audit Plan may require); (v) MCC does not have grounds for concluding that any matter certified to it in the related MCA Disbursement Certificate, the Fiscal Agent Disbursement Certificate or the Procurement Agent Disbursement Certificate is not as certified; and (vi) if any of the officers or key staff of MCA-Georgia have been removed or resigned and the position remains vacant, MCA-Georgia is actively engaged in recruiting a replacement; and

(g) MCC has not determined, in its sole discretion, that an act, omission, condition, or event has occurred that would be the basis for MCC to suspend or terminate, in whole or in part, the Compact or MCC Funding in accordance with Section 5.1 of this Compact.

**Annex V Definitions**

*ABET* has the meaning provided in Section 7.2(c) and paragraph 3(a) of Part B of Annex I.

*Activity* has the meaning provided in Part B of Annex I.

*Additional Representative* has the meaning provided in Section 4.2.

*Audit Guidelines* has the meaning provided in Section 3.8(a).

*Baseline* has the meaning provided in paragraph 3 of Annex III.

*CIF Disbursement* has the meaning provided in Annex IV.

*Compact* has the meaning provided in the Preamble.

*Compact Goal* has the meaning provided in Section 1.1.

*Compact Implementation Funding* has the meaning provided in Section 2.2(a).

*Compact Records* has the meaning provided in Section 3.7(a).

*Compact Term* has the meaning provided in Section 7.4.

*Covered Provider* has the meaning provided in Section 3.7(c).

*Disbursement* has the meaning provided in Section 2.4.

*ESIDA* has the meaning provided in paragraph 1(a) of Part B of Annex I.

*Evaluation Component* has the meaning provided in paragraph 1 of Annex III.

*Excess CIF Amount* has the meaning provided in Section 2.2(d).

*Final Evaluations* has the meaning provided in paragraph 4(b) of Annex III.

*Fiscal Agent* has the meaning provided in paragraph 3 of Part C of Annex I.

*First Compact* has the meaning provided in paragraph 1(a) of Part A of Annex I.

*Georgia* has the meaning provided in the Preamble.

*GIZ* has the meaning provided in paragraph 1(e) of Part B of Annex I.

*Goal Indicators* has the meaning provided in paragraph 3(a) of Annex III.

*Governance Guidelines* means MCC's Guidelines for Accountable Entities and Implementation Structures, as such may be posted on MCC's Web site from time to time.

*Government* has the meaning provided in the Preamble.

*G-PriEd* has the meaning provided in paragraph 1(f) of Part B of Annex I.

*Grant* has the meaning provided in Section 3.6(b).

*GRDF* means Georgia Regional Development Fund, LLC, a limited liability company organized under the laws of the State of Delaware.

*GRDF Funding* means any assets, interest, dividends, sale proceeds or any other income or property received and owned by GRDF and/or obtained or derived from GRDF by MCA-Georgia, the Service Agency of the Ministry of Finance of Georgia, or any other Government agency, person or entity, whether directly or indirectly.

*ICT* has the meaning provided in paragraph 1(a)(ii) of Part B of Annex I.

*Implementation Letter* has the meaning provided in Section 3.5.

*Implementing Entity* has the meaning provided in paragraph 2 of Part C of Annex I.

*Implementing Entity Agreement* has the meaning provided in paragraph 2 of Part C of Annex I.

*Improving General Education Quality Project* means the Project described in paragraph 1 of Part B of Annex I and whose Project Objectives are outlined in Section 1.3(a).

*Indicators* has the meaning provided in paragraph 3(a) of Annex III.

*Industry-led Skills and Workforce Development Project* means the Project described in paragraph 2 of Part B of Annex I and whose Project Objectives are outlined in Section 1.3(b).

*Inspector General* has the meaning provided in Section 3.7(d).

*Intellectual Property* means all registered and unregistered trademarks, service marks, logos, names, trade names and all other trademark rights; all registered and unregistered copyrights; all patents, inventions, shop rights, know how, trade secrets, designs, drawings, art work, plans, prints, manuals, computer files, computer software, hard copy files, catalogues, specifications, and other proprietary technology and similar information; and all registrations for, and applications for registration of, any of the foregoing, that are financed, in whole or in part, using MCC Funding.

*M&E Plan* has the meaning provided in Annex III.

*Management Team* has the meaning provided in paragraph 1(a) of Part C of Annex I.

*MCA Act* has the meaning provided in Section 2.2(a).

*MCA-Georgia* has the meaning provided in Section 3.2(b).

*MCC* has the meaning provided in the Preamble.

*MCC Environmental Guidelines* has the meaning provided in Section 2.7(c).

*MCC Funding* has the meaning provided in Section 2.3.

*MCC Gender Policy* means the MCC Gender Policy (including any guidance documents issued in connection with the guidelines) posted from time to time on the MCC Web site or otherwise made available to the Government.

*MCC M&E Policy* has the meaning provided in Annex III.

*MCC Program Procurement Guidelines* has the meaning provided in Section 3.6(a).

*MCC Web site* has the meaning provided in Section 2.7.

*Ministry* has the meaning provided in Schedule A of Annex VI.

*MoES* has the meaning provided in paragraph 1(a)(i) of Part B of Annex I.

*Monitoring Component* has the meaning provided in paragraph 1 of Annex III.

*Multi-Year Financial Plan Summary* has the meaning provided in paragraph 1 of Annex II.

*NAEC* has the meaning provided in paragraph 1(a)(iii) of Part B of Annex I.

*NCEQE* has the meaning provided in paragraph 3(e)(i) of Part B of Annex I.

*New GRDF Operational Documents* has the meaning provided in paragraph 3(a)(iii) of Part B of Annex I.

*O&M* has the meaning provided in paragraph 1(a)(i) of Part B of Annex I.

*Outcome Indicators* has the meaning provided in paragraph 4(a) of Annex III.

*Output Indicators* has the meaning provided in paragraph 4(a) of Annex III.

*Party* and *Parties* have the meaning provided in the Preamble.

*Permitted Account* has the meaning provided in Section 2.4.

*Principal Representative* has the meaning provided in Section 4.2.

*Process Indicators* has the meaning provided in paragraph 3(a) of Annex III.

*Procurement Director* has the meaning provided in paragraph 4 of Part C of Annex I.

*Program* has the meaning provided in the Recitals.

*Program Assets* means any assets, goods or property (real, tangible or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding.

*Program Funding* has the meaning provided in Section 2.1.

*Program Guidelines* means collectively the Audit Guidelines, the MCC Environmental Guidelines, the MCC Gender Policy, the Governance Guidelines, Guidelines for Country Contributions, the MCC Program Procurement Guidelines, the Reporting Guidelines, the MCC M&E Policy, the MCC Cost Principles for Government Affiliates Involved in Compact Implementation, the MCC Program Closure Guidelines (including any successor to any of the foregoing) and any other guidelines, policies or guidance papers relating to the administration of MCC-funded compact programs and as from time to time published on the MCC Web site.

*Program Implementation Agreement* and *PIA* have the meaning provided in Section 3.1.

*Program Objective* has the meaning provided in Section 1.2.

*Project(s)* has the meaning provided in Section 1.2.

*Project Objective(s)* has the meaning provided in Section 1.3.

*Provider* has the meaning provided in Section 3.7(c).

*RDD* has the meaning provided in paragraph 4(a)(i)(1) of Annex III.

*Reimbursable VAT and Excise Tax Expense* has the meaning provided in Schedule A of Annex VI.

*Reporting Guidelines* means the ''MCC Guidance on Quarterly MCA Disbursement Request and Reporting Package'' posted by MCC on the MCC Web site or otherwise publicly made available.

*School O&M Plan* has the meaning provided in paragraph 1(a)(i) of Part B of Annex I.

*Social and Gender Integration Plan* has the meaning provided in paragraph 3 of Part A of Annex I.

*Socially Vulnerable* means students (i) from high mountainous regions, (ii) from the occupied territories, (iii) from Azeri/Armenian language schools, (iv) whose parent died in battles for the territorial integrity of Georgia, (v) whose ancestors (being citizens of Samtskhe-Javakheti) were deported from Georgia during the Soviet period, (vi) who are orphans, (vii) from families that have 4 or more children, (viii) with acute physical disabilities, (ix) whose families are registered in unified data base for socially vulnerable individuals with a reintegration score below a certain threshold, (x) from villages bordering occupied territories, and (xi) under State custody.

*Stakeholders' Committee* has the meaning provided in paragraph 1(d) of Part C of Annex I.

*STEM* has the meaning provided in Section 1.2.

*STEM Higher Education Project* means the Project described in paragraph 3 of Part B of Annex I and whose Project Objectives are outlined in Section 1.3(c).

*Supervisory Board* has the meaning provided in paragraph 1(a) of Part C of Annex I.

*Supplemental Agreement* means any agreement between (i) the Government (or any Government affiliate, including MCA-Georgia) and MCC (including, but not limited to, the PIA), or (ii) MCC and/or the Government (or any Government affiliate, including MCA-Georgia), on the one hand, and any third party, on the other hand, including any of the Providers, in each case, setting forth the details of any funding, implementing or other arrangements in furtherance of, and in compliance with, this Compact.

*Target* has the meaning provided in paragraph 3(a) of Annex III.

*Taxes* has the meaning provided in Section 2.8(a).

*TPDC* has the meaning provided in paragraph 1(a)(ii) of Part B of Annex I.

*TVET* has the meaning provided in paragraph 2(a) of Part B of Annex I.

*United States Dollars* or *US$* means the lawful currency of the United States of America.

*USAID* means the United States Agency for International Development.

*VAT and Excise Tax Account* has the meaning provided in Schedule A of Annex VI.

**Annex VI Tax Provisions**

**Schedule A Co-Financing of Value Added Tax (Vat) and Excise Taxes**

*Legal Basis for Co-Financing*

1. The Compact
2. The Tax Code of Georgia

*Beneficiaries of Co-Financing*

1. MCA-Georgia
2. Implementing Entities, Providers, and contractors under the Compact

*Procedures*

The Ministry of Finance (the ''*Ministry*'') will establish a separate account (the ''*VAT and Excise Tax Account*'') at the State Treasury and provide MCA-Georgia or its designated agent regular withdrawal access to the account. MCA-Georgia will identify its authorized representatives or agents to the Ministry in writing.

No later than August 15 of each calendar year, MCA-Georgia will provide the Ministry with an estimate of the amount of Reimbursable VAT and Excise Tax Expenses (defined below) for the next calendar year. The Ministry will ensure that provisions for such expenses are made in the State budget. Transactions valued at less than US$500 will not be subject to co-financing or reimbursement of VAT or excise taxes.

The Ministry will deposit the total amount of the forecasted annual Reimbursable VAT and Excise Tax Expenses in the VAT and Excise Tax Account within seven calendar days of Parliamentary approval of the State budget. The state-budgeted expenses notwithstanding, the Ministry will deposit further funds in the VAT and Excise Tax Account (if necessary) from time to time to ensure that funds are at all times available to make the payments required below.

MCA-Georgia or its designated representative will withdraw sums out of the VAT and Excise Tax Account as needed to pay Reimbursable VAT and Excise Tax Expenses. Payments will be made through the State Treasury. MCA-Georgia will present the State Treasury a tax order authenticated with valid signatures of two permitted signatories and the MCA-Georgia seal for each withdrawal, as provided in the regulations on non-cash settlements approved by National Bank order N220 of September 2, 1999. The Ministry will ensure that funds in the amount of the Reimbursable VAT and Excise Tax Expenses are transferred from the State Treasury to MCA-Georgia or as directed by MCA-Georgia. MCA-Georgia or its designated representative will be entitled to receive from the State Treasury complete activity reports regarding the VAT and Excise Tax Account on a monthly basis or at such other periodic basis as the MCA-Georgia and the Ministry may agree.

At least fifteen (15) calendar days prior to the commencement of each calendar quarter, MCA-Georgia or its designated agent will submit to the Ministry a copy of the quarterly Financial Plan which will forecast for the following calendar quarter and identify, in Georgia Lari, any VAT or excise taxes imposed on goods, labor and services procured by MCA-Georgia, Implementing Entities, Providers, and contractors under the Compact (''*Reimbursable VAT and Excise Tax Expense*''). No later than fifteen (15) calendar days after the end of each calendar quarter, MCA-Georgia or its designated representative will submit a report to the Ministry accounting for all payments out of the VAT and Excise Tax Account during the preceding quarter.

Each of the Ministry, MCA-Georgia, and MCC may audit the VAT and Excise Tax Account from time to time. The Parties will cooperate in any such audit.

In accordance with Section 2.8 of the Compact, the Government will reimburse Taxes paid in each case in which there are insufficient funds for the payment of VAT or excise tax for any reason, including in the event that the actual amount of the Reimbursable VAT and Excise Tax Expense exceeds the amount estimated by MCA-Georgia and budgeted for in the state budget. The Government hereby acknowledges that it will ensure that each Government affiliate and each other governmental body makes a good faith effort to implement and recognize the exemptions from Taxes contemplated under Section 2.8 of the Compact. Following the entry into force of the Compact, the Government will reimburse all Reimbursable VAT and Excise Tax Expenses that relate to Compact Implementation Funding disbursed prior to the entry into force of the Compact.

**Schedule B Tax Exemption**

*Legal Basis for Co-Financing.*

1. The Compact
2. The Tax Code of Georgia

*Beneficiaries of Co-Financing*

1. MCA-Georgia
2. Implementing Entities, Providers, and contractors under the Compact

*Exempt Taxes*

1. Corporate Income Tax
2. Personal Income Tax
3. Profit Tax
4. Property Tax
5. Withholding Tax
6. Other Taxes

*Procedures*

In accordance with Section 2.8 of the Compact the Ministry will ensure that all MCC Funding and GRDF Funding are exempt from any Taxes during the Compact Term. Such exemption applies to any use of MCC Funding or GRDF Funding, and for the avoidance of doubt, to any activities and work performed, and supplies used or purchased, in the implementation of the Compact, by any person or organization (including contractors and grantees) funded by MCC Funding and GRDF Funding as set forth in accordance with Section 2.8 of the Compact.

MCA-Georgia will be free from any Taxes as set forth in Section 2.8 of the Compact. The Ministry will issue a tax exemption letter to MCA-Georgia evidencing such exemption from Taxes (other than VAT and excise tax), as promptly as possible and in no event later than thirty (30) days following the ratification of the Compact.

In order to implement this tax exemption the Ministry will from time to time execute and deliver, or cause to be executed and delivered, such other instructions, instruments or documents, and to take or cause to be taken such other action, as may be necessary or appropriate.

From time to time MCA-Georgia will provide to the Ministry a list of Implementing Entities, Providers, and contractors, receiving MCC Funding or GRDF Funding with which MCA-Georgia is doing business or with which it is planning to do business. The list will state, for each Implementing Entity, Provider, or contractor, the length of time of the engagement of such Implementing Entity, Provider, or contractor. The Ministry will be responsible for publishing the list on a public Web site and updating the list from time to time.

In accordance with Section 2.8 of the Compact, the Government will reimburse Taxes paid attributable to work performed in connection with the Program or the activities of GRDF in each case in which an entity named on the list published by the Ministry does

not receive the benefit of the tax exemption by the tax and customs authorities. The Government hereby acknowledges that it will ensure that each Government affiliate and each other governmental body makes a good faith effort to implement and recognize the exemptions from Taxes contemplated under Section 2.8 of the Compact. Following the entry into force of the Compact, the Government will reimburse all Taxes that relate to Compact Implementation Funding disbursed prior to the entry into force of the Compact.

**Schedule C Import Taxes**

*Legal Basis for Co-Financing*

1. The Compact
2. The Tax Code of Georgia

*Beneficiaries of Co-Financing*

1. MCA-Georgia
2. Implementing Entities, Providers, and contractors under the Compact

*Exempt Taxes*

1. Import Taxes

*Procedures*

When applicable, MCA-Georgia shall issue a letter to Implementing Entities, Providers, and contractors receiving MCC Funding or GRDF Funding with which MCA-Georgia is doing business or with which it is planning to do business, stating that specific goods are imported or shall be imported by the named entity in connection with the works performed in the framework of the Program or the activities of GRDF.

In accordance with Section 2.8 of the Compact, the Government will reimburse import taxes paid attributable to work performed in connection with the Program or the activities of GRDF in each case in which the letter described above is not accepted or recognized by the tax and customs authorities. Following the entry into force of the Compact, the Government will reimburse all import taxes that relate to Compact Implementation Funding disbursed prior to the entry into force of the Compact.

[FR Doc. 2013–19136 Filed 8–7–13; 8:45 am]

BILLING CODE 9211–03–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2013–0129]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Suspicious Activity Reporting Using the Protected Web Server (PWS).

2. *Current OMB approval number:* 3150–XXXX.

3. *How often the collection is required:* On occasion. Reporting is done on a voluntary basis, as suspicious incidents occur.

4. *Who is required or asked to report:* Nuclear power reactor licensees provide the majority of reports, but other entities that may voluntarily send reports include fuel facilities, independent spent fuel storage installations, decommissioned power reactors, power reactors under construction, research and test reactors, agreement states, non-agreement states, as well as departments of health, medical centers, steel mills, and radiographers.

5. *The number of annual respondents:* 50.

6. *The number of hours needed annually to complete the requirement or request:* 678 hours.

7. *Abstract:* The NRC licensees voluntarily report information on suspicious incidents on an *ad-hoc* basis, as these incidents occur. This information is shared with authorized nuclear industry officials and Federal, State, and local government agencies using PWS. Information provided by licensees is considered OFFICIAL USE ONLY and is not made public.

Submit, by October 7, 2013, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine, and have copied for a fee, publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0129. You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0129. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 5th day of August, 2013.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2013–19175 Filed 8–7–13; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2013–0057]**

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently

submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 16, 2013 (78 FR 22561).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:*

NRC Form 136, ''Security Termination Statement.''

NRC Form 237, ''Request for Access Authorization.''

NRC Form 277, ''Request for Visit or Access Authorization.''

3. *Current OMB approval number:*

3150–0049, NRC Form 136.

3150–0050, NRC Form 237.

3150–0051, NRC Form 277.

4. *The form number if applicable:* NRC Forms 136, 237, and 277.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:*

*NRC Form 136:* NRC employees, licensees and contractors.

*NRC Form 237:* NRC contractors, subcontractors, licensee employees, employees of other government agencies, and other individuals who are not NRC employees.

*NRC Form 277:* Any employees of approximately 78 licensees and 7 contractors who hold an NRC access authorization and need to make a visit to NRC, other contractor/licensees or government agencies in which access to classified information will be involved or unescorted area access is desired.

7. *An estimate of the number of annual responses:*

*NRC Form 136:* 300.

*NRC Form 237:* 770.

*NRC Form 277:* 60.

8. *The estimated number of annual respondents:*

*NRC Form 136:* 300.

*NRC Form 237:* 770.

*NRC Form 277:* 60.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:*

*NRC Form 136:* 50.

*NRC Form 237:* 154.

*NRC Form 277:* 10.

10. *Abstract:* The NRC Form 136 is completed by licensees and contractors that are leaving the NRC to acknowledge and accept their continuing security responsibilities. The NRC Form 237 is completed by NRC contractors, subcontractors, licensee employees, employees of other government agencies, and other individuals who are not NRC employees who require an NRC access authorization. The NRC Form 277 is completed by NRC contractors and licensees who have been granted an NRC access authorization and require verification of that access authorization and a need-to-know due to (1) A visit to the NRC, (2) a visit to other contractors/licensees or government agencies in which access to classified information will be involved, or (3) unescorted area access is desired.

The public may examine and have copied for fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments and questions should be directed to the OMB reviewer listed below by September 9, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer,

Office of Information and Regulatory Affairs (3150–0049, -0050, -0051),

NEOB–10202,

Office of Management and Budget,

Washington, DC 20503.

*Comments can* also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland this 5th day of August, 2013.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2013–19174 Filed 8–7–13; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2013–0054]**

## Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 16, 2013 (78 FR 22562).

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* NRC Form 850A, ''Request for NRC Contractor Building Access,'' NRC Form 850B, ''Request for NRC Contractor Information Technology Access Authorization,'' and NRC Form 850C, ''Request for NRC Contractor Security Clearance.''

3. *Current OMB approval number:* 3150–XXXX.

4. *The form numbers if applicable:* NRC Form 850A, NRC Form 850B, and NRC Form 850C.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* NRC contractors, subcontractors and other individuals who are not NRC employees.

7. *An estimate of the number of annual responses:* 500.

8. *The estimated number of annual respondents:* 500.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 85.

10. *Abstract:* Part 10 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance,'' establishes requirements that individuals requiring an access authorization and/or employment clearance must have an investigation of

their background. The NRC Forms 850A, 850B, and 850C will be used by the NRC to obtain information on NRC contractors, subcontractors, and other individuals who are not NRC employees and require access to the NRC buildings, IT systems, sensitive information, sensitive unclassified information, or classified information.

The public may examine and have copied for fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments and questions should be directed to the OMB reviewer listed below by September 9, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer,
Office of Information and Regulatory Affairs (3150–XXXX),
NEOB–10202,
Office of Management and Budget,
Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 5th day of August, 2013.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2013–19173 Filed 8–7–13; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0161]**

## Proposed Revision to Missiles Generated by Extreme Winds

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Standard review plan-draft section revision; request for comment and use.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on a proposed revision 4 to Section 3.5.1.4, ''Missiles Generated by Extreme Winds,'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.'' This revision incorporates guidance and recommendations from Regulatory Guide (RG) 1.221, ''Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants,'' and Interim Staff Guidance DC/COL–ISG–024, ''Implementation of Regulatory Guide 1.221 on Design-Basis Hurricane and Hurricane Missiles.'' In addition, this revision provides clarification on areas of review and acceptance criteria for assessment of design-basis missiles generated by extreme winds. The revision also incorporates guidance on regulatory treatment of nonsafety systems.

**DATES:** Comments must be filed no later than September 9, 2013. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0161. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN 06–A56, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–6992 or email at *Jonathan.DeGange@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2013–0161 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0161.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS Accession numbers for the redline document comparing the current revision and the proposed revision are available in ADAMS under Accession Nos.: Proposed revision 4 (ML13043A004), current revision 3 (ML070380174), and redline (ML13064A400).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2013–0161 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC does not routinely edit comment submissions to remove such information before

making the comment submissions available to the public or entering the comment submissions into ADAMS.

**II. Further Information**

The Office of New Reactors and Office of Nuclear Reactor Regulation are revising Section 3.5.1.4 of the SRP from the current revision 3. Changes in this revision include new guidance for hurricane winds and associated missiles from RG 1.221, ''Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants'' (ADAMS, Accession No. ML110940300), and Interim Staff Guidance DC/COL–ISG–024, ''Implementation of Regulatory Guide 1.221 on Design-Basis Hurricane and Hurricane Missiles'' (ADAMS Accession No. ML13015A693).

The NRC staff is issuing this notice to solicit public comments on the proposed revision 4 of Section 3.5.1.4 of the SRP. After the NRC staff considers any public comments, it will make a determination regarding the proposed revision to Section 3.5.1.4.

**III. Backfitting and Issue Finality**

This draft SRP, if finalized, would provide guidance to the staff for reviewing applications for a construction permit and an operating license under Part 50 of Title 10 of *the Code of Federal Regulations* (10 CFR) with respect to missiles generated by extreme winds. The draft SRP would also provide guidance for reviewing an application for a standard design approval, a standard design certification, a combined license, and a manufacturing license under 10 CFR Part 52 with respect to those same subject matters.

Issuance of this draft SRP, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, or otherwise be inconsistent with the issue finality provisions in 10 CFR Part 52. The staff's position is based upon the following considerations.

1. *The draft SRP positions, if finalized, do not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides interim guidance to the staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which applicants or licensees are protected under 10 CFR 50.109 or issue finality provisions in 10 CFR Part 52.

2. *Backfitting and issue finality—with certain exceptions discussed below—do not protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR Part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR Part 52—with certain exclusions discussed below—were intended to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR Part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in the draft SRP section (if finalized) in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the draft SRP section (if finalized) in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must make address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *The staff has no intention to impose the draft SRP positions on existing nuclear power plant licenses or regulatory approvals either now or in the future (absent a voluntary request for change from the licensee, holder of a regulatory approval, or a design certification applicant).*

The staff does not intend to impose or apply the positions described in the draft SRP section to existing (already issued) licenses (e.g., operating licenses and combined licenses) and regulatory approvals—in this case, design certifications. Hence, the draft SRP—even if considered guidance which is within the purview of the issue finality provisions in 10 CFR Part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose a position in the draft SRP (if finalized) on holders of already issued holders of licenses in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule, or address the criteria for avoiding issue finality as described applicable issue finality provision, as applicable.

Dated at Rockville, Maryland, this 1st day of August 2013.

For the Nuclear Regulatory Commission.

**George M. Tartal,**

*Acting Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.*

[FR Doc. 2013–19177 Filed 8–7–13; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0179]**

## Proposed Revisions to Maintenance Rule Standard Review Plan

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Standard review plan-draft section revision; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is revising the following section in Chapter 17, ''Quality Assurance'' and soliciting public comment on NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' Section 17.6, ''Maintenance Rule.''

**DATES:** Comments must be filed no later than September 9, 2013. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0179. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06A56, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory

Commission, Washington, DC 20555–0001; telephone: 301–415–6992 or email: *Jonathan.DeGange@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Accessing Information and Submitting Comments

### *A. Accessing Information*

Please refer to Docket ID NRC–2013–0179 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0179.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS Accession numbers for the redline document comparing the current revision and the proposed revision are available in ADAMS under Accession Nos. Section 17.6, Proposed Revision 2 (ML13015A125), Current Revision 1 (ML072920088), Redline (ML13015A426).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

### *B. Submitting Comments*

Please include Docket ID NRC–2013–0179 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

## II. Further Information

The Office of New Reactors and Office of Nuclear Reactor Regulation are revising this section from the current Revision 1. Changes in this revision include revised scoping and the new generic FSAR template guidance in the review procedures section, and revised references. Details of specific changes are included at the end of the proposed section.

The changes to this Standard Review Plan (SRP) Chapter reflect current staff review methods and practices based on lessons learned from NRC reviews of design certification and combined license applications completed since the last revision of this chapter. Changes include removal of reference to Regulatory Guide (RG) 1.182 which was superseded by RG 1.160 and adding reference to industry guidance Nuclear Energy Institute (NEI) 07–02A (ADAMS Accession No. ML103410542).

The NRC staff is issuing this notice to solicit public comments on the proposed SRP Section in Chapter 17. After the NRC staff considers any public comments, it will publish a final SRP Section in Chapter 17.

### *Backfitting and Issue Finality*

This draft SRP, if finalized, would provide guidance to the NRC staff for reviewing applications for a construction permit and an operating license under Part 50 of Title10 of the *Code of Federal Regulations* (10 CFR), with respect to compliance with the Maintenance Rule, 10 CFR 50.65 and the guidance in Nuclear Management and Resources Council (NUMARC) 93–01 as approved for use by the NRC in Regulatory Guide (RG) 1.160. The draft SRP would also provide guidance for reviewing an application for a standard design approval, a standard design certification, a combined license, and a manufacturing license under 10 CFR Part 52 with respect to these same subject matters.

Issuance of this SRP draft section revision, if finalized, would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR Part 52. The NRC's position is based upon the following considerations.

1. *The draft SRP positions, if finalized, would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR Part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the draft SRP to existing licenses and regulatory approvals. Hence, the issuance of a final SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR Part 52—would not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the NRC staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR Part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR Part 52—with certain exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants. The exceptions to the general principle are applicable whenever an applicant references a 10 CFR Part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the draft SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP section in a manner that does not provide issue finality as described in the applicable issue finality provision, then the NRC staff must address the criteria

for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland this 30th day of July 2013.

For the Nuclear Regulatory Commission.

**George M. Tartal,**

*Acting Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.*

[FR Doc. 2013–19201 Filed 8–7–13; 8:45 am]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Approval of Amendment to Special Withdrawal Liability Rules the I.A.M. National Pension Fund National Pension Plan

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of approval.

**SUMMARY:** The I.A.M. National Pension Fund National Pension Plan (''I.A.M. Fund'') requested the Pension Benefit Guaranty Corporation (''PBGC'') to approve a plan amendment providing for special withdrawal liability rules for certain employers that maintain the I.A.M. Fund. PBGC published a Notice of Pendency of the Request for Approval of the amendment on December 26, 2012 (77 FR 76090) (''Notice of Pendency''). In accordance with the provisions of the Employee Retirement Income Security Act of 1974, as amended (''ERISA'''), PBGC is now advising the public that the agency has approved the requested amendment.

**FOR FURTHER INFORMATION CONTACT:** Beth A. Bangert, Office of the Chief Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; Telephone 202–326–4020 (For TTY/TDD users, call the Federal Relay Service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020).

**SUPPLEMENTARY INFORMATION:**

### Background

Under § 4201 of ERISA, an employer who completely or partially withdraws from a defined benefit multiemployer pension plan becomes liable for a proportional share of the plan's unfunded vested benefits. The statute specifies that a ''complete withdrawal'' occurs whenever an employer either permanently (1) ceases to have an obligation to contribute to the plan, or (2) ceases all operations covered under the plan. *See* ERISA § 4203(a). Under the second test, therefore, an employer who closes or sells its operations will incur withdrawal liability. Under the first test, an employer who remains in business but who no longer has an obligation to contribute to the plan also is liable. The ''partial withdrawal'' provisions of §§ 4205 and 4206 impose a lesser measure of liability upon employers who greatly reduce, but do not eliminate, the operations that generate contributions to the plan. The withdrawal liability provisions of ERISA are a critical factor in maintaining the solvency of these pension plans and reducing claims made on the multiemployer plan guaranty fund maintained by PBGC. Without withdrawal liability rules, an employer who participates in an underfunded multiemployer plan would have a powerful economic incentive to reduce expenses by withdrawing from the plan.

Congress nevertheless allowed for the possibility that, in certain industries, the fact that particular employers go out of business (or cease operations in a specific geographic region) might not result in permanent damage to the pension plan's contribution base. In the construction industry, for example, the work must necessarily take place at the construction site; if that work generates contributions to the pension plan, it does not much matter which employer does the work. Put another way, if a construction employer goes out of business, or stops operations in a geographic area, pension plan contributions will not diminish if a second employer who contributes to the plan fills the void. The plan's contribution base is damaged, therefore, only if the employer stops contributing to the plan but continues to perform construction work in the jurisdiction of the collective bargaining agreement.

This reasoning led Congress to adopt a special definition of the term ''withdrawal'' for construction industry plans. Section 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan, but the employer nevertheless performs previously covered work in the jurisdiction of the collective bargaining agreement anytime within five years after the employer ceased its contributions.[1] There is a parallel rule for partial withdrawals from construction plans. Under § 208(d)(1) of ERISA, ''[a]n employer to whom § 4203(b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.''

Section 4203(f) of ERISA provides that PBGC may prescribe regulations under which plans that are not in the construction industry may be amended to use special withdrawal liability rules similar to those that apply to construction plans. Under the statute, the regulations ''shall permit the use of special withdrawal liability rules . . . only in industries'' that PBGC determines share the characteristics of the construction industry. In addition, each plan application must show that the special rule ''will not pose a significant risk to the [PBGC] insurance system.'' Section 4208(e)(3) of ERISA provides for parallel treatment of partial withdrawal liability rules.

The regulation on Extension of Special Withdrawal Liability Rules (29 CFR part 4203), prescribes the procedures a multiemployer plan must follow to request PBGC approval of a plan amendment that establishes special complete or partial withdrawal liability rules. Under 29 CFR 4203.3(a), a complete withdrawal rule must be similar to the statutory provision that applies to construction industry plans under § 4203(b) of ERISA. Any special rule for partial withdrawals must be consistent with the construction industry partial withdrawal provisions.

Each request for approval of a plan amendment establishing special withdrawal liability rules must provide PBGC with detailed financial and actuarial data about the plan. In addition, the applicant must provide PBGC with information about the effects of withdrawals on the plan's contribution base. As a practical matter, the plan must show that the characteristics of employment and labor relations in its industry are sufficiently similar to those in the construction industry that use of the construction rule would be appropriate. Relevant factors include the mobility of the employees, the intermittent nature of the employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed. PBGC

[1] Section 4203(c)(1) of ERISA applies a similar definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. No plan has ever requested PBGC to determine that it shares the characteristics of an entertainment plan.

will approve a special withdrawal liability rule only if a review of the record shows that:

(1) The industry has characteristics that would make use of the special construction withdrawal rules appropriate; and

(2) The adoption of the special rule would not adversely affect the plan. After review of the application and all public comments, PBGC may approve the amendment in the form proposed by the plan, approve the application subject to conditions or revisions, or deny the application.

**Request**

On December 26, 2012, PBGC published a notice soliciting public comment on a request on behalf of the I.A.M. Fund for approval of an amendment prescribing special withdrawal liability rules applicable to employers whose employees work under a contract or subcontract with federal or District of Columbia government agencies that, if approved by PBGC, would be effective for withdrawals occurring after January 1, 2009. PBGC received no comments on the notice.

The I.A.M. Fund is a multiemployer plan located in Washington, DC that covers workers with various skill-sets. It is maintained pursuant to collective bargaining agreements (''CBAs'') between contributing employers and the International Association of Machinists and Aerospace Workers. Certain contributing employers employ employees who work under a contract or subcontract with federal or District of Columbia government agencies governed by the Service Contract Act (''SCA''), 41 U.S.C. 351 *et seq.*

Under the I.A.M. Fund's proposed amendment, complete withdrawal of SCA employers would occur only: (a) Under conditions similar to those described in ERISA § 4203(b)(2) for the building and construction industry; (b) upon the employer's sale or transfer of a substantial portion of its business or assets to another entity who performs such work in the jurisdiction of the collective bargaining agreement but has no obligation to contribute to the I.A.M. Fund; or (c) when the employer ceases to have any obligation to contribute in connection with the withdrawal of every or substantially all employer(s) from the I.A.M. Fund. Partial withdrawal of an employer would occur only under conditions similar to those described in ERISA § 4208(d)(1).

As of January 1, 2010, the I.A.M. Fund had approximately 107,869 active participants and was paying approximately $445.8 million in benefits to 78,246 pensioners and survivors. For 2010, contributions were $331.8 million. The number of contributing employers remained stable from 2004–2010. Between 2004 and 2010, the number of active participants increased by almost 69%.

As of September 2012, the I.A.M. Fund had approximately 414 SCA-related CBAs covering 546 sites and 27,105 bargaining unit employees.

SUMMARY OF ACTUARIAL VALUATION RESULTS

| | 2010 | 2009 | 2008 | 2007 | 2006 | 2005 | 2004 |
|---|---|---|---|---|---|---|---|
| **Participant Data (as of Jan. 1)** | | | | | | | |
| Participant Counts: | | | | | | | |
| —Active | 107.869 | 104,210 | 112,842 | 93,672 | 68,276 | 67,181 | 63,894 |
| —Retired | 78,246 | 76,418 | 74,534 | 71,547 | 70,138 | 68,261 | 65,491 |
| —Separated Vested. | 83,925 | 81,943 | 79,092 | 76.406 | 72,463 | 73,193 | 72,010 |
| —Total | 270,040 | 262,571 | 266,468 | 241,625 | 210,877 | 208,635 | 201,395 |
| **Contribution Data** | | | | | | | |
| Contribution Base Units. | N/A | 212,406,557 | 210,572,334 | 208,129,349 | 182,572,827 | 145,873,219 | 139,636,859 |
| Contributions Received. | $331,827,659 | $318,412,576 | $297,403,006 | $269,232,994 | $229,965,014 | $186,198,239 | $166,273,860 |
| **Fund Disbursement Data** | | | | | | | |
| Benefits Paid | $445,754,303 | $418,034,866 | $389,758,999 | $363,962,958 | $342,698,440 | $323,603,306 | $302,687,611 |
| Total Disbursements. | $514,294,120 | $482,408,116 | $456,233,117 | $429,698,388 | $401,038,579 | $374,564,146 | $346,893,190 |
| **Funding Valuation Results** | | | | | | | |
| Actuarial Accrued Liability [2]. | $10,226,289,591 | $9,518,894,643 | $8,786,060,437 | $8,319,506,519 | $7,177,520,251 | $6,757,777,312 | $6,316,201,092 |
| Actuarial Value of Plan Assets [3 4]. | $9,348,495,105 | $7,324,683,461 | $8,528,445,344 | $7,562,612,176 | $6,910,936,597 | $6,542,310,777 | $6,291,567,994 |
| Unfunded Actuarial Accrued Liability. | $877,794,486 | $2,194,211,182 | $257,615,093 | $756,894,343 | $266,583,654 | $215,466,535 | $24,633,098 |
| Normal Cost | $262,972,734 | $247,015,553 | $224,816,950 | $224,796,287 | $175,174,376 | $161,286,365 | $146,360,771 |
| Ratio of Contributions to Normal Cost Plus Interest on Unfunded Actuarial Accrued Liability. | 1.01 | 0.77 | 1.22 | 0.96 | 1.18 | 1.05 | 1.12 |
| Funding Valuation Interest Rate. | 7.50% | 7.50% | 7.50% | 7.50% | 7 50% | 7.50% | 7.50% |
| IRC § 432 Plan Status [5]. | Neither Endangered nor Critical | Neither Endangered nor Critical | Neither Endangered nor Critical | N/A | N/A | N/A | N/A |
| Funding Standard Account credit balance (at end of year). | $1,441,923,418 | $1,287,537,314 | $1,215,638,933 | $1,115,449,739 | $1,100,832,864 | $1,034,280,096 | $997,208,997 |
| **Current Liability Valuation Results** | | | | | | | |
| Current Liability [6] | $12,890,834,839 | $11,616,776,438 | $11,423,640,776 | $8,852,393,063 | $7,728,528,595 | $6,964,467,902 | $6,178,194,421 |
| Market Value of Plan Assets. | $7,415,989,310 | $6,103,902,884 | $9,143,330,428 | $8,505,670,319 | $7,440,076,874 | $6,917,117,902 | $6,194,918,670 |
| Unfunded Current Liability. | $5,474,845,529 | $5,512,873,554 | $2,280,310,348 | $346,722,744 | $288,451,721 | $47,350,000 | $0 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Current Liability Normal Cost (Expected Increase in Current Liability Due to Benefits Accruing During the Plan Year). | $812,708,299 | $724,602,812 | $722,802,865 | $515,502,172 | $373,709,001 | $332,979,085 | $283,365,005 |
| Ratio of Contributions to Increase In Current Liability Due to Benefit Accruals Plus Interest on Unfunded Current Liability. | 0.31 | 0.32 | 0.34 | 0.50 | 0.59 | 0.55 | 0.59 |
| Current Liability Interest Rate [7]. | 4.58% | 4.82% | 4.33% | 5.78% | 5.77% | 6.10% | 6.55% |
| **Withdrawal Liability Valuation Results** | | | | | | | |
| Total Unfunded Vested Benefit Liability for Withdrawal Liability Purposes [8]. | $0 | $209,374,018 | $0 | $0 | $0 | $0 | $0 |

(1) Elective January 1, 2011, the rate of future benefit accrual was reduced by 40% (except for participants subject to a custom benefit schedule and those whose employers first joined the fund after April 1, 2003). This change facilitated a zone certification of "Neither Endangered nor Critical" for 2010, which satisfied a key requirement for extending the amortization period for funding standard account charge bases in effect as of January 1, 2009 (under Code § 431(d)).

(2) The actuarial accrued liability was determined using actuarial assumptions selected by the plan actuary which are deemed to be reasonable (taking into account the experience of the plan and reasonable expectations) and which offer the actuary's best estimate of anticipated experience under the plan. The actuarial accrued liability was determined under the individual entry age normal actuarial cost method.

(3) The actuarial value of plan assets was based on recognition of the difference between actual investment return and that anticipated under the funding valuation interest rate assumption over a five-year period. The actuarial value is constrained to a 20% corridor around market value.

(4) The plan elected to implement certain funding relief options allowed under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010. These relief provisions involve i) extending the recognition period for investment losses experienced in 2008 to 29 years; ii) extending the upper constraint on the actuarial value of assets to 130% market value; and iii) modifying the asset valuation method by smoothing the difference between expected and actual return for the year ending December 31, 2008 over a period of 10 years.

(5) The 2009 plan status of "Neither Endangered nor Critical" is the result of an election by the plan's trustees to freeze the plan status at the 2009 level, as permitted under the Worker, Retiree and Employer Recovery Act of 2008 Without this legislation, the 2009 plan status would have been "Endangered."

(6) The current liability was determined under actuarial methods and assumptions specified by the Internal Revenue Code and implementing regulations. The unit credit actuarial cost method was used to determine current liability.

(7) The current liability assumed interest rate is selected from a range based on the four-year weighted average rate on 30-year Treasury bonds as of the valuation date.

(8) The unfunded vested benefit liability for withdrawal liability purposes was calculated using the unit credit actuarial cost method, the funding valuation interest rate assumption and the funding valuation actuarial value of plan assets.

**Decision on the Proposed Amendment**

The statute and the implementing regulation state that PBGC must make two factual determinations before it approves a request for an amendment that adopts a special withdrawal liability rule. ERISA § 4203(f); 29 CFR 4203.4(a). First, on the basis of a showing by the plan, PBGC must determine that the amendment will apply to an industry that has characteristics that would make use of the special rules appropriate. Second, PBGC must determine that the plan amendment will not pose a significant risk to the insurance system. PBGC's discussion on each of those issues follows. After review of the record submitted by the I.A.M. Fund, and having received no public comments, PBGC has entered the following determinations.

*1. What Is the Nature of the Industry?*

In determining whether an industry has the characteristics that would make an amendment to special rules appropriate, an important line of inquiry is the extent to which the I.A.M. Fund's contribution base resembles that found in the construction industry. This threshold question requires consideration of the effect of SCA employer withdrawals on the I.A.M. Fund's contribution base. As with construction-industry employers, when SCA employers contributing to the I.A.M. Fund lose their contracts, the applicable federal or District of Columbia government agency contracts with a new employer to contribute at the same or substantially the same rate for the same number of contribution base units as the previous SCA employer. This is because the SCA provides that employees must not be paid less than the wages and fringe benefits set by the Department of Labor or as collectively bargained. Over the past ten years, cessation of contributions by any individual SCA employer has not had an adverse impact on the I.A.M. Fund's contribution base. Most SCA employers that have ceased to contribute have been replaced by another employer who begins contributing for the same work.

*2. What Is the Exposure and Risk of Loss to PBGC and Participants?*

*Exposure.* During the seven year period from 2004 to 2010, the I.A.M. Fund's active participant population increased by 69% while the number of retirees increased by 17%. In those same years, the number of contribution base units grew strongly and the dollar amount of contributions doubled. Benefits paid exceeded contributions in every year, but grew only 47%—a significantly slower than the growth of contributions.

*Risk of loss.* The record shows that the I.A.M. Fund presented a low risk of loss to PBGC guaranty funds. The I.A.M. Fund did not have unfunded vested benefits for withdrawal liability purposes as of December 31, 2009, and did not have to assess withdrawal liability for withdrawals in 2010. The I.A.M. Fund and the covered industry have unique characteristics that suggest that the I.A.M. Fund's contribution base is likely to remain stable. Contributions to the I.A.M. Fund are made with respect to SCA employers whose employees work under a contract or subcontract with federal or District of Columbia government agencies covered under the SCA. Consequently, the I.A.M. Fund's contribution base is secure and the departure of one SCA employer from the I.A.M. Fund is not likely to have an adverse effect on the contribution base so long as the replacement SCA employer contributes to the I.A.M. Fund for substantially the same number of contribution case units at the same or higher contribution rate as the previous employer.

**Conclusion**

Based on the facts of this case and the representations and statements made in connection with the request for approval, PBGC has determined that the plan amendment modifying special withdrawal liability rules (1) will apply only to an industry that has characteristics that would make the use of special withdrawal liability rules appropriate, and (2) will not pose a significant risk to the insurance system. Therefore, PBGC hereby grants the I.A.M. Fund's request for approval of a plan amendment modifying special withdrawal liability rules applicable to SCA employers, as set forth herein. Should the I.A.M. Fund wish to amend these rules at any time, PBGC approval of the amendment will be required.

Issued at Washington, DC, on this 26 day of July, 2013.

**Joshua Gotbaum,**

*Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 2013–19219 Filed 8–7–13; 8:45 am]

BILLING CODE 7709–02–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70102; File No. SR–C2–2013–028]**

## Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Order Handling

August 2, 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 July 25, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to modify its rules to address certain option order handling procedures on the Exchange in connection with the implementation of the market wide equity Plan to Address Extraordinary Market Volatility (the ''Plan''). The text of the proposed rule change is available at the Exchange's Office of the Secretary, on the Exchange's Web site at *http://www.c2exchange.com/Legal/*, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov*.

**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.

[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

In an attempt to address extraordinary market volatility in NMS Stock, and, in particular, events like the severe volatility on May 6, 2010, the Exchange, in conjunction with the other national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, ''Participants'') drafted the Plan pursuant to Rule 608 of Regulation NMS and under the Securities Exchange Act of 1934 (the ''Act'').[3] The Plan is primarily designed to, among other things, address extraordinary market volatility in NMS stocks, protect investors, and promote fair and orderly markets. The Plan provides for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of specified price bands, as defined in Section I(N) of the Plan. These requirements are coupled with trading pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or monetary gaps of liquidity).

The Plan was filed on April 5, 2011 by the Participants for publication and comment.[4] The Participants requested the Commission approve the Plan as a one-year pilot. On May 24, 2012, the Participants filed an amendment to the Plan which clarified, among other things, the calculation of the reference price, as defined in Section I(T) of the Plan, potential for order type exemption, and the creation of an Advisory Committee.[5] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[6] The Plan was implemented on April 8, 2013.

Though the Plan was primarily designed for equity markets, the Exchange believed it would impact the options markets as well. Thus, the Exchange filed rule changes to amend the Exchange rules to ensure the option markets are not compromised as a result of the Plan's implementation.[7] The Exchange is proposing to amend these rules to clarify how the openings will operate on the Exchange in the event of a limit up-limit down state.

The current rule 6.11, as recently amended, states that is an underlying security for an option class enters into a limit up-limit down state when the class moves to opening rotation, ''all market orders in the system will be cancelled.''[8] The Exchange is proposing to: (1) Correct the reference to Exchange Rule 6.3A, (2) add an exception to this general rule, and (3) provide greater clarity on the effect of a limit up-limit down state on an underlying security after the Rotation Period has begun.

First, the Exchange is proposing to clarify an incorrect reference in Rule 6.11.03 to Rule 6.3A. The correct reference should be made to Rule 6.39 which was a recently added rule to address the Plan. The Exchange believes that by updating the reference, Permit Holders will have greater clarity of which rule is applicable.

Next the Exchange is proposing to make an exception to the general rule that all market orders will be cancelled during the Rotation Period if the underlying security is in a limit up-limit down state. The Exchange is proposing to add language stating that the type of order described in Exchange Rule 6.12(h), ''No-Bid Series'' orders, from a previous day will not cancelled. The Exchange is proposing to allow such market orders to remain in the Exchange Book because these essentially act as limit orders at the minimum increment. Cancelling such orders could potentially cause such orders to lose their priority with respect to other market orders in the Exchange Book. The Exchange believes that though these orders are essentially treated as limit orders, because they may have a ''market'' distinction, alerting Permit Holders of the behavior of such orders when the underlying security enters a limit up-limit down state will provide more clarity. In addition, this behavior is consistent with how limit orders are treated in the same situation.

Finally, the Exchange is proposing to add further clarity to the recently amended rule to clarify that if a limit up-limit down state commences *after* the Rotation Period has begun for a class of options, the Rotation Period will continue normally. More specifically, the Exchange is proposing to add language to state that market and limit orders will continue through the Rotation Period as they would if there was not a limit up-limit down state. Once the Rotation Period has begun for a class of options, due to how the Exchange System operates, the process will not be interrupted to modify the order handling mid-process.

Market orders will continue to process even though they are normally returned during a limit up-limit down state,[9] limit orders will process normally,[10] and the Exchange will open normally if there is a presence of Opening Conditions.[11] Market orders, though normally returned during a limit up-limit down state to avoid executions at unfavorable or unreliable prices, do not face the same risks when they are part of the opening process. This is because preopening orders are matched with each other and with other interest during the Rotation Period. Thus, market orders will trade at the calculated opening price. Preopening limit orders will also be filled at the opening price and cannot be filled through their limit prices.

The Exchange believes this clarity is necessary to ensure Permit Holders are fully aware of special order handling during limit up-limit down states. Though the rule currently specifies what happens to orders on the Exchange if the limit up-limit down state commences prior to the Rotation Period beginning for a class of options, the Exchange believes it is necessary to additionally state what would happen if the Rotation Period had already begun and the limit up-limit down state triggers during the time of that process. The Exchange believes that including pre-opening market order interest in the Rotation Period will enhance the liquidity available during the rotation, and that the nature of the opening match process will protect market orders against anomalous opening prices that could otherwise be caused by market conditions associated with a limit-up limit-down state. This will also

[3] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

[4] *Id.*

[5] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631).

[6] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

[7] *See* Securities and Exchange Act Release No. 34–69345 (April 8, 2013), 78 FR 21985 (April 11, 2013) (SR–C2–2013–013).

[8] *See* Exchange Rule 6.11.03.

[9] *See* Exchange Rule 6.10(a) which describes how market orders process.

[10] *See* Exchange Rule 6.10(b) which describes how limit orders process.

[11] *See* Exchange Rule 6.11(f) which describes how the Exchange will open in the presence of Opening Conditions. If a limit up-limit down state commences after the Rotation Period has begun for a class of options, options to buy and sell will be paired to the extent possible. If another market is displaying a more favorable price, then the Exchange will open as described in 6.11(f). Consistent with Rule 6.11(f), the Exchange will link any unmatched portion of the market order to an away trading venue. Any portion of a market order that is unfilled and returned to the Exchange will be cancelled. Thus, markets orders will not be filled at an unreliable price because they will either be paired with other resting orders at the open or linked to an away trading venue displaying a more favorable price. The Exchange believes this is consistent with the treatment of market orders and ensures they will not be given an unreliable price despite the limit up-limit down state. Additionally, because limit orders have a limit price, these orders will also not fill at an unreliable price.

help to ensure the options markets remain just and equitable with the implementation of the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] 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 the proposed changes will be in accordance with the Act as they are merely intended to ensure the options markets will continue to remain just and equitable with the implementation of the Plan which is intended to reduce the negative impacts of a sudden, unanticipated price movement in NMS stocks. The proposed rule changes would promote this intention in the options markets while protecting investors participating there. More specifically, the currently proposed changes will correct and clarify current Exchange rules promoting the interest of investors. Finally, creating a more orderly market will promote just and equitable principles of trade by allowing investors to feel more secure in their participation in the national market system after the implementation of the Plan. In addition, the Exchange is proposing to provide a more robust rule text by clarifying what occurs if a limit up-limit down states initiates after the beginning of the Exchange's opening rotation. The Exchange believes that not cancelling the pre-opening interest will ensure investors can execute more interest despite the change in the market conditions after the opening process has begun. This will also help to ensure the options markets remain just and equitable with the implementation of the Plan.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed changes will not impose any burden on intramarket competition because it applies to all Permit Holders equally. The Exchange does not believe the proposed changes will impose any burden on intermarket competition as the changes are merely being made to protect investors with the implementation of the Plan. In addition, the proposed changes will provide certainty of treatment and execution of options orders during periods of extraordinary market volatility.

*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 [15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

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 under Section 19(b)(2)(B) [17] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2013–028 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2013–028. 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 Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(2)(B).

should refer to File Number SR–C2–2013–028 and should be submitted on or before August 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19149 Filed 8–7–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70098; File No. SR–NYSEMKT–2013–66]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change To Adopt the Text of New York Stock Exchange Rule 49 as Rule 49—Equities in Order To Authorize Exchange Officials To Exercise the Same Emergency Powers As NYSE Officials May Exercise

August 2, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 22, 2013, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to [adopt] the text of New York Stock Exchange (''NYSE'') Rule 49 as Rule 49—Equities in order to authorize Exchange officials to exercise the same emergency powers as NYSE officials may exercise. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to adopt the text of proposed NYSE Rule 49 as Rule 49—Equities in order to authorize Exchange officials to exercise the same emergency powers as NYSE officials may exercise.[4]

Background

In 2009, NYSE adopted NYSE Rule 49 to provide NYSE officials with the authority to declare an emergency condition[5] with respect to trading on or through NYSE's systems and facilities and to act as necessary in the public interest and for the protection of investors.[6] The authority in NYSE Rule 49 may be exercised when, due to an emergency condition, NYSE's systems and facilities located at 11 Wall Street, New York, New York, including the NYSE Trading Floor, cannot be utilized. If such an emergency condition is declared, a qualified NYSE officer may, among other things, designate NYSE Arca LLC (''NYSE Arca''), NYSE's and the Exchange's affiliate, to serve as a backup facility to receive and process bids and offers and to execute orders on behalf of NYSE so that NYSE, as a self-regulatory organization (''SRO''), can remain operational.[7] NYSE Arca, which would continue to operate simultaneously during the emergency condition, has a counterpart rule, NYSE Arca Equities Rule 2.100. To date, NYSE has not invoked NYSE Rule 49. The Exchange currently has no counterpart rule.

On October 29 and 30, 2012, due to the dangerous conditions that developed as a result of Superstorm Sandy, NYSE and the Exchange, as well as a number of their member organizations located in the tri-state area, were unable to open because of the risk of flooding at their physical locations. In addition, other broker-dealers and exchanges with facilities in the area were also faced with significant staffing challenges because the storm conditions prevented personnel from getting to work. As a result, it was agreed, after consulting with other exchanges, market participants, and Commission staff, and in light of concerns over the physical safety of personnel and the possibility of technical issues, that all U.S. equities and options markets would be closed for those two days.

NYSE has proposed to amend NYSE Rule 49 to more effectively delineate the SRO functions of the Exchange and NYSE Arca during an emergency condition, reflect the operational preferences of the industry, and reflect the current structure of member organization connectivity to and system coding for exchange systems.[8] The current NYSE rule contemplates the Exchange remaining operational during the emergency condition and both NYSE and NYSE Arca performing certain SRO functions with respect to the same trading activity that would be taking place on NYSE Arca. NYSE believes that a more practical and effective structure would be to have all trading activity occurring on NYSE Arca under that SRO's authority, with one exception. NYSE Arca would, on behalf and at the direction of NYSE, disseminate certain primary listing market messages as both NYSE and NYSE Arca messages so that market participants' systems could properly recognize such messages. NYSE Arca would do so beginning on the next trading day following the declaration of the emergency condition. All trading volume on NYSE Arca in NYSE-listed securities during the emergency condition would be reported as NYSE

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* SR–NYSE–2013–54.

[5] The definition of ''emergency'' is the one used in Section 12(k)(7) of the Act and is also used by other exchanges and the Securities and Exchange Commission (''Commission''). Section 12(k)(7) defines an emergency to mean ''(A) a major market disturbance characterized by or constituting—(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or (B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions.'' 15 U.S.C. 78l(k)(7).

[6] *See* Securities Exchange Act Release No. 61177 (December 16, 2009), 74 FR 68643 (December 28, 2009) (SR–NYSE–2009–105).

[7] NYSE Arca trades equity securities on the systems and facilities of its wholly owned subsidiary, NYSE Arca Equities, Inc., referred to as the ''NYSE Arca Marketplace.'' For the purposes of this filing and in the text of proposed Rule 49—Equities, these shall be referred to collectively as the systems and facilities of NYSE Arca, or simply NYSE Arca.

[8] *See supra* [note 4].

Arca volume, except for volume associated with the opening and closing prints in NYSE-listed securities, which would be deemed NYSE volume. NYSE Arca has submitted a related rule filing.[9]

Proposed Rule Change

To align its authority with its affiliates and mitigate the possibility of having to close in the event of a future emergency condition, the Exchange proposes to adopt the text of proposed NYSE Rule 49. The proposed rule change would provide NYSE MKT officials with the same emergency powers that NYSE officials may exercise. Each of the provisions of the proposed rule change is described below.

Under proposed Rule 49(a)(1)—Equities, in the event of an emergency, a qualified Exchange officer would have the authority to declare an emergency condition with respect to trading on or through the systems and facilities of the Exchange (''Emergency Condition'') and designate NYSE Arca to perform the functions set forth in proposed Rule 49(b)(2)(A)—Equities on behalf of and at the direction of the Exchange.

Under proposed Rule 49(a)(2)—Equities, no declaration of an Emergency Condition could be made pursuant to Rule 49(a)(1)—Equities unless (A) a regional or national emergency existed that would prevent the Exchange from operating normally, and (B) such declaration was necessary so that the securities markets, in general, could continue to operate and trading in Exchange-listed securities, in particular, could continue to occur in a manner consistent with the protection of investors and in pursuit of the public interest.

Under proposed Rule 49(a)(3)—Equities, the term ''emergency'' as used in the rule would mean an ''emergency'' as defined in Section 12(k)(7) of the Act.[10] The term ''qualified Exchange officer'' would mean the NYSE Euronext Chief Executive Officer or his or her designee, or the NYSE Regulation, Inc. Chief Executive Officer or his or her designee. If none of these individuals were able to act due to incapacitation, the most senior surviving officer of NYSE Euronext or NYSE Regulation, Inc. would be a ''qualified Exchange officer'' for purposes of the rule.

Under proposed Rule 49(b)(1)—Equities, when an Emergency Condition is declared under paragraph (a), the Exchange: (A) Would halt all trading conducted on the Exchange's systems and facilities and would not route any unexecuted orders to NYSE Arca; (B) would accept cancellations for Good 'Til Cancelled (''GTC'') orders; and (C) would purge any unexecuted orders from the Exchange's own systems and facilities as soon as practicable following declaration of the Emergency Condition.

Under proposed Rule 49(b)(2)—Equities, beginning on the next trading day following the declaration of the Emergency Condition,[11] NYSE Arca would, on behalf of and at the direction of the Exchange, disseminate as messages of both the Exchange and NYSE Arca (A) the official opening and closing prices of Exchange-listed securities to the Consolidated Tape Association (''CTA''), and (B) notifications to the Consolidated Quotation System (''CQS'') for Exchange-listed securities of (i) regulatory halts and resumption of trading thereafter, (ii) trading pause and resumption of trading thereafter, and (iii) Short Sale Price Test trigger and lifting thereafter (collectively, ''primary listing market notifications'').[12] The Exchange notes that in the event of an intra-day declaration of an Emergency Condition, the Exchange would manually disseminate primary listing market notifications to CQS. Quotes or orders of Exchange-listed securities entered on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to CQS as bids or offers of NYSE Arca, and quotes or orders of Exchange-listed securities executed on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to CTA as executions of NYSE Arca, except that executions in the opening or closing auctions would be reported as Exchange volume only in order to avoid any double counting.

The Exchange believes that the proposed rule would minimize the impact of declaring an Emergency Condition because NYSE Arca already trades Exchange-listed securities on an unlisted trading privileges basis and prints such executions as NYSE Arca, or ''P,'' trades.[13] This arrangement would be compatible with market participants' system coding conventions, where orders routed to an exchange generally come back as executions from that exchange, unless routed out. Thus, quotes and orders in Exchange-listed securities routed to NYSE Arca during the Emergency Condition would come back to the entering firm as ''P'' executions, rather than ''A'' executions.[14] Similarly, the Exchange further understands that in order for many market participants' systems to recognize the primary listing market notifications, the notifications must carry an ''A'' designation to associate it with Exchange-listed securities. If the notifications were disseminated only as ''P'' notifications, they may not be properly recognized by these market participants' systems. However, other market participants may be able to read such primary listing market notifications if disseminated with the ''P'' designation. Accordingly, during an Emergency Condition, in order to accommodate various market participants' existing technological frameworks for the temporary measures addressed in proposed Rule 49—Equities, NYSE Arca would disseminate the official opening and closing prints for Exchange-listed securities and primary listing market notifications with both ''P'' and ''A'' designations. When NYSE Arca disseminates these messages on behalf of the Exchange, it will do so in accordance with its own rules and procedures for its primary listed securities.[15] The Exchange believes that the proposed rule change offers a practical solution that will be compatible with most market participants' current system coding, which will allow the proposed rule change to be quickly and efficiently implemented and avoid the costs and delays associated with system reprogramming.

The Exchange believes that maintaining a primary market print for an Exchange-listed security's official opening price would assist market participants that rely on a primary market opening print as the basis for trading strategies for that trading day. For example, the pricing and valuation of certain indices, funds and derivative products require primary market prints. Similarly, private corporate transactional contracts involving stock purchases or valuations frequently make reference to the primary market print rather than to the CTA print. In addition, certain indexes rely on the primary listing market closing print to

[9] *See* SR–NYSEArca–2013–77.

[10] *See supra* [note 5].

[11] The Exchange's current and proposed disaster recovery plans do not enable the intraday failover of the Exchange's system onto NYSE Arca, including dissemination of primary listing market notifications; such technology is only available on a next-day basis.

[12] *See* NYSE MKT Rules 123D—Equities, 80B—Equities, 80C—Equities, and 440B—Equities. Each of these types of notifications is a responsibility of the primary listing market for the security.

[13] The ''P'' designation reflects one of NYSE Arca's predecessor names, Pacific Exchange, Inc., before it was purchased by NYSE Euronext.

[14] The ''A'' designation reflects one of the Exchange's predecessor names, American Stock Exchange LLC, before it was purchased by NYSE Euronext.

[15] Nonetheless, the Exchange will remain the SRO that is legally responsible for the notifications.

calculate the index, and certain funds rely on the primary listing market closing print to calculate the fund's value. Thus, these market participants would benefit from the dissemination of the primary market prints as ''A'' messages and not have to engage in any system reprogramming to receive them.

Under proposed Rule 49(b)(3)—Equities, members and member organizations wishing to trade Exchange-listed securities during an Emergency Condition would be responsible for having contingency plans for establishing connectivity to NYSE Arca and changing the routing instructions for their order entry systems to send quotes and orders in Exchange-listed securities to NYSE Arca. Under proposed Rule 49(b)(4)—Equities, during an Emergency Condition, all trading of Exchange-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be subject to NYSE Arca Equities rules (including but not limited to the opening, re-opening, and closing auction processes applicable to securities for which NYSE Arca is the primary listing market set forth in NYSE Arca Equities Rule 7.35), except that the Exchange's listing requirements for its listed securities would continue to apply.

Under proposed Rule 49(c)(1)—Equities, in connection with taking action under the rule, a qualified Exchange officer would make reasonable efforts to consult with the Commission before taking such action, or, if the qualified Exchange officer were unable to consult prior to acting, as promptly thereafter as practicable under the circumstances. The authority granted pursuant to the rule would be operative for up to 10 calendar days from the date that the Exchange invoked such authority. The Exchange could request that the initial 10-calendar-day period be extended for a specific amount of time by submission of a rule filing pursuant to Section 19(b)(2) of the Act. Such extension would not take effect except upon approval of such a filing by the Commission. Actions taken pursuant to the rule could be terminated by the Exchange at any time. The Exchange would provide adequate prior notice to members, member organizations, Sponsored Participants and investors regarding its intention to terminate any such action.

The Exchange will announce by Trader Update when the Exchange and NYSE Arca will be ready to implement the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(7) of the Act,[18] in particular, in that it provides fair procedures for the disciplining of members [19] and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

Specifically, the Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and national market system because it offers a practical solution to facilitate trading in Exchange-listed securities in the event of an Emergency Condition and would help to avoid a future market-wide closure. All quoting and trading activity in NYSE MKT-listed securities during the Emergency Condition would be deemed NYSE Arca quoting and trading for purposes of CQS and CTA reporting and be subject to NYSE Arca's surveillance and discipline, except that the opening and closing prints and primary listing market notifications would be disseminated as both Exchange and NYSE Arca messages so that the majority of market participants' systems could properly receive and process them. As such, the proposed rule change reflects the operational preferences of the industry and the current structure of most member organizations' connectivity to and system coding for exchange systems and would reduce the systemic and administrative burdens on market participants by avoiding the need for reprogramming, depending on which message notifications their respective systems would be able to read during such an Emergency Condition. The Exchange believes that facilitating trading on NYSE Arca in Exchange-listed securities under that SRO's rules would benefit both issuers and investors by providing additional liquidity during the Emergency Condition.

The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system because it would assist market participants that rely on or reference a primary market opening print in their trading strategies or private corporate transactional contracts involving stock purchases or valuations. In addition, certain indexes rely on the primary listing market closing print to calculate the index and certain funds rely on the primary listing market closing print to calculate the fund's value. The proposed rule change would assist these market participants in performing these functions without requiring them to reprogram their systems.

The Exchange also believes that the proposed rule change would promote just and equitable principles of trade and provide for fair discipline by clearly delineating SRO surveillance and disciplinary functions. The Exchange believes that it would be more effective for NYSE Arca to discipline NYSE MKT members and member organizations under NYSE Arca rules rather than having the Exchange enforce NYSE Arca rules, as the NYSE would do under its current rule.

In sum, the Exchange believes that the proposed rule change would substantially strengthen business continuity planning for itself and its member organizations, thereby benefiting market participants and investors generally.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate trading in Exchange-listed securities on NYSE Arca during an Emergency Condition. As such, the Exchange believes that the proposed rule change would promote competition for the benefit of market participants and investors generally.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(7).

[19] The Exchange's equivalent to the term ''member'' in this context is ''member organization.''

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2013–66 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR- NYSEMKT–2013–66. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSEMKT–2013–66 and should be submitted on or before August 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19145 Filed 8–7–13; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70101; File No. SR–Phlx–2013–78 ]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading Halts or Suspension When an Exchange Trading System Experiences Technical Failure or Failures

August 2, 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 July 25, 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, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Exchange Rules 1047 and 1047A to expressly state another factor that is considered in determining whether trading on the Exchange in any class of option contracts should be halted or suspended.

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.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to amend Exchange Rule 1047, entitled ''Trading Rotations, Halts and Suspensions'' and Rule 1047A, entitled ''Trading Rotations, Halts or Reopenings'' to expressly state a factor which is considered today in determining whether to halt or suspend trading in any class of option on the Exchange. Today, Exchange Rule 1047 contains four factors that an Options Exchange Official[3] may consider appropriate in the interests of a fair and orderly market and to protect investors when determining whether to halt or suspend options trading. The current factors are as follows: (i) Trading in the underlying stock or Exchange-Traded Fund Share has been halted or suspended in the primary market; (ii) the opening of such underlying stock or Exchange-Traded Fund Share in the primary market has been delayed because of unusual

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 1. An ''Option Exchange Official'' is an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. A list of individual Options Exchange Officials shall be displayed on the Exchange Web site. The Chief Regulatory Officer shall maintain the list of Options Exchange Officials and update the Web site each time a name is added to, or deleted from, the list of Options Exchange Officials. In the event no Options Exchange Official is available to rule on a particular matter, the Chief Regulatory Officer or his/her designee shall rule on such matter.

circumstances; (iii) the Exchange has been advised that the issuer of the underlying stock or Exchange-Traded Fund Share is about to make an important announcement affecting such issuer; or (iv) other unusual conditions or circumstances are present. This fourth factor is the basis on which Options Exchange Officials today halt or suspend options trading for technical issues on Phlx.

The Exchange is proposing to expressly state that technical failures may be considered when determining to halt or suspend options trading. Specifically, the Exchange proposes to expressly note that an Options Exchange Official may consider a Trading System technical failure or failures including, but not limited to, the failure of the central processing system, a number of member or member organization trading applications, or the electrical power supply to the system itself or any related system in determining when to halt or suspend options trading. The Exchange proposes to define Trading System for purposes of this Rule as Phlx XL II, or any other Exchange quotation, transaction reporting, execution, order routing or other systems for trading options.

The Exchange believes that a Trading System failure may be considered as an unusual condition or circumstance as noted in Rule 1047(iv) and Rule 1047A(iii), however the Exchange desires to include specific language regarding a technical failure within the list of considerations, similar to other options exchanges. Today, this factor is included in the list of factors for halting or suspending options trading on The NASDAQ Options Market LLC (''NOM'') and the NASDAQ OMX BX, Inc. (''BX Options'').[4] NOM and BX Options today halt or suspend options trading for technical failures utilizing the corresponding rules at Chapter V, Section 3. The Exchange believes that expressly stating this factor within Rules 1047 and 1047A will provide clearer guidance to Options Exchange Officials when they are determining whether to halt or suspend options trading on Phlx.

Similarly, the Exchange proposes to add identical language to Rule 1047A which relates to the trading of options on indices. Rule 1047A currently provides that ''[t]rading on the Exchange in any option may be halted with the approval of an Options Exchange Official, whenever trading on the primary market in any underlying security is halted or suspended. Trading shall be halted whenever an Options Exchange Official deems such action appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following: (i) Trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks; (ii) the current calculation of the index derived from the current market prices of the stocks is not available; (iii) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.'' The Exchange proposes to amend Rule 1047A by adding identical language to that proposed for Rule 1047. The Exchange also proposes to renumber Rules 1047 and 1047(A) to include the added factor.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] 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, by specifically noting that Options Exchange Officials may consider technical failures when halting or suspending options trading.

The Exchange believes that expressly noting that a system technical failure should be among the factors considered by an Options Exchange Official in halting or suspending options trading provides greater clarity to the factors which may cause such a market halt or suspension. Today, a technical failure of either the exchange's Trading System or that of a number of Participants would be considered in halting or suspending options trading on NOM and BX Options.[7] An Options Exchange Official must determine whether halting or suspending options trading is appropriate to ensure a fair and orderly market and also to protect investors. Options Exchange Officials must consider the factors enumerated within Rules 1047 and 1047A, depending on the options impacted, and make decisions as to whether to halt or suspend trading after an analysis of the facts. The Exchange believes that expressly noting Trading System failures as a consideration is appropriate because such failures could prevent a fair and orderly market and impact investors. The Exchange believes that the addition of the proposed text provides greater clarity to the factors to be considered by Options Exchange Officials.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes this proposed rule change will benefit investors by specifically noting that technical issues are a consideration for an Options Exchange Official when determining whether to halt or suspend options trading. Today, the Exchange halts and suspends options trading for such technical failures when those failures impact investors as do other options exchanges. This proposal will provide greater clarity to Options Exchange Officials in making these determinations.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission

[4] *See* NOM and BX Options Rules at Chapter V, Section 3.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* NOM and BX Options Rules at Chapter V, Section 3.

[8] 15 U.S.C. 78s(b)(3)(a)(ii).

[9] 17 CFR 240.19b–4(f)(6).

written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–78 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–2013–78. 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–Phlx–2013–78 and should be submitted on or before August 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19148 Filed 8–7–13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70095; File No. SR–BX–2013–046]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Options Fees and Rebates

August 2, 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 July 30, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Chapter XV, Section 2 entitled ''BX Options Market—Fees and Rebates'' to add iPath S&P 500 VIX Short Term Futures (''VXX'') to the list of options underlying certain penny pilot options.

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on August 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

BX proposes to amend Chapter XV, Section 2(1) to add VXX to the list of options underlying certain penny pilot options (the others include BAC, IWM, QQQ and SPY, collectively with VXX, the ''Specified Penny Pilot Options'').

The proposed rule change will reflect the fees and rebates as follows:

FEES AND REBATES

[per executed contract]

| | Customer | BX options market maker | Non-customer[1] |
|---|---|---|---|
| BAC, IWM, QQQ, SPY and VXX: | | | |
| Rebate to Add Liquidity | [2] $0.00 | [2] $0.20 | N/A |
| Fee to Add Liquidity | [3] 0.10 | [3] 0.10 | 0.45 |
| Rebate to Remove Liquidity | 0.00 | N/A | N/A |
| Fee to Remove Liquidity | N/A | 0.45 | 0.45 |
| All Other Penny Pilot Options: | | | |
| Rebate to Add Liquidity | [2] 0.00 | [2] 0.10 | N/A |

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

FEES AND REBATES—Continued

[per executed contract]

| | Customer | BX options market maker | Non-customer [1] |
|---|---|---|---|
| Fee to Add Liquidity | [3] 0.40 | [3] 0.40 | 0.45 |
| Rebate to Remove Liquidity | 0.32 | N/A | N/A |
| Fee to Remove Liquidity | N/A | 0.45 | 0.45 |
| Non-Penny Pilot Options: | | | |
| Fee to Add Liquidity | [4] 0.25/ 0.85 | [4] 0.50/ 0.85 | 0.88 |
| Rebate to Remove Liquidity | 0.70 | N/A | N/A |
| Fee to Remove Liquidity | N/A | 0.88 | 0.88 |

Currently, the fees that apply to VXX as are the listed above under the ''All Other Penny Pilot Options'' category. The new fees applicable to VXX as a Specified Penny Pilot Option are unchanged for Non-Customers. The Rebate to Add Liquidity and the Fee to Remove Liquidity for Customers also remains unchanged. For BX Options Market Makers, both the Rebate and Fee to Remove Liquidity are unchanged. The Rebate to Add Liquidity for BX Options Market Makers increases from $0.10 to $0.20 per executed contract. The Fee to Add Liquidity for both Customers and BX Options Market Makers decreases from $0.40 to $0.10 per executed contract. Finally, the Rebate to Remove Liquidity for Customers decreases from $0.32 to $0.00 per executed contract.

The Exchange believes that including VXX to the list of Specified Penny Pilot Options, is competitive and will encourage BX members to transact business on the Exchange.

2. Statutory Basis

BX believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls.

The Exchange believes that its proposal to include VXX in the list of Specified Penny Pilot Options and subject to the fees and rebates applicable thereto, is reasonable given the fact that certain symbols such as the Specified Penny Pilot Options are highly liquid as compared to other penny pilot options and pricing by symbol is not novel as other options exchanges differentiate pricing by security today.[5] The Exchange believes that its proposal to assess an increase to the Rebate to Add Liquidity for BX Options Market Makers, a decrease to the Fee to Add Liquidity for both Customers and BX Options Market Makers, and a decrease to the Rebate to Remove Liquidity for Customers for VXX (as is the case for the other Specified Penny Pilot Options) as compared to all other penny pilot options is equitable and not unfairly discriminatory because it will help to attract order flow from BX Options Market Makers and Customers to the Exchange to the benefit of all market participants through increased liquidity.

The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that its proposal to include VXX in the list of Specified Penny Pilot Options and subject to the fees and rebates applicable thereto, is competitive and similar to other fees and rebates in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the fee/rebate pricing structure for VXX as included in the Specified Penny Pilot Options list, would attract liquidity to and benefit order interaction at the Exchange to the benefit of all market participants.

Additionally, since the fees and rebates for VXX as included in the list of Specified Penny Pilot Options are comparable to those present at other options venues, the Exchange believes the proposals discussed herein do not pose a burden on competition amongst Exchange participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] 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

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] *See* NASDAQ OMX PHLX LLC's Pricing Schedule, which has different pricing for its Select Symbols and different pricing for other Multiply Listed Options. *See also* the NASDAQ Options Market LLC at Chapter XV, Section 2(1), which distinguishes pricing for NDX and MNX; the International Securities Exchange LLC's Fee Schedule, which distinguishes pricing for Special Non-Select Penny Pilot Symbols; and the Chicago Board Options Exchange, Incorporated's Fees Schedule, which distinguishes index products.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2013–046 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–BX–2013–046. 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–BX–2013–046 and should be submitted on or before August 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19142 Filed 8–7–13; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70096; File No. SR–NYSE–2013–48]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period for the Exchange's Retail Liquidity Program for an Additional 12 Months, To Expire on July 31, 2014

August 2, 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 July 30, 2013, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's Retail Liquidity Program (the ''Retail Liquidity Program'' or the ''Program''), which is currently scheduled to expire on July 31, 2013, for an additional 12 months, to expire on July 31, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to extend the pilot period of the Retail Liquidity Program,[3] currently scheduled to expire on July 31, 2013, for an additional 12 months, until July 31, 2014.

Background

In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis.[4] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, Retail Liquidity Providers (''RLPs'') are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer (''PBBO''), called a Retail Price Improvement Order (''RPI''). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating such interest exists. Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Rule 107C(m), the pilot period for the Program is scheduled to end on July 31, 2013.

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that

[3] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (''RLP Approval Order'') (SR–NYSE–2011–55).

[4] *See id.*

the Exchange has committed to provide.[5] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[6] Through this filing, the Exchange seeks to amend NYSE Rule 107C(m) and extend the current pilot period of the Program until July 31, 2014.[7]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] 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. The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional 12 months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[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.

**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–NYSE–2013–48 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–NYSE–2013–48. 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

[5] *See id.* at 40681.

[6] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. *See* Letter from Janet M. McGinness, EVP & Corporate Secretary, NYSE Euronext to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission dated July 30, 2013.

[7] The Exchange is also making a technical, non-substantive amendment to Rule 107C(m) to fix a typographical error.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

publicly available. All submissions should refer to File Number SR–NYSE–2013–48 and should be submitted on or before August 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19143 Filed 8–7–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70099; File No. SR–NYSE–2013–54]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend NYSE Rule 49, Which Addresses the Exchange's Emergency Powers

August 2, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 22, 2013, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 49, which addresses the Exchange's Emergency Powers. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend NYSE Rule 49, which addresses the Exchange's emergency powers. As explained in more detail below, the proposed rule change would amend Rule 49 to better delineate the self-regulatory organization (''SRO'') functions of the Exchange and NYSE Arca, Inc. (''NYSE Arca'') during an emergency condition, reflect the operational preferences of the industry, and reflect the current structure of member organization connectivity to and system coding for exchange systems.

Current Rule

In 2009, the Exchange adopted Rule 49 to provide the Exchange with the authority to declare an emergency condition[4] with respect to trading on or through the systems and facilities of the Exchange and to act as necessary in the public interest and for the protection of investors.[5] The authority in Rule 49 may be exercised when, due to an emergency condition, the Exchange's systems and facilities located at 11 Wall Street, New York, New York, including the NYSE Trading Floor, cannot be utilized. If such an emergency condition is declared, a qualified Exchange officer may designate NYSE Arca, the Exchange's affiliate, to serve as a backup facility to receive and process bids and offers and to execute orders on behalf of the Exchange so that the Exchange, as an SRO, can remain operational.[6] During such an emergency condition, NYSE Arca also would continue to operate simultaneously. To date, the Exchange has not invoked the rule.

Under Rule 49, during the emergency condition, the Exchange would halt all trading conducted on the Exchange's systems and facilities. Unexecuted orders would remain on the Exchange's systems unless cancelled. The Exchange would open trading on the systems and facilities of NYSE Arca as soon thereafter as possible, but not earlier than at least the next trading day. As soon as practicable following the commencement of trading on the systems and facilities of NYSE Arca, any unexecuted orders would be purged from the Exchange's own systems and facilities.

Quotes or orders of Exchange-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be reported to the Consolidated Quotation System (''CQS'') as bids and offers, or to the Consolidated Tape Association (''CTA'') as executions, made on or through the systems and facilities of the Exchange, not NYSE Arca. Members and member organizations would be required to have contingency plans for changing the routing instructions for their order entry systems and to take such other appropriate actions as instructed by the Exchange to accommodate the use of the systems and facilities of NYSE Arca to trade Exchange-listed securities.

Exchange members, member organizations and Sponsored Participants would be permitted to enter bids and offers and to execute orders on or through the systems and facilities of NYSE Arca, regardless of whether they were members or sponsored participants of NYSE Arca at the time the emergency condition was declared. Such bids and offers would be deemed to be bids and offers of the Exchange. Exchange member organizations registered as Designated Market Makers (''DMMs'') that were designated as temporary members of NYSE Arca in accordance with NYSE Arca Equities Rules would, for the duration of such designation, not be considered DMMs for the purposes of the Exchange's rules but rather ''Market Makers'' pursuant to NYSE Arca Equities rules for the purposes of trading Exchange-listed securities on

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The definition of ''emergency'' is the one used in Section 12(k)(7) of the Act and is also used by other exchanges and the Securities and Exchange Commission (''Commission''). Section 12(k)(7) defines an emergency to mean ''(A) a major market disturbance characterized by or constituting—(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or (B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions.'' 15 U.S.C. § 78l(k)(7).

[5] *See* Securities Exchange Act Release No. 61177 (December 16, 2009), 74 FR 68643 (December 28, 2009) (SR–NYSE–2009–105).

[6] NYSE Arca trades equity securities on the systems and facilities of its wholly owned subsidiary, NYSE Arca Equities, Inc., referred to as the ''NYSE Arca Marketplace.'' For the purposes of this filing and in the text of proposed NYSE Rule 49, these shall be referred to collectively as the systems and facilities of NYSE Arca, or simply NYSE Arca.

and through the systems and facilities of NYSE Arca. The Exchange would, as needed, designate any NYSE Arca members that were not members or member organizations of the Exchange at the time of the emergency condition as temporary members. Such temporary members would not be required to meet any of the Exchange's membership requirements. The Exchange also would, as needed, authorize sponsored participants of NYSE Arca that did not have sponsored access to the Exchange for temporary access through either an existing Exchange member or member organization or an NYSE Arca member granted temporary membership under Rule 49. Temporary memberships or access under the rule would be valid only until regular trading resumed on the Exchange's systems and facilities, including the Trading Floor.

All trades of Exchange-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be subject to the NYSE Arca Equities Rules governing trading, and such rules would be considered Exchange rules for the purposes of such transactions, except that (i) the Exchange's rules governing member firm conduct would continue to apply to its members, member organizations and Sponsored Participants, including, but not limited to, membership requirements and net capital requirements, and (ii) the Exchange's listing requirements for its listed securities would continue to apply.

Surveillance of trading of Exchange-listed securities on or through the systems and facilities of NYSE Arca would be conducted by NYSE Arca on behalf of the Exchange. Members and member organizations of the Exchange would remain subject to the jurisdiction of the Exchange for any disciplinary actions related to the trading of Exchange-listed securities on or through the systems and facilities of NYSE Arca. Violations of the rules of NYSE Arca would be referred to the Exchange for prosecution according to the Exchange's disciplinary rules. Exchange members and member organizations could not assert as an affirmative defense to such prosecution the lack of jurisdiction of the Exchange over trading of Exchange-listed securities on or through the systems and facilities of NYSE Arca.

Events During Superstorm Sandy

On October 29 and 30, 2012, due to the dangerous conditions that developed as a result of Superstorm Sandy, NYSE and NYSE MKT LLC (''NYSE MKT''), as well as a number of their member organizations located in the tri-state area, were unable to open because of the risk of flooding at their physical locations. In addition, other broker-dealers and exchanges with facilities in the area were also faced with significant staffing challenges because the storm conditions prevented personnel from getting to work. As a result, it was agreed, after consulting with other exchanges, market participants, and Commission staff, and in light of concerns over the physical safety of personnel and the possibility of technical issues, that all U.S. equities and options markets would be closed for those two days.

Proposed Rule Change

The Exchange proposes to amend Rule 49 to more effectively delineate the SRO functions of the Exchange and NYSE Arca during an emergency condition, reflect the operational preferences of the industry, and reflect the current structure of member organization connectivity to and system coding for exchange systems. As described above, the current rule contemplates the Exchange remaining operational during the emergency condition and both the Exchange and NYSE Arca performing certain SRO functions with respect to the same trading activity that would be taking place on NYSE Arca. The Exchange believes that a more practical and effective structure would be to have all trading activity occurring on NYSE Arca under that SRO's authority, with one exception. NYSE Arca would, on behalf and at the direction of the Exchange, disseminate certain primary listing market messages as both NYSE and NYSE Arca messages so that market participants' systems could properly recognize such messages. NYSE Arca would do so beginning on the next trading day following the declaration of the emergency condition. All trading volume on NYSE Arca in NYSE-listed securities during the emergency condition would be reported as NYSE Arca volume, except for volume associated with the opening and closing prints in NYSE-listed securities, which would be deemed NYSE volume. The specific amendments to achieve these results are described in more detail below.

Rule 49(a)(1) would be amended to provide a short form of the term ''Emergency Condition,'' which is strictly a technical amendment to simplify the remainder of the rule text, and to specify that NYSE Arca may perform certain functions on behalf and at the direction of the Exchange.

Rule 49(a)(2) would be amended to remove a reference to the Exchange's systems and facilities, including the Trading Floor, continuing to operate during the Emergency Condition. The text would be revised to provide that an Emergency Condition declaration may be made if necessary so that the securities markets, in general, may continue to operate and trading in Exchange-listed securities, in particular, may continue to occur in a manner consistent with the protection of investors and in pursuit of the public interest. In Rule 49(a)(3), the subparagraphs would be redesignated so that the rule text follows a consistent convention.[7]

Rules 49(b)(1) and 49(b)(2)(i), which include text describing how the Exchange would halt trading and NYSE Arca would begin receiving and processing bids and offers and executing orders on behalf of the Exchange beginning on the next trading day, would be deleted and replaced with text that more specifically describes the steps that each SRO would take upon the declaration of the Emergency Condition. Proposed Rule 49(b)(1) would provide that when an Emergency Condition is declared, the Exchange (A) would halt all trading conducted on the Exchange's systems and facilities and would not route any unexecuted orders to NYSE Arca; (B) would accept cancellations for Good 'Til Cancelled (''GTC'') orders; and (C) would purge any unexecuted orders from the Exchange's own systems and facilities as soon as practicable following declaration of the Emergency Condition.

Proposed Rule 49(b)(2) would provide that beginning on the next trading day following the declaration of the Emergency Condition,[8] NYSE Arca would, on behalf of and at the direction of the Exchange, disseminate as messages of both the Exchange and NYSE Arca (A) the official opening and closing prices of Exchange-listed securities to CTA, and (B) notifications to CQS for Exchange-listed securities of (i) regulatory halts and resumption of trading thereafter, (ii) trading pause and resumption of trading thereafter, and (iii) Short Sale Price Test trigger and lifting thereafter (collectively, ''primary

[7] The Exchange notes that there is a pending amendment to subparagraph (a)(3)(ii). *See* Securities Exchange Act Release No. 69851 (June 25, 2013), 78 FR 39407 (July 1, 2013) (SR–NYSE–2013–42).

[8] The Exchange's current and proposed disaster recovery plans do not enable the intraday failover of the Exchange's system onto NYSE Arca, including dissemination of primary listing market notifications; such technology is only available on a next-day basis.

listing market notifications'').[9] The Exchange notes that in the event of an intra-day declaration of an Emergency Condition, the Exchange would manually disseminate primary listing market notifications to CQS. Quotes or orders of Exchange-listed securities entered on NYSE Arca during the Emergency Condition would be reported to CQS as bids or offers of NYSE Arca, and quotes or orders of Exchange-listed securities executed on or through NYSE Arca during the Emergency Condition would be reported to CTA as executions of NYSE Arca, except that executions in the opening or closing auctions would be reported as Exchange volume only in order to avoid any double counting.

The Exchange believes that the proposed rule change would minimize the impact of declaring an Emergency Condition because NYSE Arca already trades Exchange-listed securities on an unlisted trading privileges basis and prints such executions as NYSE Arca or ''P'' trades.[10] This arrangement would be compatible with market participants' system coding conventions, where orders routed to an exchange generally come back as executions from that exchange, unless routed out. Thus, quotes and orders in Exchange-listed securities routed to NYSE Arca during the Emergency Condition would come back to the entering firm as ''P'' executions, rather than ''N'' executions. Similarly, the Exchange further understands that in order for many market participants' systems to recognize the primary listing market notifications, the notifications must carry an ''N'' designation to associate it with Exchange-listed securities. If the notifications were disseminated only as ''P'' notifications, they may not be properly recognized by these market participants' systems. However, other market participants may be able to read such primary listing market notifications if disseminated with the ''P'' designation. Accordingly, during an Emergency Condition, in order to accommodate various market participants' existing technological frameworks for the temporary measures addressed in proposed Rule 49, NYSE Arca would disseminate the official opening and closing prints for NYSE-listed securities and primary listing market notifications with both ''P'' and ''N'' designations. When NYSE Arca disseminates these messages on behalf of the Exchange, it will do so in accordance with its own rules and procedures for its primary listed securities.[11] The Exchange believes that the proposed rule change offers a practical solution that will be compatible with most market participants' current system coding, which will allow the proposed rule change to be quickly and efficiently implemented and avoid the costs and delays associated with system reprogramming.

The Exchange believes that maintaining a primary market print for an Exchange-listed security's official opening price would assist market participants that rely on a primary market opening print as the basis for trading strategies for that trading day. For example, the pricing and valuation of certain indices, funds and derivative products require primary market prints. Similarly, private corporate transactional contracts involving stock purchases or valuations frequently make reference to the primary market print rather than to the CTA print. In addition, certain indexes rely on the primary listing market closing print to calculate the index, and certain funds rely on the primary listing market closing print to calculate the fund's value. Thus, these market participants would benefit from the dissemination of the primary market prints as ''N'' messages and not have to engage in any system reprogramming to receive them.

Rule 49(b)(2)(iii) currently provides that members and member organizations must have contingency plans for changing the routing instructions for their order entry systems, and to take such other appropriate actions as instructed by the Exchange, to accommodate the use of the systems and facilities of NYSE Arca to trade Exchange-listed securities. The proposed rule change would redesignate this provision as Rule 49(b)(3) and amend the text to provide that members and member organizations wishing to trade Exchange-listed securities during an Emergency Condition would be responsible for having contingency plans for establishing connectivity to NYSE Arca and changing the routing instructions for their order entry systems to route quotes and orders in Exchange-listed securities to NYSE Arca. This is the manner by which the current rule operates, but this level of detail was previously provided in communications with the industry rather than in the rule.[12] Such connectivity and routing could be established either directly to NYSE Arca by becoming an ETP Holder or through a third party, such as a service bureau, that is an ETP Holder. The Exchange would not have the ability to reroute such quotes and orders from NYSE to NYSE Arca on behalf of members and member organizations, as noted in proposed Rule 49(b)(1)(A). The proposed rule change would also delete text stating that the Exchange would provide instructions to members and member organizations about using NYSE Arca facilities because this would be unnecessary.

Current Rule 49(b)(3), which provides for certain temporary memberships and would deem Exchange DMMs that are designated as temporary members of NYSE Arca as NYSE Arca Market Makers, would be deleted in its entirety. Because all trading would occur under the NYSE Arca SRO via a direct membership as an ETP Holder or indirectly via a service bureau as described above, temporary memberships would be unnecessary. Upon further review, the Exchange has also determined that there would be substantial technological difficulties for NYSE DMMs to become established during the Emergency Condition as NYSE Arca Market Makers and comply with NYSE Arca Equities Rule 7.23 quoting obligations, as amended in 2011.[13] It also would be technologically impracticable to attempt to impose NYSE's DMM requirements in a different market and inconsistent with the structure of the proposed rule change. If an Exchange DMM wanted to be able to act as an NYSE Arca Market Maker during the Emergency Condition, it would have to apply for and obtain such status in advance.

Current Rule 49(b)(4) states that NYSE Arca trading rules would apply to all trading on NYSE Arca during the emergency condition and would be deemed Exchange rules. Under the proposed rule change, this text would be deleted and such trading rules would no longer be deemed Exchange rules. To better delineate each SRO's authority, and for simplicity and clarity, during an Emergency Condition, all trading in NYSE-listed securities on NYSE Arca would be subject to NYSE Arca rules, surveillance, and discipline; as such, current Rule 49(b)(5) would be deleted.

[9] *See* NYSE Rules 123D, 80B, 80C, and 440B. Each of these types of notifications is a responsibility of the primary listing market for the security.

[10] The ''P'' designation reflects one of NYSE Arca's predecessor names, Pacific Exchange, Inc., before it was purchased by NYSE Euronext.

[11] Nonetheless, NYSE will remain the SRO that is legally responsible for the notifications.

[12] *See* NYSE Regulation Information Memo 10–14 (March 15, 2010), *available at http://www.nyse.com/nysenotices/nyse/information-memos/detail?memo_id=10-14.*

[13] *See* Securities Exchange Act Release No. 64422 (May 6, 2011), 76 FR 27691 (May 12, 2011) (SR–NYSEArca-2011–26).

NYSE Arca would not be acting on behalf of the Exchange, but rather under its own SRO authority. Thus, if an NYSE member organization violated an NYSE Arca trading rule while trading on NYSE Arca during an Emergency Condition, it would be subject to discipline by NYSE Arca, not the Exchange. The proposed rule change also would specify that such NYSE Arca trading rules include, but are not limited to, the opening, reopening, and closing auction processes applicable to securities for which NYSE Arca is the primary listing market set forth in NYSE Arca Equities Rule 7.35. NYSE Arca's auction processes at the open and close and following a trading halt differ from those of NYSE. However, NYSE's listing requirements would continue to apply to any Exchange-listed security that was trading on NYSE Arca during the Emergency Condition.

The Exchange also proposes to make typographical corrections to Rule 49(c).

The Exchange notes that its affiliates have submitted related rule filings. NYSE Arca has submitted a companion filing to make its authority consistent with proposed Rule 49.[14] NYSE MKT also has submitted a filing to adopt the text of Rule 49, as amended by this filing.[15]

The Exchange will announce by Trader Update when the Exchange and NYSE Arca will be ready to implement the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(7) of the Act,[18] in particular, in that it provides fair procedures for the disciplining of members [19] and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

Specifically, the Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and national market system because it offers a practical solution to facilitate trading in Exchange-listed securities in the event of an Emergency Condition and would help to avoid a future market-wide closure. All quoting and trading activity in NYSE-listed securities during the Emergency Condition would be deemed NYSE Arca quoting and trading for purposes of CQS and CTA reporting and be subject to NYSE Arca's surveillance and discipline, except that the opening and closing prints and primary listing market notifications would be disseminated as both Exchange and NYSE Arca messages so that the majority of market participants' systems could properly receive and process them. As such, the proposed rule change reflects the operational preferences of the industry and the current structure of most member organizations' connectivity to and system coding for exchange systems and would reduce the systemic and administrative burdens on market participants by avoiding the need for reprogramming, depending on which message notifications their respective systems would be able to read during such an Emergency Condition. Although market making requirements could not feasibly be imposed on NYSE DMMs trading on NYSE Arca during an Emergency Condition, the Exchange believes that facilitating trading on NYSE Arca in Exchange-listed securities under that SRO's rules would benefit both issuers and investors by providing additional liquidity during the Emergency Condition.

The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system because it would assist market participants that rely on or reference a primary market opening print in their trading strategies or private corporate transactional contracts involving stock purchases or valuations. In addition, certain indexes rely on the primary listing market closing print to calculate the index, and certain funds rely on the primary listing market closing print to calculate the fund's value. The proposed rule change would assist these market participants in performing these functions without requiring them to reprogram their systems.

The Exchange also believes that the proposed rule change would promote just and equitable principles of trade and provide for fair discipline by better delineating SRO surveillance and disciplinary functions. The Exchange believes that it would be more effective for NYSE Arca to discipline NYSE members and member organizations under NYSE Arca rules rather than having the Exchange enforce NYSE Arca rules.

In sum, the Exchange believes that the proposed rule change would substantially strengthen business continuity planning for itself and its member organizations, thereby benefiting market participants and investors generally.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate trading in Exchange-listed securities on NYSE Arca during an Emergency Condition and remove certain requirements that cannot feasibly be imposed. As such, the Exchange believes that the proposed rule change would promote competition for the benefit of market participants and investors generally.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[14] *See* SR–NYSEArca-2013–77.

[15] *See* SR–NYSEMKT–2013–66.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(7).

[19] The Exchange's equivalent to the term ''member'' in this context is ''member organization.''

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–NYSE–2013–54 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- NYSE–2013–54. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2013–54 and should be submitted on or before August 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19146 Filed 8–7–13; 8:45 am]

**BILLING CODE 8011–01–P**

[20] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70104; File No. SR–NYSE–2013–55]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending One of the Supplemental Liquidity Provider Credits in its Price List

August 2, 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 July 22, 2013, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend one of the Supplemental Liquidity Provider (''SLP'') credits in its Price List. The Exchange proposes to implement the fee change effective August 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend one of the SLP credits in its Price List. The Exchange proposes to implement the fee change effective August 1, 2013.

SLPs are eligible for certain credits when adding liquidity to the Exchange.[3] The amount of the credit is determined by the ''tier'' that the SLP qualifies for, which is generally based on the SLP's level of quoting and the average daily volume (''ADV'') of liquidity added by the SLP in assigned securities, excluding early closing days for the ADV calculation.

The Exchange provides a credit of $0.0025 per transaction, or $0.0020 per transaction for Non-Displayed Reserve Orders,[4] for an SLP that adds liquidity to the NYSE in securities with a per share price of $1.00 or more if the SLP (i) Meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated), (ii) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) of an ADV of more than 0.22% of NYSE consolidated ADV (''CADV''), (iii) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) of an ADV during the billing month that is at least an 0.18% increase over the SLP's September 2012 Adding ADV[5] (''SLP Baseline ADV''), and (iv) has a minimum provide ADV for all assigned SLP securities of 12 million shares.[6]

The Exchange proposes to amend the third requirement for this credit to require that the SLP add liquidity for all assigned SLP securities in the aggregate

[3] The SLP program provides incentives for quoting and adds competition to the existing group of liquidity providers. An SLP can either be a proprietary trading unit of a member organization (an ''SLP-Prop'') or a registered market maker at the Exchange (an ''SLMM''). *See* NYSE Rule 107B.

[4] A Non-Displayed Reserve Order is a limit order that is not displayed, but remains available for potential execution against all incoming automatically executing orders until executed in full or cancelled. *See* NYSE Rule 13 (Definitions of Orders).

[5] Adding ADV is ADV that adds liquidity to the NYSE during the billing month. Adding ADV excludes any liquidity added by a Designated Market Maker.

[6] *See* Securities Exchange Act Release No. 68021 (October 9, 2012), 77 FR 63406 (October 16, 2012) (SR–NYSE–2012–50).

(including shares of both an SLP-Prop and an SLMM of the same member organization) of an ADV during the billing month that is at least equal to the SLP Baseline ADV plus 0.18% of NYSE CADV in the billing month.[7] For example, assume that an SLP's Baseline ADV is 15 million shares, and NYSE CADV in the billing month is 3.5 billion shares. To meet the third requirement for this credit under the current Price List, the SLP will need to add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) of an ADV during the billing month of at least 15,027,000 shares (1.0018 × the SLP's Baseline ADV of 15 million shares). Under the proposed change, the SLP will need to add liquidity for all assigned SLP securities in the aggregate of an ADV during the billing month that is at least 6.3 million shares (3.5 billion NYSE CADV × 0.18%) more than the SLP's Baseline ADV, or a total adding liquidity of at least 21.3 million shares (6.3 million shares plus the SLP's Baseline ADV of 15 million shares). The remaining requirements for this credit will remain the same.

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations, including SLPs, would have in complying with the proposed change. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes it is reasonable to amend the requirement for the credit so that SLPs will be required to provide an ADV during the billing month that is at least equal to the SLP Baseline ADV plus 0.18% of NYSE CADV because the revised requirement will encourage SLPs to provide a higher level of liquidity in their assigned securities based on trading activity in that billing month, rather than relating it only to September 2012 activity. The Exchange believes the proposed changes to the requirement for the credit are equitable and not unfairly discriminatory because the credit is open to all SLPs on an equal basis. In addition, SLPs have higher quoting obligations than other market participants, and in turn provide higher volumes of liquidity, which contributes to price discovery and benefits all market participants. As such, it is equitable and not unfairly discriminatory to offer SLPs credits that are relatively higher than other market participants that do not have such obligations.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[10] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the revised credit for SLPs reflects the need for the Exchange to adjust financial incentives to attract order flow.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or credits available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their trading practices, the Exchange believes that the degree to which fee or credit changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed change will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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 under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–55 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–NYSE–2013–55. This file number should be included on the

[7] The Exchange notes that its affiliate, NYSE Arca Equities, Inc., recently implemented a similar requirement for its "Tape B Step Up Tier." *See* Securities Exchange Act Release No. 69926 (July 3, 2013), 78 FR 41154 (SR–NYSEArca–2013–67).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

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–NYSE–2013–55 and should be submitted on or before August 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19151 Filed 8–7–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70097; File No. SR–NYSEARCA–2013–77]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend NYSE Arca Equities Rule 2.100, Which Provides for Certain Emergency Powers

August 2, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 22, 2013, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 2.100 (''Rule 2.100''), which provides for certain emergency powers. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 2.100, which provides for certain emergency powers. As explained in more detail below, the proposed rule change would amend Rule 2.100 to better delineate the self-regulatory organization (''SRO'') functions of the Exchange and Affiliated Exchanges during an emergency condition, reflect the operational preferences of the industry, reflect the current structure of market participant connectivity to and system coding for exchange systems, and add NYSE MKT LLC (''NYSE MKT'') to the definition of ''Affiliated Exchange.''

Current Rule

In 2009, the Exchange amended Rule 2.100 to provide the Exchange with the authority to declare an emergency condition[4] with respect to trading on or through the systems and facilities of the Exchange and to act as necessary in the public interest and for the protection of investors.[5] The authority in Rule 2.100 may be exercised when, due to an emergency condition, an Affiliated Exchange's systems and facilities cannot be utilized. If such an emergency condition is declared, a qualified Exchange officer may designate the Exchange to serve as a backup facility to receive and process bids and offers and to execute orders on behalf of the Affiliated Exchange so that the Affiliated Exchange, as an SRO, can remain operational. During such an emergency condition, the Exchange also would continue to operate simultaneously. Currently, the only Affiliated Exchange with a rule authorizing it to designate the Exchange as a back-up trading facility is the New York Stock Exchange LLC (''NYSE''), and, to date, NYSE has not invoked the rule.[6]

Under current Rule 2.100, in the event of an emergency, a qualified Exchange officer would have the authority to declare an emergency condition with respect to trading on or through the systems and facilities of the Exchange. No declaration of an emergency condition with respect to trading on or through the systems and facilities of the Corporation would be made pursuant to the rule unless (i) there was a regional or national emergency that would prevent the Exchange from operating normally; and (ii) such declaration was necessary so that the securities markets in general, and the Exchange's systems and facilities, in particular, could continue to operate in a manner consistent with the protection of investors and in pursuit of the public interest.

If an emergency condition were declared with respect to trading on or

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The definition of ''emergency'' is the one used in Section 12(k)(7) of the Act and is also used by other exchanges and the Securities and Exchange Commission (''Commission''). Section 12(k)(7) defines an emergency to mean ''(A) a major market disturbance characterized by or constituting—(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or (B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions.'' 15 U.S.C. 78l(k)(7).

[5] *See* Securities Exchange Act Release No. 61178 (December 16, 2009), 74 FR 68434 (December 28, 2009) (SR–NYSEArca–2009–90). The text of Rule 2.100 refers to the ''Corporation,'' which is NYSE Arca Equities. *See* NYSE Arca Equities Rule 1.1(k).

[6] *See* NYSE Rule 49; *see also* Securities Exchange Act Release No. 61177 (December 16, 2009), 74 FR 68643 (December 24, 2009) (SR–NYSE–2009–105).

through the systems and facilities of an Affiliated Exchange, a qualified Exchange officer could designate the Exchange to receive and process bids and offers and to execute orders on behalf of such Affiliated Exchange. The Affiliated Exchange would halt all trading conducted on its systems and facilities and open trading on the systems and facilities of the Exchange as soon thereafter as possible, but not earlier than at least the next trading day. Any unexecuted orders on the Affiliated Exchange's systems and facilities at that time would not be transferred to the Exchange's systems and facilities.

Quotes or orders of Affiliated Exchange-listed securities entered or executed on or through the systems and facilities of the Exchange following the declaration would be reported to the Consolidated Quotation System (''CQS'') as bids or offers or to the Consolidated Tape Association (''CTA'') as executions, respectively, made on or through the systems and facilities of the Affiliated Exchange. ETP Holders would be required to take appropriate actions as instructed by the Exchange to accommodate the use of its systems and facilities to trade Affiliated Exchange-listed securities.

Affiliated Participants (which include an Affiliated Exchange's members, member organizations, and sponsored participants) would be permitted to enter bids and offers and to execute orders on or through the systems and facilities of the Exchange, regardless of whether such Affiliated Participants were ETP Holders or Sponsored Participants of the Exchange when the emergency condition was declared. Bids and offers entered pursuant to the rule would be deemed to be bids and offers of the Affiliated Exchange. The Exchange would, as needed, designate any Affiliated Participants that were not Exchange ETP Holders as temporary members. Such temporary members would not be required to meet any of the Exchange's membership requirements. The Exchange would, as needed, permit Affiliated Participants that did not have sponsored access to the Exchange to obtain temporary access through either an existing ETP Holder or through an Affiliated Participant that was granted temporary membership. For the duration of any such designation, Affiliated Participants registered as Designated Market Makers (''DMMs'') on their respective Affiliated Exchanges would not be considered DMMs for the purposes of the rules of the Affiliated Exchanges, but would be considered ''Market Makers'' pursuant to NYSE Arca Equities Rule 7.23 for the purposes of trading Affiliated Exchange-listed securities on or through the systems and facilities of the Exchange. Temporary memberships or access granted under the rule would be valid only until regular trading resumed on the Affiliated Exchange's systems and facilities.

All trades of Affiliated Exchange-listed securities entered or executed on or through the systems and facilities of the Exchange would be subject to the NYSE Arca Equities rules governing trading, and such rules would be considered the rules of the Affiliated Exchange for the purposes of such transactions, with certain exceptions. The rules of the Affiliated Exchange governing member firm conduct would continue to apply to its Affiliated Participants, including, but not limited to, membership requirements and net capital requirements, and the Affiliated Exchange's listing requirements for its listed securities would continue to apply.

The surveillance of the trading of Affiliated Exchange-listed securities on or through the systems and facilities of the Exchange would be conducted by the Exchange on behalf of the listing Affiliated Exchange. Affiliated Participants would remain subject to the jurisdiction of their Affiliated Exchange for any disciplinary actions related to the trading of Affiliated Exchange-listed securities on or through the systems and facilities of the Exchange. Violations of NYSE Arca Equities rules would be referred to the appropriate Affiliated Exchange for prosecution according to its own disciplinary rules. Affiliated Participants could not assert as an affirmative defense to such prosecution the lack of jurisdiction of the Affiliated Exchange over trading of Affiliated Exchange-listed securities on or through the systems and facilities of the Exchange.

Events During Superstorm Sandy

On October 29 and 30, 2012, due to the dangerous conditions that developed as a result of Superstorm Sandy, NYSE and NYSE MKT, as well as a number of their member organizations located in the tri-state area, were unable to open because of the risk of flooding at their physical locations. In addition, other broker-dealers and exchanges with facilities in the area were also faced with significant staffing challenges because the storm conditions prevented personnel from getting to work. As a result, it was agreed, after consulting with other exchanges, market participants, and Commission staff, and in light of concerns over the physical safety of personnel and the possibility of technical issues, that all U.S. equities and options markets would be closed for those two days.

Proposed Rule Change

The Exchange proposes to amend Rule 2.100 to more effectively delineate the SRO functions of the Exchange and Affiliated Exchanges during an emergency condition, reflect the operational preferences of the industry, and reflect the current structure of market participants' connectivity to and system coding for exchange systems. As described above, the current rule contemplates an Affiliated Exchange remaining operational during the emergency condition and both the Exchange and Affiliated Exchange performing certain SRO functions with respect to the same trading activity that would be taking place on the Exchange. The Exchange and its affiliates believe that a more practical and effective structure would be to have all trading activity occurring on the Exchange under its authority, with one exception. The Exchange would, on behalf and at the direction of the Affiliated Exchanges, disseminate certain primary listing market messages as both Affiliated Exchange and Exchange messages so that market participants' systems could properly recognize such messages. The Exchange would do so beginning on the next trading day following the declaration of the emergency condition. All trading volume on the Exchange in Affiliated Exchange-listed securities during the emergency condition would be reported as Exchange volume, except for volume associated with the opening and closing prints in Affiliated Exchange-listed securities, which would be deemed Affiliated Exchange volume. The specific amendments to achieve these results are described in more detail below.

The title of Rule 2.100 would be amended to be consistent with NYSE Rule 49, and the current text of Rule 2.100(a)(1) would be deleted and would be replaced with text that would provide that if a qualified Affiliated Exchange officer declares an emergency condition under the rules of the Affiliated Exchange, a qualified Exchange officer may authorize the Exchange to perform the functions under Rule 2.100. Rule 2.100 would also provide a short form definition of the term ''Emergency Condition.'' Rule 2.100(a)(2) would be deleted because the rules of the Affiliated Exchange would determine the procedures for the declaration of an Emergency Condition. Like the current NYSE Arca rule, each Affiliated Exchange's rule would

provide that no declaration of an Emergency Condition could be made unless there was a regional or national emergency (as defined in Section 12(k)(7) of the Act) that would prevent the Affiliated Exchange from operating normally, and such declaration was necessary so that the securities markets, in general, may continue to operate and trading in Affiliated Exchange-listed securities, in particular, may continue to occur in a manner consistent with the protection of investors and in pursuit of the public interest.

Rule 2.100(a)(3) would be redesignated Rule 2.100(a)(2), and the subparagraphs would be redesignated so that the rule text follows a consistent convention. Current Rule 2.100(a)(3)(i), which defines ''emergency,'' would be deleted because the Exchange would rely on the definition in the rules of the Affiliated Exchanges. Current Rule 2.100(a)(3)(ii) would be amended to correct a typo. The term ''qualified Corporation office'' should be ''qualified Corporation officer.'' [7] Current Rule 2.100(a)(3)(iii) would be amended to add NYSE MKT to the definition of ''Affiliated Exchange'' in order to provide more robust business continuity planning for NYSE MKT that is consistent with NYSE. Current Rule 2.100(a)(3)(iv) would be deleted because all references to ''Affiliated Participant'' in the proposed rule would be deleted; therefore, it is not necessary to define the term.

Rules 2.100(b)(1) and 2.100(b)(2)(i), which include text describing how the Affiliated Exchange would halt trading and the Exchange would begin receiving and processing bids and offers and executing orders on behalf of the Affiliated Exchange beginning on the next trading day, would be deleted and replaced with text that more specifically describes the steps that each SRO would take upon the declaration of the Emergency Condition. Proposed Rule 2.100(b)(1) would provide that when an Emergency Condition is declared under paragraph (a), the Affiliated Exchange (A) would halt all trading conducted on the Affiliated Exchange's systems and facilities and would not route any unexecuted orders to the Exchange; (B) would accept cancellations for Good 'Til Cancelled (''GTC'') orders; [8] and (C) would purge any unexecuted orders from the Affiliated Exchange's own systems and facilities as soon as practicable following declaration of the Emergency Condition.

Proposed Rule 2.100(b)(2) would provide that beginning on the next trading day following the declaration of the Emergency Condition,[9] the Exchange would, on behalf of and at the direction of the Affiliated Exchange, disseminate as messages of both the Affiliated Exchange and the Exchange (A) the official opening and closing prices of Affiliated Exchange-listed securities to CTA, and (B) notifications to CQS for Affiliated Exchange-listed securities of (i) regulatory halts and resumption of trading thereafter, (ii) trading pause and resumption of trading thereafter, and (iii) Short Sale Price Test trigger and lifting thereafter (collectively, ''primary listing market notifications'').[10] The Exchange notes that in the event of an intra-day declaration of an Emergency Condition, the Affiliated Exchanges would manually disseminate primary listing market notifications to CQS. Quotes or orders of Affiliated Exchange-listed securities entered on the Exchange during the Emergency Condition would be reported to CQS as bids or offers of the Exchange, and quotes or orders of Affiliated Exchange-listed securities executed on or through the Exchange during the Emergency Condition would be reported to CTA as executions of the Exchange, except that executions in the opening or closing auctions would be reported as Affiliated Exchange volume only in order to avoid any double counting.

The Exchange believes that the proposed rule change would minimize the impact of declaring an Emergency Condition because the Exchange already trades Affiliated Exchange-listed securities on an unlisted trading privileges basis and prints such executions as Exchange or ''P'' trades.[11] This arrangement would be compatible with market participants' system coding conventions, where orders routed to an exchange generally come back as executions from that exchange, unless routed out. Thus, quotes and orders in Affiliated Exchange-listed securities routed to the Exchange during the Emergency Condition would come back to the entering firm as ''P'' executions, rather than ''N'' or ''A'' executions, as applicable.[12] Similarly, the Exchange further understands that in order for many market participants' systems to recognize the primary listing market notifications, the notifications must carry an ''N'' or ''A'' designation, as applicable, to associate it with the respective Affiliated Exchange-listed securities. If the notifications were disseminated only as ''P'' notifications, they may not be properly recognized by these market participants' systems. However, other market participants may be able to read such primary listing market notifications if disseminated with the ''P'' designation. Accordingly, during an Emergency Condition, in order to accommodate various market participants' existing technological frameworks for the temporary measures addressed in proposed Rule 2.100, the Exchange would disseminate the official opening and closing prints for Affiliated Exchange-listed securities and primary listing market notifications with both ''P'' and ''N'' or ''A'' designations, as applicable. When the Exchange disseminates these messages on behalf of the Affiliated Exchanges, it will do so in accordance with its own rules and procedures for its primary listed securities.[13] The Exchange believes that the proposed rule change offers a practical solution that will be compatible with most market participants' current system coding, which will allow the proposed rule change to be quickly and efficiently implemented and avoid the costs and delays associated with system reprogramming.

The Exchange believes that maintaining a primary market print for an Affiliated Exchange-listed security's official opening price would assist market participants that rely on a primary market opening print as the basis for trading strategies for that trading day. For example, the pricing and valuation of certain indices, funds and derivative products require primary market prints. Similarly, private corporate transactional contracts involving stock purchases or valuations frequently make reference to the primary market print rather than to the CTA print. In addition, certain indexes rely on the primary listing market

[7] The Exchange notes that there is a pending amendment to subparagraph(a)(3)(ii). *See* Securities Exchange Act Release No. 69850 (June 25, 2013), 78 FR 39352 (July 1, 2013) (SR–NYSEArca–2013–62).

[8] *See* NYSE Rule 13 and NYSE MKT Rule 13—Equities.

[9] The current and proposed disaster recovery plans of the Affiliated Exchanges do not enable the intraday failover of their respective systems onto the Exchange, including dissemination of primary listing market notifications; such technology is only available on a next-day basis.

[10] *See* NYSE Rules 123D, 80B, 80C, and 440B and NYSE MKT Rules 123D—Equities, 80B—Equities, 80C—Equities, and 440B—Equities. Each of these types of notifications is a responsibility of the primary listing market for the security.

[11] The ''P'' designation reflects one of the Exchange's predecessor names, Pacific Exchange, Inc., before it was purchased by NYSE Euronext.

[12] The ''N'' designation is for NYSE, and the ''A'' designation is for NYSE MKT, reflecting one of NYSE MKT's predecessor names, American Stock Exchange LLC, before it was purchased by NYSE Euronext

[13] Nonetheless, the Affiliated Exchange will remain the SRO that is legally responsible for the notifications.

closing print to calculate the index, and certain funds rely on the primary listing market closing print to calculate the fund's value. Thus, these market participants would benefit from the dissemination of the primary market prints as ''N'' or ''A'' messages, as applicable, and not have to engage in any system reprogramming to receive them.

Rule 2.100(b)(2)(iii) currently provides that ETP Holders are required to take appropriate actions as instructed by the Exchange to accommodate the use of its systems and facilities to trade Affiliated Exchange-listed securities. This text would be deleted because it is unnecessary.

Rule 2.100(b)(3), which provides for certain temporary memberships and would deem Affiliated Exchange DMMs that are designated as temporary members of the Exchange as Market Makers, would be deleted in its entirety. Because all trading would occur under the Exchange's SRO via a direct membership as an ETP Holder or indirectly via a service bureau that is an ETP Holder, temporary memberships would be unnecessary. Upon further review, the Exchange has also determined that there would be substantial technological difficulties for Affiliated Exchange DMMs to become established during the Emergency Condition as Market Makers and comply with NYSE Arca Equities Rule 7.23, as amended in 2011.[14] It also would be technologically impracticable to attempt to impose an Affiliated Exchange's DMM requirements in a different market and inconsistent with the structure of the proposed rule change. If an Affiliated Exchange DMM wanted to be able to act as a Market Maker during the Emergency Condition, it would have to apply for and obtain such status in advance.

Current Rule 2.100(b)(4) states that the Exchange's trading rules would apply to all trading on the Exchange during the emergency condition and would be deemed Affiliated Exchange rules. Under the proposed rule change, this text would be deleted and such trading rules would no longer be deemed Affiliated Exchange rules. In addition, this paragraph would be redesignated as paragraph (b)(3). To better delineate each SRO's authority, and for simplicity and clarity, during an Emergency Condition, all trading in Affiliated Exchange-listed securities on the Exchange would be subject to the Exchange's rules, surveillance, and discipline; as such, current Rule 2.100(b)(5) would be deleted. The Exchange would not be acting on behalf of the Affiliated Exchange, but rather under its own SRO authority. Thus, if a market participant violated an Exchange trading rule while trading on the Exchange during an Emergency Condition, it would be subject to discipline by the Exchange, not the Affiliated Exchange. The proposed rule change also would specify that such Exchange trading rules include, but are not limited to, the opening, reopening, and closing auction processes applicable to securities for which the Exchange is the primary listing market set forth in Rule 7.35—Equities. The Exchange's auction processes at the open and close and following a trading halt differ from those of its Affiliated Exchanges. However, the Affiliated Exchange's listing requirements would continue to apply to any Affiliated Exchange-listed security that was trading on the Exchange during the Emergency Condition.

The Exchange also proposes to make typographical corrections to Rule 2.100(c).

The Exchange notes that its affiliates have submitted related rule filings. NYSE has submitted a proposed rule change to amend NYSE Rule 49 to make it consistent with proposed Rule 2.100.[15] NYSE MKT also has submitted a proposed rule change to adopt the text of proposed NYSE Rule 49.[16]

The Exchange will announce by Trader Update when the Exchange and the Affiliated Exchanges will be ready to implement the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(7) of the Act,[19] in particular, in that it provides fair procedures for the disciplining of members [20] and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

Specifically, the Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and national market system because it offers a practical solution to facilitate trading in Affiliated Exchange-listed securities in the event of an Emergency Condition and would help to avoid a future market-wide closure. All quoting and trading activity in Affiliated Exchange-listed securities during the Emergency Condition would be deemed Exchange quoting and trading for purposes of CQS and CTA reporting and be subject to the Exchange's surveillance and discipline, except that the opening and closing prints and primary listing market notifications would be disseminated as both Affiliated Exchange and Exchange messages so that the majority of market participants' systems could properly receive and process them. As such, the proposed rule change reflects the operational preferences of the industry and the current structure of most member organizations' connectivity to and system coding for exchange systems and would reduce the systemic and administrative burdens on market participants by avoiding the need for reprogramming, depending on which message notifications their respective systems would be able to read during such Emergency Condition. Although market making requirements could not feasibly be imposed on DMMs of Affiliated Exchanges trading on the Exchange during an Emergency Condition, the Exchange believes that facilitating trading on the Exchange in Affiliated Exchange-listed securities under its SRO rules would benefit both issuers and investors by providing additional liquidity during the Emergency Condition.

The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system because it would assist market participants that rely on or reference a primary market opening print in their trading strategies or private corporate transactional contracts involving stock purchases or valuations. In addition, certain indexes rely on the primary listing market closing print to calculate the index and certain funds rely on the primary listing market closing print to calculate the

[14] *See* Securities Exchange Act Release No. 64422 (May 6, 2011), 76 FR 27691 (May 12, 2011) (SR–NYSEArca-2011–26).

[15] *See* SR–NYSE–2013–54.

[16] *See* SR–NYSEMKT–2013–66.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(7).

[20] The Exchange's equivalent to the term ''member'' in this context is ''ETP Holder.''

fund's value. The proposed rule change would assist these market participants in performing these functions without requiring them to reprogram their systems.

The Exchange also believes that the proposed rule change would promote just and equitable principles of trade and provide for fair discipline by better delineating SRO surveillance and disciplinary functions. The Exchange believes that it would be more effective for the Exchange to discipline market participants under its rules rather than having the Affiliated Exchange enforce the Exchange's rules.

The Exchange believes that adding NYSE MKT to the definition of ''Affiliated Exchange'' would remove impediments to and perfect the mechanism of a free and open market and national market system because it would authorize the Exchange to serve as a back-up trading facility for NYSE MKT in the event that NYSE MKT declares an emergency condition an cannot operate at its physical premises.

In sum, the Exchange believes that the proposed rule change would substantially strengthen business continuity planning for itself and its Affiliated Exchanges, thereby benefiting market participants and investors generally.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate trading in Affiliated Exchange-listed securities on the Exchange during an Emergency Condition and remove certain requirements that cannot feasibly be imposed. As such, the Exchange believes that the proposed rule change would promote competition for the benefit of market participants and investors generally.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2013–77 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2013–77. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEARCA–2013–77 and should be submitted on or before August 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19144 Filed 8–7–13; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70103; File No. SR–CBOE–2013–077]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Order Handling

August 2, 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 July 23, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to modify its rules to address certain option order handling procedures on the Exchange in connection with the implementation of the market wide equity Plan to Address Extraordinary Market Volatility (the ''Plan''). The text of the proposed rule change is available at the Exchange's Office of the Secretary, on the Exchange's Web site at *http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx,* at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

In an attempt to address extraordinary market volatility in NMS Stock, and, in particular, events like the severe volatility on May 6, 2010, the Exchange, in conjunction with the other national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, ''Participants'') drafted the Plan pursuant to Rule 608 of Regulation NMS and under the Securities Exchange Act of 1934 (the ''Act'').[3] The Plan is primarily designed to, among other things, address extraordinary market volatility in NMS stocks, protect investors, and promote fair and orderly markets. The Plan provides for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of specified price bands, as defined in Section I(N) of the Plan. These requirements are coupled with trading pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or monetary gaps of liquidity).

The Plan was filed on April 5, 2011 by the Participants for publication and comment.[4] The Participants requested the Commission approve the Plan as a one-year pilot. On May 24, 2012, the Participants filed an amendment to the Plan which clarified, among other things, the calculation of the reference price, as defined in Section I(T) of the Plan, potential for order type exemption, and the creation of an Advisory Committee.[5] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[6] The Plan was implemented on April 8, 2013.

Though the Plan was primarily designed for equity markets, the Exchange believed it would impact the options markets as well. Thus, the Exchange filed rule changes to amend the Exchange rules to ensure the option markets are not compromised as a result of the Plan's implementation.[7] The Exchange is proposing to further amend these rules to clarify how the ''Hybrid Opening System'' will operate on the Exchange in the event of a limit up-limit down state.

The current rule 6.2B.07, as recently amended, states that if an underlying security for an option class enters into a limit up-limit down state when the class moves to opening rotation, ''all market orders in the system will be cancelled except market orders that are considered limit orders pursuant to Rule 6.13(b)(iv) and entered the previous trading day.''[8] The Exchange is proposing to: (1) Correct the incorrect reference to Exchange Rule 6.13(b)(iv), and (2) provide greater clarity on the effect of a limit up-limit down state on an underlying security after the opening rotation has begun.

First, the Exchange is proposing to clarify an incorrect reference in Rule 6.13(b)(iv). The orders described in the purpose section of the original rule filing are, ''No-Bid Series'' which are actually found in Exchange Rule 6.13(b)(vi) and not Exchange Rule 6.13(b)(iv). The Exchange is now proposing to amend Rule 6.2B.07 to reflect this correction. As stated in the original rule filing, the Exchange is proposing to allow such market orders to remain in the Exchange Book because these orders essentially act as limit orders at the minimum increment. Cancelling such orders could potentially cause such orders to lose their priority with respect to other market orders in the Exchange Book. In addition, limit orders are not cancelled while the underlying security is in a limit up-limit down state, so the Exchange believes allowing market orders that function as a limit orders to remain in the Exchange Book is consistent with the way limit order are generally handled.

Next, the Exchange is proposing to add further clarity to the recently amended rule to clarify that if a limit up-limit down state commences *after* the opening rotation process has begun for a class of options, the opening rotation will continue normally. More specifically, the Exchange is proposing to add language to state that market and limit orders will continue through the opening rotation as they would if there was not a limit up-limit down state. Once the opening rotation has begun for a class of options, due to how the Exchange System operates, the process will not be interrupted to modify the order handling mid-process.

Market orders will continue to process even though they are normally returned during a limit up-limit down state,[9] limit orders will process normally,[10] and auctions will open and operate as they normally do.[11] Market orders, though normally returned during a limit up-limit down state to avoid executions at unfavorable or unreliable prices, do not face the same risks when they are part of the opening process. This is because preopening orders are matched with each other and with other interest during the opening rotation. Thus market orders will trade at the calculated opening price. Preopening limit orders will also be filled at the opening price and cannot be filled through their limit prices.

The Exchange believes this clarity is necessary to ensure Trading Permit Holders are fully aware of special order handling during limit up-limit down states. Though the rule currently specifies what happens to orders on the Exchange if the limit up-limit down state commences prior to the opening rotation beginning for a class of options, the Exchange believes it is necessary to additionally state what would happen if the opening rotation had already begun and the limit up-limit down state triggers during the time of that process.

[3] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

[4] *Id.*

[5] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631).

[6] *See* Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

[7] *See* Securities and Exchange Act Release No. 34–69328 (April 5, 2013), 78 FR 21642 (April 11, 2013) (order approving SR–CBOE–2013–030).

[8] *See* Exchange Rule 6.2B.07.

[9] *See* Exchange Rule 6.53(a) which describes how market orders process.

[10] *See* Exchange Rule 6.53(b) which describes how limit orders process.

[11] *See* Exchange Rule 6.2B.03 which describes the HAL Opening Procedure on the Exchange. If a limit up-limit down state commences after the opening rotation has begun for a class of options, options to buy and sell will be paired to the extent possible. If another market is displaying a more favorable price, then the HAL opening procedure (''HALO'') will begin as described in Exchange Rule 6.2B.03. At the end of the HALO, consistent with Rule 6.2B.03, the Exchange will link any unmatched portion of the market order to an away trading venue. Any portion of a market order that is unfilled and returned to the Exchange will be cancelled. Thus, markets orders will not be filled at an unreliable price because they will either be paired with other resting orders at the open or linked to an away trading venue displaying a more favorable price. The Exchange believes this is consistent with the treatment of market orders and ensures they will not be given an unreliable price despite the limit up-limit down state. Additionally, because limit orders have a limit price, these orders will also not fill at an unreliable price.

The Exchange believes that including pre-opening market order interest in the opening rotation will enhance the liquidity available during the rotation, and that the nature of the opening match process will protect market orders against anomalous opening prices that could otherwise be caused by market conditions associated with a limit-up limit-down state. This will also help to ensure the options markets remain just and equitable with the implementation of the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] 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 the proposed changes will be in accordance with the Act as they are merely intended to ensure the options markets will continue to remain just and equitable with the implementation of the Plan which is intended to reduce the negative impacts of a sudden, unanticipated price movement in NMS stocks. The proposed rule changes would promote this intention in the options markets while protecting investors participating there. More specifically, the currently proposed changes will correct and clarify current Exchange rules promoting the interest of investors. Finally, creating a more orderly market will promote just and equitable principles of trade by allowing investors to feel more secure in their participation in the national market system after the implementation of the Plan. In addition, the Exchange is proposing to provide a more robust rule text by clarifying what occurs if a limit up-limit down states initiates after the beginning of the Exchange's opening rotation. The Exchange believes that not cancelling the pre-opening interest will ensure investors can execute more interest despite the change in the market conditions after the opening process has begun. This will also help to ensure the options markets remain just and equitable with the implementation of the Plan.

*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. Specifically, the Exchange believes the proposed changes will not impose any burden on intramarket competition because it applies to all TPHs equally. The Exchange does not believe the proposed changes will impose any burden on intermarket competition as the changes are merely being made to protect investors with the implementation of the Plan. In addition, the proposed changes will provide certainty of treatment and execution of options orders during periods of extraordinary market volatility.

*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[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

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 under Section 19(b)(2)(B)[17] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–077 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–077. 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 Section, 100 F Street NE., Washington, DC 20549–1090 on official

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(2)(B).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–077 and should be submitted on or before August 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19150 Filed 8–7–13; 8:45 am]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70100; File No. SR–NYSEMKT–2013–60]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period for the Exchange's Retail Liquidity Program for an Additional 12 Months, To Expire on July 31, 2014

August 2, 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 July 30, 2013, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's Retail Liquidity Program (the ''Retail Liquidity Program'' or the ''Program''), which is currently scheduled to expire on July 31, 2013, for an additional 12 months, to expire on July 31, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to extend the pilot period of the Retail Liquidity Program,[3] currently scheduled to expire on July 31, 2013, for an additional 12 months, until July 31, 2014.

Background

In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis.[4] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, Retail Liquidity Providers (''RLPs'') are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer (''PBBO''), called a Retail Price Improvement Order (''RPI''). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE MKT Rule 107C(m)—Equities, the pilot period for the Program is scheduled to end on July 31, 2013.

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.[5] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[6] Through this filing, the Exchange seeks to amend NYSE MKT Rule 107C(m)—Equities and extend the current pilot period of the Program until July 31, 2014.[7]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] 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. The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (''RLP Approval Order'') (SR–NYSEAmex–2011–84).

[4] *See id.*

[5] *See id.* at 40681.

[6] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. *See* Letter from Janet M. McGinness, EVP & Corporate Secretary, NYSE Euronext to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission dated July 30, 2013.

[7] The Exchange is also making a technical, non-substantive amendment to Rule 107C(m)—Equities to fix a typographical error.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional 12 months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–60 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEMKT–2013–60 and should be submitted on or before August 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–19147 Filed 8–7–13; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

## In the Matter of Hutech21 Co., Ltd.; Order of Suspension of Trading

August 5, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hutech21 Co., Ltd. (''Hutech21''). Hutech21 is a British Virgin Islands corporation based in Rathwell, Manitoba, and its stock is currently quoted on OTC Link, operated by OTC Markets Group, Inc. under the symbol CLGZF. Questions have arisen concerning the adequacy and accuracy of press releases issued by Hutech21 concerning its business operations.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Hutech21.

*Therefore, it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on August 5, 2013 through 11:59 p.m. EDT, on August 16, 2013.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2013–19249 Filed 8–6–13; 11:15 am]

BILLING CODE 8011–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 13689 and # 13690]**

### New York Disaster # NY–00135

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of New York dated 08/02/2013.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 06/26/2013 through 07/05/2013.

*Effective Date:* 08/02/2013.

*Physical Loan Application Deadline Date:* 10/01/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/02/2014.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Herkimer, Madison, Montgomery, Oneida.

*Contiguous Counties:*

New York: Chenango, Cortland, Fulton, Hamilton, Lewis, Onondaga, Oswego, Otsego, Saint Lawrence, Saratoga, Schenectady, Schoharie.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 3.750 |
| Homeowners Without Credit Available Elsewhere | 1.875 |
| Businesses With Credit Available Elsewhere | 6.000 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere | 2.875 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.875 |
| For Economic Injury: | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.875 |

The number assigned to this disaster for physical damage is 13689 6 and for economic injury is 13690 0.

The State which received an EIDL Declaration # is New York.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 2, 2013.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2013–19244 Filed 8–7–13; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 13681 and # 13682]**

### West Virginia Disaster # WV–00033

**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 State of West Virginia (FEMA–4132–DR), dated 07/26/2013.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 06/13/2013.

*Effective Date:* 07/26/2013.

*Physical Loan Application Deadline Date:* 09/24/2013.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/28/2014.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 07/26/2013, 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 Counties:* Mason, Roane.

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 13681B and for economic injury is 13682B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Joseph P. Loddo,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2013–19247 Filed 8–7–13; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Docket Number: 2013–0008]**

### Small Business Innovation Research and Small Business Technology Transfer Programs Commercialization Benchmark

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** The Small Business Administration (SBA) is publishing the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) program Commercialization Benchmark for the 11 participating agencies for public comment. This benchmark establishes the commercialization results a Small Business Concern (SBC) that has been awarded multiple prior Phase II awards is required to achieve from work it performed under its prior Phase II awards in order to be eligible to receive a new Phase I award. This requirement is described in Section 4(a) of the SBIR Policy Directive and the STTR Policy Directive which implements section 5165 of the SBIR/STTR Reauthorization Act of 2011, Public Law 112–81, 125-Stat. 1298.

**DATES:** *Effective Date:* October 7, 2013 and when published on *www.sbir.gov.*

*Comment Date:* Comments to this notice must be received on or before September 9, 2013.

**ADDRESSES:** You may submit comments, identified by Docket Number 2013–0008 by any of the following methods:

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

• *Mail/Hand Delivery/Courier:* Edsel Brown, Jr., Assistant Director, Office of Innovation, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments to this notice without change on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to Edsel Brown, Jr., Assistant Director, Office of Innovation, Small Business Administration, 409 Third Street SW., Washington, DC 20416; or send an email to *Technology@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether to publish it.

**FOR FURTHER INFORMATION CONTACT:** Edsel Brown, Jr., Assistant Director, Office of Innovation, Small Business Administration, 409 Third Street SW., Washington, DC 20416; telephone (202) 205–6450; email (*Technology@sba.gov*).

**SUPPLEMENTARY INFORMATION:** On August 6, 2012, SBA published the SBIR and STTR Policy Directives at 77 FR 46806 and 77 FR 46855 respectively. Section 4(a)(3) of these Policy Directives requires each agency to establish an SBA-approved Commercialization Rate Benchmark for firms that have been awarded multiple prior Phase II awards. The benchmark establishes the level of commercialization results an SBC must have received from work it performed under prior Phase II awards in order to be eligible for a new Phase I award.

The Commercialization Rate benchmark is the second of two requirements designed to ensure that SBCs that have previously won multiple Phase II awards demonstrate a minimum level of progress towards commercialization of their SBIR/STTR-funded research. The first requirement was described in the Transition Rate Benchmark notice published in the **Federal Register** on October 16, 2012 at 77 FR 63410. The Transition Rate benchmark sets the minimum ratio of Phase II to Phase I awards that must be met by firms that have been awarded over 20 Phase I awards over the past 5 years (excluding the most recently completed fiscal year) in order to be eligible for a Phase I award. The Commercialization Rate benchmark establishes the level of Phase III commercialization results an SBA must have achieved from work it performed under prior Phase II awards.

The Commercialization Benchmark requirement will apply only to firms that have received more than 15 Phase II awards during the last 10 fiscal years, excluding the two most recently completed fiscal years.

To implement the Commercialization Benchmark, the eleven SBIR/STTR-participating agencies and the SBA have identified a measure of commercialization results that will be applied across all agencies. The SBA will use data it collects from awardees in its Company Registry on the SBIR.gov Web site to identify those companies that do not meet the required level of commercialization for their past Phase II work. To be consistent with the process used for the Transition to Phase II Benchmark requirement, and provided that the necessary data systems are available, SBA will generate, on June 1 of each year, a list of companies that fail to meet the Commercialization Benchmark rate. These companies will be ineligible to receive a Phase I award for a period of one year from that date. This list will be made available to officials at the participating agencies. It will not be available to the public. The firms on the list will be notified directly and will be able to view their status on the Company Registry at SBIR.gov. As the SBIR/STTR program data system develops, SBA may modify the date on which SBA identifies the firms that do not meet the benchmark requirements to earlier in the year.

The purpose of the Commercialization Benchmark is to measure an SBC's progress from Phase II to Phase III. Phase III is defined in Section 4(c)(3) of the Policy Directives as ''work that derives from, extends, or completes an effort made under prior SBIR funding agreements, but is funded by sources other than the SBIR Program.''

For the purposes of the Commercialization Benchmark, Phase III commercialization of a company's past Phase II work will be measured using both monetary and non-monetary results. The following data will be used for the benchmark:

• Total sales or revenues that resulted, at least in part, from work performed under Phase II awards received in the 10-year period.

• Total dollars invested to continue the work and move it towards commercial application.

• The number of patents that resulted, at least in part, from work performed under Phase II awards received in the 10-year period.

The Commercialization Benchmark requirement will be expressed as follows: Each company that has won 16 or more Phase II awards during the past 10 years, excluding the most recently completed two fiscal years, must have received an average of at least $100,000 of sales and/or investments per Phase II award received; or have received a number of patents equal to or greater than 15% of the number of Phase II awards received during the period. For example, if a company won 18 Phase II awards during fiscal years 2007 through 2011, it would be required to meet the commercialization benchmark calculated on June 1st 2014 because it had received more than 16 Phase II awards in the 5 year time period. On June 1st 2014, the company shows, through its reporting on these 18 awards, that it has achieved $1.7 million in sales and/or additional investment and 3 patents resulting directly from the work done under these awards. The sales and investment amount is not sufficient to meet the benchmark of $100,000 per award, however, with 3 patents the company exceeds the patent requirement of 2.7 (15% of 18 awards) and therefore meets the benchmark requirement.

As the data system for the SBIR/STTR programs develops and is able to collect additional data for measuring commercialization results, the agencies and SBA may refine the Commercialization Benchmark to include other measures and/or adjust the required performance levels.

SBA has reviewed and approved this benchmark. Section 5165 of the SBIR/STTR Reauthorization Act of 2011 requires SBA to publish, at least 60 days before becoming effective, the system and performance standard to be used, and the approval by SBA. Therefore, SBA will review all comments received in response to this notice and issue the final commercialization benchmark requirement within 60 days of the date this notice is published. That notice will be made available at *www.sbir.gov.*

For greater detail on the Commercialization Rate benchmark requirement, see Section 4(a)(3) of the SBIR Policy Directive (77 FR 46806) and the STTR Policy Directive (77 FR 46855).

**Pravina Raghavan,**

*Deputy Associate Administrator for Investments and Innovation.*

[FR Doc. 2013–19243 Filed 8–7–13; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 8414]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Iran Modern''

**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 ''Iran Modern,'' 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 Asia Society in New York, New York from on or about September 6, 2013, until on or about January 5, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact 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: July 31, 2013.

**Lee Satterfield,**

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2013–19248 Filed 8–7–13; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 8415]**

### Designation of Bahawal Khan, Also Known as Salahuddin Ayubi, Also Known as Bahwal Khan, 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 individual known as Bahawal Khan, also known as Salahuddin Ayubi, also known as Bahwal Khan, 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: July 18, 2013.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2013–19251 Filed 8–7–13; 8:45 am]

BILLING CODE 4710–10–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aviation Medical Examiner Program

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 20, 2013, vol. 78, no. 97, page 29427. This collection is necessary in order to determine applicants' qualifications for certification as Aviation Medical Examiners (AMEs).

**DATES:** Written comments should be submitted by September 9, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0604.

*Title:* Aviation Medical Examiner Program.

*Form Numbers:* FAA Form 8520–2.

*Type of Review:* Renewal of an information collection.

*Background:* 14 CFR Part 183 describes the requirements for delegating to private physicians the authority to conduct physical examinations on persons wishing to apply for their airmen medical certificate. This collection of information is for the purpose of obtaining essential information concerning the applicants' professional and personal qualifications. The FAA uses the information to screen and select the designees who serve as aviation medical examiners.

*Respondents:* Approximately 450 applicants annually.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 30 minutes.

*Estimated Total Annual Burden:* 225 hours.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to

enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on August 2, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–19194 Filed 8–7–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 20, 2013, vol. 78, no. 97, page 29426. The information collected is needed for applicants' noise certification compliance reports in order to demonstrate compliance with 14 CFR Part 36.

**DATES:** Written comments should be submitted by September 9, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0659.

*Title:* Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes.

*Form Numbers:* There are no FAA forms associated with this collection of information.

*Type of Review:* Renewal of an information collection.

*Background:* The information collected is needed for applicants' noise certification compliance reports in order to demonstrate compliance with 14 CFR Part 36, which is implemented under the Aircraft Noise Abatement Act of 1968. An applicant's collected information is incorporated into a noise compliance report that is provided to and approved by the FAA. The noise compliance report is used by the FAA in making a finding that the airplane is in compliance with regulations.

*Respondents:* Approximately 10 applicants annually.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 135 hours.

*Estimated Total Annual Burden:* 1,350 hours.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on August 2, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–19195 Filed 8–7–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Information for the Prevention of Aircraft Collisions on Runways at Towered Airports

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 24, 2013, vol. 78, no. 101, pages 31626–31627. Feedback from surveys conducted under this generic information collection will be used in the prevention of runway collisions and in the medication of the severity and frequency of runway incursions.

**DATES:** Written comments should be submitted by September 9, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0692.

*Title:* Information for the Prevention of Aircraft Collisions on Runways at Towered Airports.

*Form Numbers:* There are no FAA forms associated with this generic collection of information.

*Type of Review:* Renewal of a generic information collection.

*Background:* Information to be collected will focus on pilot, controller, or vehicle driver practices and/or feedback on specific runway safety initiatives, such as training programs, Runway Safety Action Team meetings, changes to procedures, changes to infrastructure made to enhance runway safety (such as paint, signs, lights, and markings), or aspects of airport design. Feedback gathered on the perceived effectiveness of specific strategies to prevent runway incursions will be used to refine current intervention strategies and to develop strategies to help reduce the severity and frequency of runway incursions.

*Respondents:* An estimated 8,900 pilots, aircraft support vehicle drivers, airport/airfield maintenance staff, management, and other personnel

engaged in the operations of aircraft or airports.

*Frequency:* Information will be collected on occasion.

*Estimated Average Burden per Response:* 10 minutes.

*Estimated Total Annual Burden:* 1,480 hours.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on August 2, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–19196 Filed 8–7–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 24, 2013, vol. 78, no. 101, page 31626. Information is collected to determine program compliance or non-compliance of regulated aviation employers, oversight planning, to determine who must provide annual Management Information System testing information, and to communicate with entities subject to the program regulations.

**DATES:** Written comments should be submitted by September 9, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0535.

*Title:* Anti-Drug Program for Personnel Engaged in Specified Aviation Activities.

*Form Numbers:* There are no FAA forms associated with this collection of information.

*Type of Review:* Renewal of an information collection.

*Background:* The FAA mandates specified aviation entities to conduct drug and alcohol testing under its regulations, Drug and Alcohol Testing Program (14 CFR Part 120), 49 U.S.C. 31306 (Alcohol and controlled substances testing), and the Omnibus Transportation Employee Testing Act of 1991 (the Act). The FAA uses information collected for determining program compliance or non-compliance of regulated aviation employers, oversight planning, determining who must provide annual MIS testing information, and communicating with entities subject to the program regulations.

*Respondents:* Approximately 7,000 affected entities annually.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 5 minutes.

*Estimated Total Annual Burden:* 22,902 hours.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on August 2, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–19192 Filed 8–7–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Passenger Facility Charge (PFC) Application

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 20, 2013, vol. 78, no. 97, pages 29425–29426. This program requires public agencies and certain members of the aviation industry to prepare and submit applications and reports to the FAA. Through this program the FAA provides additional funding for airport development which is needed now and in the future.

**DATES:** Written comments should be submitted by September 9, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0557.

*Title:* Passenger Facility Charge (PFC) Application.

*Form Numbers:* FAA Form 5500–1.

*Type of Review:* Renewal of an information collection.

*Background:* 49 U.S.C. 40117 authorizes airports to impose passenger facility charges (PFC). The final rule (14 CFR part 158) implementing this Act was effective June 28, 1991. The information collected allows the FAA to approve the collection of PFC revenue for projects which preserve or enhance safety, security, or capacity of the national air transportation system, or which reduce noise or mitigate noise impacts resulting from an airport, or which furnish opportunities for enhanced competition between or among air carriers.

*Respondents:* Approximately 450 applicants annually.

*Frequency:* Information is collected quarterly.

*Estimated Average Burden per Response:* 10 hours.

*Estimated Total Annual Burden:* 24,025 hours.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on August 2, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–19193 Filed 8–7–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Representatives of the Administrator

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 20, 2013, vol. 78, no. 97, pages 29426–29427. The collection of information is for the purpose of obtaining essential information concerning the applicant's professional and personal qualifications. The FAA uses the information provided to screen and select designees who act as representatives of the FAA Administrator in performing various certification and examination functions under Title VI of Federal Aviation Act.

**DATES:** Written comments should be submitted by September 9, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0033.

*Title:* Representatives of the Administrator.

*Form Numbers:* FAA forms 8110–14, 8110–28, 8710–6, 8710–10.

*Type of Review:* Renewal of an information collection.

*Background:* Title 49, United States Code, Section 44702 authorizes the appointment of appropriately qualified persons to be representatives of the Administrator to allow those persons to examine, test and certify other persons for the purpose of issuing them pilot and instructor certificates. The collection of information is for the purpose of obtaining essential information concerning the applicant's professional and personal qualifications.

*Respondents:* Approximately 5,015 applicants annually.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 1.5 hours.

*Estimated Total Annual Burden:* 7,098 hours.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on August 2, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–19191 Filed 8–7–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Human Space Flight Requirements for Crew and Space Flight Participants

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 20, 2013, vol. 78, no. 97, pages 29425–29426. The FAA uses the information

collected related to public safety to ensure that a launch or reentry operation involving a human on board a vehicle will meet the risk criteria and requirements with regard to ensuring public safety.

**DATES:** Written comments should be submitted by September 9, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0720.

*Title:* Human Space Flight Requirements for Crew and Space Flight Participants.

*Form Numbers:* There are no FAA forms associated with this information collection.

*Type of Review:* Renewal of an information collection.

*Background:* The FAA has established requirements for human space flight of crew and space flight participants as required by the Commercial Space Launch Amendments Act of 2004. The information collected is used by the FAA, a licensee or permittee, a space flight participant, or a crew member. The FAA uses the information related to public safety to ensure that a launch or reentry operation involving a human on board a vehicle will meet the risk criteria and requirements with regard to ensuring public safety.

*Respondents:* Approximately 5 applicants annually.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 4 hours.

*Estimated Total Annual Burden:* 2,975 hours.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oira_submission@omb.eop.gov, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on August 2, 2013.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2013–19197 Filed 8–7–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Approval of Finding of No Significant Impact—Record of Decision (FONSI/ROD) for Sioux Falls Regional Airport, Sioux Falls, South Dakota

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

**ACTION:** Notice.

**SUMMARY:** The FAA is announcing approval of Finding of No Significant Impact—Record of Decision (FONSI/ROD) for proposed development at the Sioux Falls Regional Airport, Sioux Falls, South Dakota. The FAA approved the FONSI/ROD on July 22, 2013.

**SUPPLEMENTARY INFORMATION:** The FONSI/ROD approved the Sponsor's proposed action for Runway 3–21 to meets FAA's geometric design standards for RSA and OFA. Additionally the purpose of the project is to mitigate for trees that penetrate the 50 to 1 approach surface to Runway 3 and trees that penetrate the associated 7 to 1 transitional surface on the Runway 3 end. These penetrations are defined as obstructions which can adversely affect the navigable airspace under the provisions of Federal Aviation Regulations (FAR) Part 77. The 50 to 1 approach surface and 7 to 1 transitional surface for Runway 3 are defined under FAR Part 77.19, Civil Airport Imaginary Surfaces.

The approved action is needed because Runway 3–21 does not currently meet FAA geometric design standards. Objects are located within the RSA and OFA that do not comply with RSA and OFA design standards found in FAA AC 150/5300–13A, Airport Design and *FAA Order 5200.8, Runway Safety Area Program.* All RSAs at federally obligated airports and all RSAs at airports certificated under 14 Code of Federal Regulations (CFR) Part 139 must conform to the standards contained in *AC 150/5300–132.* Objects in the RSA include a localizer antenna, perimeter road, and perimeter fence. Objects in the OFA include the above-mentioned RSA objects, the localizer antenna equipment building, and several trees on the adjacent Elmwood Golf Course. The proposed mitigation of obstructions to FAR Part 77 is needed in order to enhance the safety of aircraft operations for both the arrivals on Runway 3 and the departures on Runway 21.

The FONSI/ROD indicates the project is consistent with existing environmental policies and objectives as set forth in the National Environmental Policy Act (NEPA) of 1969, as amended and will not significantly affect the quality of the environment.

In reaching this decision, the FAA has given careful consideration to: 9a) the role of FSD in the national air transportation system, (b) aviation safety, and (c) preferences of the airport owner/operator, and (d) anticipated environmental impact.

**DATES:** This notice is effective August 8, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lindsay Butler, Federal Aviation Administration, Great Lakes Regional Office, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone number: 847–294–7723.

Issued in Des Plaines, IL on July 30, 2013.

**Jesse Carriger,**

*Manager, Planning/Programming Branch, FAA Great Lakes Region.*

[FR Doc. 2013–19178 Filed 8–7–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Veterans Health Administration Fund Availability Under the VA's Homeless Providers Grant and Per Diem Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of Funding Availability (NOFA).

**SUMMARY:** Funding Opportunity Title: VA Grant and Per Diem (GPD) Special Needs Renewal. The Department of Veterans Affairs (VA) is announcing the availability of 1-year renewal funding for currently operational fiscal year (FY) 2011 VA GPD Special Need Grant Recipients, in conjunction with their collaborative VA Special Need partners and currently operational VA GPD Special Need Grant Recipients which do not involve a collaborative effort, to make re-applications for assistance under the Special Need Grant

Component of VA's Homeless Providers GPD Program. The focus of this NOFA is to encourage applicants to continue to deliver services to the homeless Special Need veteran population as outlined in their FY 2009 Special Need grant application. This NOFA contains information concerning the program, application process, and amount of funding available.

*Announcement Type:* Initial.

*Catalog of Federal Domestic Assistance Number:* 64–024.

**DATES:** An original signed and dated request for re-application letter, on agency letterhead, for assistance under the VA's Homeless Providers GPD Program, must be received in the GPD Program Office by 4:00 p.m. Eastern Time on Friday, August 16, 2013, (see re-application requirements below). Requests for re-application may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any request for re-application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

*For a copy of the application package:* An application package is not needed for this NOFA. Applicants submitting a letter, on their agency's letterhead, requesting re-application agree to VA using their previously awarded FY 2009 Special Need application for scoring purposes (see re-application requirements in this NOFA).

*Submission of application:* An original and complete letter requesting re-application with project number (see re-application requirements in this NOFA) must be submitted to the following address: VA Homeless Providers GPD Program Office, 10770 N. 46th Street, Suite C–200, Tampa, FL 33617. Letters of re-application must be received in the GPD office by the re-application deadline. Any additional materials arriving separately will not be included in the re-application package for consideration.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffery L. Quarles, Director, VA's Homeless Providers GPD Program, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–200, Tampa, FL 33617; (toll-free) (877) 332–0334.

**SUPPLEMENTARY INFORMATION:**

## I. Funding Opportunity Description

A. *Purpose:* This NOFA announces the availability of funds to renew assistance provided under VA's Homeless Providers GPD Program for FY 2011 operational GPD Special Need grant recipients and their collaborative VA partners. Eligible applicants may obtain grant assistance with additional operational costs that would not otherwise be incurred but for the fact that the recipient is providing supportive housing beds and services for the following special needs homeless veteran populations:

(1) Women;

(2) Frail elderly;

(3) Terminally ill;

(4) Chronically mentally ill; or

(5) Individuals who have care of minor dependents.

B. *Definitions:* Definitions of these populations are contained in 38 CFR 61.1 Definitions. Eligible applicants should review these definitions to ensure their proposed populations meet the specific requirements.

C. *Approach:* VA is pleased to issue this NOFA for the Homeless Providers GPD Program as a part of the effort to end homelessness among our Nation's veterans. Funding applied for under this NOFA may be used for: the provision of service and operational costs to facilitate the following with regard to the targeted group.

*Women*

(1) Ensure transportation for women, especially for health care and educational needs; and

(2) Address safety and security issues including segregation from other program participants if deemed appropriate.

*Individuals Who Have Care of Minor Dependents*

(1) Ensure transportation for individuals who have care of minor dependents, and their children, especially for health care and educational needs;

(2) Provide directly or offer referrals for adequate and safe child care;

(3) Ensure children's health care needs are met, especially age-appropriate wellness visits and immunizations; and

(4) Address safety and security issues, including segregation from other program participants if deemed appropriate.

*Frail Elderly*

(1) Ensure the safety of the residents in the facility to include preventing harm and exploitation;

(2) Ensure opportunities to keep residents mentally and physically agile to the fullest extent through the incorporation of structured activities, physical activity, and plans for social engagement within the program and in the community;

(3) Provide opportunities for participants to address life transitional issues and separation and/or loss issues;

(4) Provide access to assistance devices such as walkers, grippers, or other devices necessary for optimal functioning;

(5) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(6) Provide opportunities for participants either directly or through referral for other services particularly relevant for the frail elderly, including services or programs addressing emotional, social, spiritual, and generative needs.

*Terminally Ill*

(1) Help participants address life-transition and life-end issues;

(2) Ensure that participants are afforded timely access to hospice services;

(3) Provide opportunities for participants to engage in ''tasks of dying,'' or activities of ''getting things in order'' or other therapeutic actions that help resolve end of life issues and enable transition and closure;

(4) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants, either directly or through referral, for other services that are particularly relevant for the terminally ill, such as legal counsel and pain management.

*Chronically Mentally Ill*

(1) Help participants join in and engage with the community;

(2) Facilitate reintegration with the community and provide services that may optimize reintegration such as life-skills education, recreational activities, and follow-up case management;

(3) Ensure that participants have opportunities and services for re-establishing relationships with family;

(4) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants, either directly or through referral, to obtain other services particularly relevant for a chronically mentally ill population, such as vocational development, benefits management, fiduciary or money management services, medication compliance, and medication education.

VA is seeking, through this NOFA, to renew the FY 2011 previous grant and per diem Special Need providers and their VA collaborative partners to continue to serve the Special Need veteran populations.

D. *Requirements:* No part of a Special Need grant may be used for any purpose that would change significantly the scope of the specific grant and per diem project for which a capital grant and per diem was awarded. As a part of the review process, VA will review the original project and subsequent approved program changes of the previous FY 2009 Special Need applications to ensure significant scope changes have not occurred displacing other homeless veteran populations. VA will not allow any changes under this renewal NOFA. Special Need funding may not be used for capital improvements or to purchase vans or real property. However, the leasing of vans or real property may be acceptable. Questions regarding acceptability should be directed to the VA's National GPD Program Office (at (877) 332–0334). Applicants may not receive Special Need funding to replace funds provided by any Federal, state, or local government agency or program to assist homeless persons.

E. *Authority:* Funding applied for under this NOFA is authorized by the ''Homeless Veterans Comprehensive Assistance Act of 2001,'' Public Law 107–95, § 5, codified as amended by Public Law 112–154, §§ 301, 303, and 305, at 38 U.S.C. 2011, 2012, 2013, 2061. The program is implemented by the final rule codified at 38 CFR 61.0 through 61.82. Funds made available under this NOFA are subject to the requirements of those regulations.

## II. Award Information

A. *Overview:* This NOFA announces the availability of one year renewal funding for currently operational FY 2011 VA GPD Special Need Grant Recipients in conjunction with their collaborative VA Special Need partners and currently operational VA GPD Special Need Grant Recipients which do not involve a collaborative effort to make re-applications for assistance under the Special Need Grant Component of VA's Homeless Providers GPD Program.

B. *Funding Priorities:* None

C. *Allocation of Funds:* Approximately $5 million is available for current Special Need GPD grant components of this program. Funding will be for a period beginning on October 1, 2013, and ending on September 30, 2014. Special need per diem payments are to defray the operational cost of the project. Special need per diem payment will be the lesser of:

1. One hundred percent of the daily cost of care estimated by the special need recipient for furnishing services to homeless veterans with special need that the special need recipient certifies to be correct, minus any other sources of income; or

2. Two times the current VA State Home Program per diem rate for domiciliary care.

Special need awards are subject to funds availability, the recipient meeting the performance goals as stated in the grant application, statutory and regulatory requirements, and annual inspections. Applicants should ensure their funding requests and operational costs are based on the 12-month period above and should be approximately in line with prior 1-year expenditures. Based on GPD funding availability, approximately, $3.5 million is expected to be made available over the specified time (internally) for the current VA collaborative partners. The goal of this Notice is to ensure a continuation of Special Need services to homeless veterans and their VA collaborative partners, to the maximum extent possible.

## III. Eligibility Information

A. *Eligible Applicants:* In order to be eligible, an applicant must be a current operational FY 2011 VA GPD Special Need Grant Recipient in conjunction with their collaborative VA Special Need partners, or a currently operational VA GPD Special Need Grant Recipient that does not involve a collaborative effort to make re-applications for assistance under the Special Need Grant Component of VA's Homeless Providers GPD Program.

B. *Cost Sharing or Matching:* This section is not applicable to the Special Need Grant.

## IV. Application and Submission Information

A. *Address To Request Application Package:* An application package is not needed for this NOFA. Applicants submitting a letter requesting re-application on their agency's letterhead agree to VA using their previously awarded FY 2009 Special Need application for scoring purposes.

B. *Content and Form of Application:* A separate request for renewal letter is needed for each project number for which you are requesting Special Needs Funding. In addition, current Special Need recipients should also list their Special Need Project number. A project number is the last two digits of the year funded, the sequence the application was received, and the state abbreviation for the project location, (e.g., 09–325–MA would have been funded in the year 2009, the 325th application received, and the project is located in Massachusetts). If you do not know your project number, call VA's GPD Field Office at (877) 332–0334.

The grant application requirements were specified and met in the original application package and need not be provided as the applicant agrees that, as a condition of funding under this NOFA, the FY 2009 application with any VA-approved changes in scope will be used. The following additional information is required by this NOFA. The renewal request must include:

1. Letter from Applicant: A letter from the renewal applicant on agency-signed letterhead, stating the applicant agrees to as a condition of funding under this NOFA that the FY 2009 application will be used and they will provide the services as outlined in that application along with any VA-approved changes in scope, and the applicant's FY 2009 required forms and certifications still apply for the period of this award.

2. Letter from VA Collaborative Partner: If the FY 2009 Special Need grant was a collaborative, the renewal request must include an updated letter of commitment or an updated Memorandum of Agreement (MOA) from the VA collaborative partner, stating that the VA will continue to meet its objectives or provide its duties as outlined in the original MOA in FY 2009.

3. Collaborative partners: VA collaborative partners will receive the same amount of funding as they receive in FY 2013. Applicants having questions with regard to the funding from previous Special Need awards should contact the GPD Office prior to application for this NOFA. Selections will be made based on criteria described in the FY 2009 application and additional information as specified in this NOFA.

Applicants who are selected will be notified of any further additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other Special Need applicants.

C. *Submission Dates and Times:* An original signed and dated request for re-application letter, on agency letterhead, for assistance under the VA's Homeless

Providers GPD Program must be received in the GPD Program Office, by 4:00 p.m. Eastern Time on Friday, August 16, 2013. Requests for re-application may not be sent by FAX. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any request for re-application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

D. *Intergovenmental Review:* This section is a not applicable.

E. *Funding Restrictions:* Approximately $5 million is available for current Special Need GPD grant component of this program. Funding will be for a period beginning on October 1, 2013, and ending on September 30, 2014. Special need per diem payments are to defray the operational cost of the project. Special need per diem payment will be the lesser of:

1. 100 percent of the daily cost of care estimated by the special need recipient for furnishing services to homeless veterans with special need that the special need recipient certifies to be correct, minus any other sources of income; or

2. Two times the current VA State Home Program per diem rate for domiciliary care.

Based on GPD funding availability, approximately, $3.5 million is expected to be made available over the specified time (internally) for the current VA collaborative partners.

F. *Grant Award Period and Funding Actions:* Conditionally selected applicants will complete a funding agreement with VA in accordance with 38 CFR 61.61 and provide any additional information as required by VA. Upon signature by the Secretary or designated representative final selection will be completed. Funding for operational grant and per diem applicants that are finally selected will not exceed the 1-year period specified in this NOFA. A condition to obtain the Special Need Grant is for the applicant to include the original (GPD) program for which the Special Need grant is sought.

G. *Other Submission Requirements:* Requests for re-application may not be sent by FAX. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any request for re-application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

## V. Application Review Information

A. *Criteria:* The threshold for consideration for this award will be those applicants who submit the required letter requesting renewal described in this NOFA, that are current operational FY 2011 VA GPD Special Need Grant Recipients in conjunction with their collaborative VA Special Need partners, or a currently operational VA GPD Special Need Grant Recipients that does not involve a collaborative effort to make re-applications for assistance under the Special Need Grant Component of VA's Homeless Providers GPD Program.

B. *Review and Selection Process:* A letter from the renewal applicant on agency signed letterhead stating the applicant agrees that, as a condition of funding under this NOFA, the FY 2009 application will be used and they will provide the services as outlined in that application along with any VA approved changes in scope, and the applicant's FY 2009 required forms and certifications still apply for the period of this award. If the FY 2009 Special Need grant was a collaborative effort, the renewal request must include an updated letter of commitment or an updated MOA from VA collaborative partner, stating that the VA will continue to meet its objectives or provide its duties as outlined in the original MOA in FY 2009.

## VI. Award Administration Information

A. *Award Notice:* Although subject to change, the GPD Office expects the announcement of grant renewals during the first quarter of fiscal year 2014 (which begins October 1, 2013). The initial announcement will be made via news release, which will be posted on the GPD Web site at *www.va.gov/homeless/gpd.asp.* Following the initial announcement, the GPD Office will mail a notification letter to the grant recipients. Applicants that are not selected for renewal of their grant will be mailed a declination letter within 2 weeks of the initial announcement.

B. *Administrative and National Policy:* It is important to be aware that VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor services provided to homeless veterans and outcomes associated with the services provided in grant and per diem-funded programs. Applicants should be aware of the following:

1. Awardees will be required to support their request for Special Needs per diem payments with adequate fiscal documentation as to program income and expenses.

2. All awardees that are selected in response to this NOFA must meet the requirements of the current edition of the Life Safety Code of the National Fire Protection Association as it relates to their specific facility. Applicants should note that all facilities are to be protected throughout by an approved automatic sprinkler system, unless a facility is specifically exempted under the Life Safety Code. Applicants should make consideration of this when submitting their grant applications as no additional funds will be made available for capital improvements under this NOFA.

3. Each grant awardee will have the VA liaison that was appointed for its current Special Need grant program monitor services to ensure the Special Need grant is being met and will include at least an annual review of each program's progress toward meeting internal goals and objectives in helping the Special Need homeless veterans as identified in each applicant's original Special Need application to include any VA-approved changes in scope.

4. Monitoring of Homeless Special Need participants and services provided by GPD recipients will be accomplished according to appropriate VA procedure. These monitoring procedures will be used to determine successful accomplishment of outcomes for each collaborative partnership.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffery L. Quarles, Director, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–200, Tampa, FL 33617; (toll-free) (877) 332–0334.

Approved: August 1, 2013.

**Jose D. Riojas,**

*Interim Chief of Staff, Department of Veterans Affairs.*

[FR Doc. 2013–19166 Filed 8–7–13; 8:45 am]

**BILLING CODE P**

# FEDERAL REGISTER

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Part II

## Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 34

## Board of Governors of the Federal Reserve System

12 CFR Part 226

## Bureau of Consumer Financial Protection

12 CFR Part 1026

Appraisals for Higher-Priced Mortgage Loans—Supplemental Proposal; Proposed Rule

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 34**

**[Docket No. OCC–2013–0009]**

**RIN 1557–AD70**

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**12 CFR Part 226**

**[Docket No. R–1443]**

**RIN 7100–AD90**

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1026**

**[Docket No. CFPB–2013–0020]**

**RIN 3170–AA11**

## Appraisals for Higher-Priced Mortgage Loans—Supplemental Proposal

**AGENCIES:** Board of Governors of the Federal Reserve System (Board); Bureau of Consumer Financial Protection (Bureau); Federal Deposit Insurance Corporation (FDIC); Federal Housing Finance Agency (FHFA); National Credit Union Administration (NCUA); and Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Proposed rule; request for public comment.

**SUMMARY:** The Board, Bureau, FDIC, FHFA, NCUA, and OCC (collectively, the Agencies) are proposing to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the official interpretation to the regulation. This proposal relates to a final rule issued by the Agencies on January 18, 2013 (2013 Interagency Appraisals Final Rule or Final Rule), which goes into effect on January 18, 2014. The Final Rule implements a provision added to TILA by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or Act) requiring appraisals for ''higher-risk mortgages.'' For certain mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the Final Rule requires creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. The Agencies are proposing amendments to the Final Rule implementing these requirements; specifically, the Agencies are proposing exemptions from the rules for: transactions secured by existing manufactured homes and not land; certain ''streamlined'' refinancings; and transactions of $25,000 or less.

**DATES:** Comments must be received on or before September 9, 2013, except that comments on the Paperwork Reduction Act analysis in part VIII of the Supplementary Information must be received on or before October 7, 2013.

**ADDRESSES:** Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title ''Appraisals for Higher-Priced Mortgage Loans—Supplemental Proposal'' to facilitate the organization and distribution of comments among the Agencies. Commenters also are encouraged to identify the number of the specific question for comment to which they are responding. Interested parties are invited to submit written comments to:

*Board:* You may submit comments, identified by Docket No. R–1443 or RIN 7100–AD90, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW., Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

*Bureau:* You may submit comments, identified by Docket No. CFPB–2013–0020 or RIN 3170–AA11, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

*FDIC:* You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- *Email: comments@FDIC.gov.*

Comments submitted must include ''FDIC'' and ''Truth in Lending Act (Regulation Z).'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html,* including any personal information provided.

*FHFA:* You may submit your comments, identified by regulatory information number (RIN) 2590–AA58, by any of the following methods:

- *Email:* Comments to Alfred M. Pollard, General Counsel, may be sent by email to *RegComments@fhfa.gov.*

Please include ''RIN 2590–AA58'' in the subject line of the message.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include ''RIN 2590–AA58'' in the subject line of the message.

• *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA58, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The package should be logged in at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

• *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA58, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024.

Copies of all comments will be posted without change, including any personal information you provide, such as your name, address, email address, and phone number, on the FHFA Internet Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., Eastern Time, at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

*NCUA:* You may submit comments, identified by RIN 3133–AE21, by any of the following methods (Please send comments by one method only):

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

• *NCUA Web site: http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx*. Follow the instructions for submitting comments.

• *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Appraisals for Higher-Priced Mortgage Loans—Supplemental Proposal'' in the email subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for email.

• *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier in Lieu of Mail:* Same as mail address.

You can view all public comments on NCUA's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

*OCC:* Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Appraisals for Higher-Priced Mortgage Loans—Supplemental Proposal'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—''regulations.gov'':* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2013–0009'' in the Search Box and click ''Search''. Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments.

• Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

• *Email: regs.comments@occ.treas.gov.*

• *Mail:* 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.

• *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

• *Fax:* (571) 465–4326.

*Instructions:* You must include ''OCC'' as the agency name and ''Docket ID OCC–2013–0009'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. 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.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

• *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2013–0009'' in the Search box and click ''Search.'' Comments can be filtered by Agency using the filtering tools on the left side of the screen.

• Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

• *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. 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.

Docket: You may also view or request available background documents and project summaries using the methods described above.

**FOR FURTHER INFORMATION CONTACT:**

*Board:* Lorna Neill or Mandie Aubrey, Counsels, Division of Consumer and Community Affairs, at (202) 452–3667, Carmen Holly, Supervisory Financial Analyst, Division of Banking Supervision and Regulation, at (202) 973–6122, or Kara Handzlik, Counsel, Legal Division, (202) 452–3852, Board of Governors of the Federal Reserve System, Washington, DC 20551.

*Bureau:* Owen Bonheimer, Counsel, or William W. Matchneer, Senior Counsel, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7000.

*FDIC:* Beverlea S. Gardner, Senior Examination Specialist, Risk Management Section, at (202) 898–3640, Sandra S. Barker, Senior Policy Analyst, Division of Consumer Protection, at (202) 898–3615, Mark Mellon, Counsel, Legal Division, at (202) 898–3884, Kimberly Stock, Counsel, Legal Division, at (202) 898–3815, or Benjamin Gibbs, Senior Regional Attorney, at (678) 916–2458, Federal Deposit Insurance Corporation, 550 17th St. NW., Washington, DC 20429.

*FHFA:* Susan Cooper, Senior Policy Analyst, (202) 649–3121, Lori Bowes, Policy Analyst, Office of Housing and Regulatory Policy, (202) 649–3111, Ming-Yuen Meyer-Fong, Assistant General Counsel, Office of General Counsel, (202) 649–3078, Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC, 20024.

*NCUA:* John Brolin and Pamela Yu, Staff Attorneys, or Frank Kressman, Associate General Counsel, Office of General Counsel, at (703) 518–6540, or Vincent Vieten, Program Officer, Office of Examination and Insurance, at (703) 518–6360, or 1775 Duke Street, Alexandria, Virginia, 22314.

*OCC:* Robert L. Parson, Appraisal Policy Specialist, (202) 649–6423, G. Kevin Lawton, Appraiser (Real Estate Specialist), (202) 649–7152, Carolyn B. Engelhardt, Bank Examiner (Risk Specialist—Credit), (202) 649–6404, Charlotte M. Bahin, Senior Counsel or Mitchell Plave, Special Counsel, Legislative & Regulatory Activities Division, (202) 649–5490, Krista LaBelle, Special Counsel, Community and Consumer Law Division, (202) 649–6350, or 400 Seventh Street SW., Washington DC 20219.

**SUPPLEMENTARY INFORMATION:**

## I. Summary of the Proposed Rule

As discussed in detail under part II of this Supplementary Information, section 1471 of the Dodd-Frank Act created new TILA section 129H, which establishes special appraisal requirements for ''higher-risk mortgages.'' 15 U.S.C. 1639h. The Agencies adopted the 2013 Interagency Appraisals Final Rule to implement these requirements (adopting the term ''higher-priced mortgage loans'' (HPMLs) instead of ''higher-risk mortgages''). The Agencies believe that several additional exemptions from the new appraisal rules may be appropriate. Specifically, the Agencies are proposing an exemption for transactions secured by an existing manufactured home and not land, certain types of refinancings, and transactions of $25,000 or less (indexed for inflation). The Agencies solicit comment on these proposed exemptions. In addition, the Agencies are proposing a different definition of ''business day'' than the definition used in the Final Rule, as well as a few non-substantive technical corrections.

### *A. Proposed Exemption for Transactions Secured Solely by an Existing Manufactured Home and Not Land*

The Agencies propose to exempt transactions secured solely by an existing (used) manufactured home and not land from the HPML appraisal requirements, but seek comment on whether an alternative valuation type should be required.

The Agencies propose to retain coverage of loans secured by existing manufactured homes and land. The Agencies also propose to retain the exemption for transactions secured by new manufactured homes, but are seeking further comment on the scope of this exemption and whether certain conditions on the exemption might be appropriate.

### *B. Proposed Exemption for Certain Refinancings*

The Agencies are also proposing to exempt from the HPML appraisal rules certain types of refinancings with characteristics common to refinance products often referred to as ''streamlined'' refinances. Specifically, the Agencies propose to exempt an extension of credit that is a refinancing where the owner or guarantor of the refinance loan is the current owner or guarantor of the existing obligation. In addition, the periodic payments under the refinance loan must not result in negative amortization, cover only interest on the loan, or result in a balloon payment. Finally, the proceeds from the refinance loan may only be used to pay off the outstanding principal balance on the existing obligation and to pay closing or settlement charges.

### *C. Proposed Exemption for Extensions of Credit of $25,000 or Less*

Finally, the Agencies are also proposing an exemption from the HPML appraisal rules for extensions of credit of $25,000 or less, indexed every year for inflation.

### *D. Effective Date*

The Agencies intend that exemptions adopted as a result of this supplemental proposal will be effective on January 18, 2014, the same date on which the Final Rule will become effective. In the section-by-section analysis below, the Agencies request comment on a number of conditions that might be appropriate to require creditors to meet to qualify for the proposed exemptions. If the Agencies adopt any conditions on an exemption, the Agencies will consider establishing a later effective date for those conditions, to allow creditors sufficient time to adjust their compliance systems, if necessary.

*Question 1:* The Agencies request comment on the need for a later effective date for any condition on a proposed exemption discussed in the section-by-section analysis below, and the appropriate effective date for those conditions.

## II. Background

In general, the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.,* seeks to promote the informed use of consumer credit by requiring disclosures about its costs and terms, as well as other information. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. For most types of creditors, TILA directs the Bureau to prescribe regulations to carry out the purposes of the law and specifically authorizes the Bureau to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Bureau's judgment are necessary or proper to effectuate the purposes of TILA, or prevent circumvention or evasion of TILA.[1] 15 U.S.C. 1604(a).

For most types of creditors and most provisions of the TILA, TILA is implemented by the Bureau's Regulation Z. *See* 12 CFR part 1026. Official Interpretations provide guidance to creditors in applying the rules to specific transactions and interpret the requirements of the regulation. *See* 12 CFR part 1026, Supp. I. However, as explained in the Final Rule, the new appraisal section of TILA addressed in the Final Rule (TILA section 129H, 15 U.S.C. 1639h) is implemented not only for all affected creditors by the Bureau's Regulation Z, but also by OCC regulations and the Board's Regulation Z (for creditors overseen by the OCC and the Board, respectively). *See* 12 CFR parts 34 and 164 (OCC regulations) and part 226 (the Board's Regulation Z); *see also* § 1026.35(c)(7) and 78 FR 10368, 10415 (Feb. 13, 2013). The Bureau's, the OCC's and the Board's versions of the 2013 Interagency Appraisals Final Rule and corresponding official interpretations are substantively identical. The FDIC, NCUA, and FHFA adopted the Bureau's version of the regulations under the Final Rule.[2]

The Dodd-Frank Act[3] was signed into law on July 21, 2010. Section 1471 of the Dodd-Frank Act's Title XIV, Subtitle

[1] For motor vehicle dealers as defined in section 1029 of the Dodd-Frank Act, TILA directs the Board to prescribe regulations to carry out the purposes of TILA and authorizes the Board to issue regulations. 15 U.S.C. 5519; 15 U.S.C. 1604(i).

[2] *See* NCUA: 12 CFR 722.3; FHFA: 12 CFR part 1222. The FDIC adopted the Bureau's version of the regulations, but did not adopt a cross-reference to the Bureau's regulations in FDIC regulations. *See* 78 FR 10368, 10370 (Feb. 13, 2013).

[3] Public Law 111–203, 124 Stat. 1376 (Dodd-Frank Act).

F (Appraisal Activities), added TILA section 129H, 15 U.S.C. 1639h, which establishes appraisal requirements that apply to ''higher-risk mortgages.'' Specifically, new TILA section 129H prohibits a creditor from extending credit in the form of a ''higher-risk mortgage'' loan to any consumer without first:

- Obtaining a written appraisal performed by a certified or licensed appraiser who conducts an appraisal that includes a physical inspection of the interior of the property and is performed in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and the regulations prescribed thereunder.
- Obtaining an additional appraisal from a different certified or licensed appraiser if the ''higher-risk mortgage'' finances the purchase or acquisition of a property from a seller at a higher price than the seller paid, within 180 days of the seller's purchase or acquisition. The additional appraisal must include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

A creditor that extends a ''higher-risk mortgage'' must also:

- Provide the applicant, at the time of the initial mortgage application, with a statement that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the applicant's expense.
- Provide the applicant with one copy of each appraisal conducted in accordance with TILA section 129H without charge, at least three days prior to the transaction closing date.

New TILA section 129H(f) defines a ''higher-risk mortgage'' with reference to the annual percentage rate (APR) for the transaction. A ''higher-risk mortgage'' is a ''residential mortgage loan''[4] secured by a principal dwelling with an APR that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set—

- By 1.5 or more percentage points, for a first lien residential mortgage loan with an original principal obligation amount that does not exceed the amount for ''jumbo'' loans (*i.e.,* the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date of the interest rate set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454));
- By 2.5 or more percentage points, for a first lien residential mortgage ''jumbo'' loan (*i.e.,* having an original principal obligation amount that exceeds the amount for the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date of the interest rate set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454)); or
- By 3.5 or more percentage points, for a subordinate lien residential mortgage loan.

The definition of ''higher-risk mortgage'' expressly excludes ''qualified mortgages,'' as defined in TILA section 129C, and ''reverse mortgage loans that are qualified mortgages,'' as defined in TILA section 129C. 15 U.S.C. 1639c.

The Agencies published proposed regulations for public comment on September 5, 2012, that would implement these higher-risk mortgage appraisal provisions (2012 Interagency Appraisals Proposed Rule or 2012 Proposed Rule). 77 FR 54722 (Sept. 5, 2012). The Agencies issued the 2013 Interagency Appraisals Final Rule on January 18, 2013. The Final Rule was published in the **Federal Register** on February 13, 2013, and is effective on January 18, 2014. *See* 78 FR 10368 (Feb. 13, 2013).

## III. Summary of the 2013 Interagency Appraisals Final Rule

### *A. Loans Covered*

To implement the statutory definition of ''higher-risk mortgage,'' the Final Rule used the term ''higher-priced mortgage loan'' or HPML, a term already in use under the Bureau's Regulation Z with a meaning substantially similar to the meaning of ''higher-risk mortgage'' in the Dodd-Frank Act. In response to commenters, the Agencies used the term HPML to refer generally to the loans that could be subject to the Final Rule because they are closed-end credit and meet the statutory rate triggers, but the Agencies separately exempted several types of HPML transactions from the rule. The term ''higher-risk mortgage'' encompasses a closed-end consumer credit transaction secured by a principal dwelling with an APR exceeding certain statutory thresholds. These rate thresholds are substantially similar to rate triggers that have been in use under Regulation Z for HPMLs.[5] Specifically, consistent with TILA section 129H, a loan is an HPML under the Final Rule if the APR exceeds the APOR by 1.5 percentage points for first-lien conventional or conforming loans, 2.5 percentage points for first-lien jumbo loans, and 3.5 percentage points for subordinate-lien loans.[6]

Consistent with TILA, the Final Rule exempts ''qualified mortgages'' from the requirements of the rule. Qualified mortgages are defined in § 1026.43(e) of the Bureau's final rule implementing the Dodd-Frank Act's ability-to-repay requirements in TILA section 129C (2013 ATR Final Rule).[7] 15 U.S.C. 1639c.

In addition, the Interagency Appraisals Final Rule excludes from its coverage the following classes of loans:

(1) Transactions secured by a new manufactured home;

(2) transactions secured by a mobile home, boat, or trailer;

(3) transactions to finance the initial construction of a dwelling;

(4) loans with maturities of 12 months or less, if the purpose of the loan is a ''bridge'' loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling; and

(5) reverse mortgage loans.

### *B. Requirements That Apply to All Appraisals Performed for Non-Exempt HPMLs*

Consistent with TILA, the Final Rule allows a creditor to originate an HPML that is not exempt from the Final Rule only if the following conditions are met:

- The creditor obtains a written appraisal;
- The appraisal is performed by a certified or licensed appraiser; and
- The appraiser conducts a physical property visit of the interior of the property.

Also consistent with TILA, the following requirements also apply with respect to HPMLs subject to the Final Rule:

- At application, the consumer must be provided with a statement regarding the purpose of the appraisal, that the

[4] *See* Dodd-Frank Act section 1401; TILA section 103(cc)(5), 15 U.S.C. 1602(cc)(5) (defining ''residential mortgage loan''). New TILA section 103(cc)(5) defines the term ''residential mortgage loan'' as any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open-end credit plan. 15 U.S.C. 1602(cc)(5).

[5] Added to Regulation Z by the Board pursuant to the Home Ownership and Equity Protection Act of 1994 (HOEPA), the HPML rules address unfair or deceptive practices in connection with subprime mortgages. *See* 73 FR 44522, July 30, 2008; 12 CFR 1026.35.

[6] The existing HPML rules apply the 2.5 percent over APOR trigger for jumbo loans only with respect to a requirement to establish escrow accounts. *See* 12 CFR 1026.35(b)(3)(v).

[7] 78 FR 6408 (Jan. 30, 2013).

creditor will provide the applicant a copy of any written appraisal, and that the applicant may choose to have a separate appraisal conducted for the applicant's own use at his or her own expense; and

- The consumer must be provided with a free copy of any written appraisals obtained for the transaction at least three business days before consummation.

*C. Requirement To Obtain an Additional Appraisal in Certain HPML Transactions*

In addition, the Final Rule implements the Act's requirement that the creditor of a ''higher-risk mortgage'' obtain an additional written appraisal, at no cost to the borrower, when the loan will finance the purchase of the consumer's principal dwelling and there has been an increase in the purchase price from a prior acquisition that took place within 180 days of the current purchase. TILA section 129H(b)(2)(A), 15 U.S.C. 1639h(b)(2)(A). In the Final Rule, using their exemption authority, the Agencies set thresholds for the increase that will trigger an additional appraisal. An additional appraisal will be required for an HPML (that is not otherwise exempt) if either:

- The seller is reselling the property within 90 days of acquiring it and the resale price exceeds the seller's acquisition price by more than 10 percent; or
- The seller is reselling the property within 91 to 180 days of acquiring it and the resale price exceeds the seller's acquisition price by more than 20 percent.

The additional written appraisal, from a different licensed or certified appraiser, generally must include the following information: an analysis of the difference in sale prices (*i.e.,* the sale price paid by the seller and the acquisition price of the property as set forth in the consumer's purchase agreement), changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

Finally, in the Final Rule the Agencies expressed their intention to publish a supplemental proposal to request comment on possible exemptions for ''streamlined'' refinance programs and smaller dollar loans, as well as loans secured by certain other property types, such as existing manufactured homes. *See* 78 FR 10368, 10370 (Feb. 13, 2013). Accordingly, the Agencies are publishing this Proposed Rule.

**IV. Legal Authority**

TILA section 129H(b)(4)(A), added by the Dodd-Frank Act, authorizes the Agencies jointly to prescribe regulations implementing section 129H. 15 U.S.C. 1639h(b)(4)(A). In addition, TILA section 129H(b)(4)(B) grants the Agencies the authority jointly to exempt, by rule, a class of loans from the requirements of TILA section 129H(a) or section 129H(b) if the Agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors. 15 U.S.C. 1639h(b)(4)(B).

**V. Section-by-Section Analysis**

For ease of reference, unless otherwise noted, the Supplementary Information refers to the section numbers of the proposed provisions that would be published in the Bureau's Regulation Z at 12 CFR 1026.35(c). As explained in the Final Rule, separate versions of the regulations and accompanying commentary were issued as part of the Final Rule by the OCC, the Board, and the Bureau, respectively. 78 FR 10367, 10415 (Feb. 13, 2013). No substantive difference among the three sets of rules was intended. The NCUA and FHFA adopted the rules as published in the Bureau's Regulation Z at 12 CFR 1026.35(a) and (c), by cross-referencing these rules in 12 CFR 722.3 and 12 CFR Part 1222, respectively. The FDIC adopted the rules as published in the Bureau's Regulation Z at 12 CFR 1026.35(a) and (c), but did not cross-reference the Bureau's Regulation Z.

Accordingly, in this **Federal Register** notice, the proposed provisions are separately published in the HPML appraisal regulations of the OCC, the Board, and the Bureau. No substantive difference among the three sets of proposed rules is intended.

*Section 1026.2 Definitions and Rules of Construction*

2(a) Definitions

2(a)(6) Business Day

The term ''business day'' is used with respect to two requirements in the Final Rule. First, the Final Rule requires the creditor to provide the consumer with a disclosure that ''shall be delivered or placed in the mail not later than the third business day after the creditor receives the consumer's application for a higher-priced mortgage loan'' subject to § 1026.35(c). § 1026.35(c)(5)(i) and (ii). Second, the Final Rule requires the creditor to provide to the consumer a copy of each written appraisal obtained under the Final Rule ''[n]o later than three business days prior to consummation of the loan.'' § 1026.35(6)(i) and (ii).

The Agencies propose to define ''business day'' in the Final Rule to mean ''all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.'' § 1026.2(a)(6). The Agencies propose this definition for consistency with disclosure timing requirements under both the existing Regulation Z mortgage disclosure timing requirements and the Bureau's proposed rules for combined mortgages disclosures under TILA and the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2601 *et seq.* (2012 TILA–RESPA Proposed Rule). *See* § 1026.19(a)(1)(ii) and (a)(2); *see also* 77 FR 51116 (Aug. 23, 2012) (*e.g.,* proposed § 1026.19(e)(1)(iii) (early mortgage disclosures) and (f)(1)(ii) (final mortgage disclosures).

Under existing Regulation Z, early disclosures must be delivered or placed in the mail not later than the seventh business day before consummation of the transaction; if the disclosures need to be corrected, the consumer must receive corrected disclosures no later than three business days before consummation (the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered). *See* § 1026.19(a)(2)(i)–(ii). For these purposes, ''business day'' is defined as quoted previously. One reason that the Agencies propose to align the definition of ''business day'' under the Final Rule with the definition of ''business day'' for these disclosures is to avoid the creditor having to provide the copy of the appraisal under the HPML rules and corrected Regulation Z disclosures at different times (because different definitions of ''business day'' would apply).[8]

The proposed definition of ''business day'' is also intended to align with the definition of ''business day'' for the timing requirements of mortgage disclosures under the 2012 TILA–RESPA Proposal. *See* proposed § 1026.2(a)(6). The 2012 TILA–RESPA Proposal would require the creditor to deliver the early mortgage disclosures ''not later than the third business day after the creditor receives the

[8] If the Agencies do not adopt the proposed definition of ''business day,'' the definition that would apply would be ''a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions.'' § 1026.2(a)(6).

consumer's application.'' Proposed § 1026.19(e)(1)(iii). The 2012 TILA–RESPA Proposal would require the final mortgage disclosures ''not later than three business days before consummation.'' Proposed § 1026.19(f)(1)(ii). For these purposes, ''business day'' would be defined as the Agencies propose to define ''business day'' in the Final Rule.

If the Bureau adopts this aspect of the 2012 TILA–RESPA Proposal, then using the proposed definition of ''business day'' in the Final Rule would ensure that the HPML appraisal notice and the early mortgage disclosures have to be provided at the same time (no later than three ''business days'' after the creditor receives the consumer's application). This would also ensure that the copy of the HPML appraisal and the final mortgage disclosures have to be provided at the same time (no later than three ''business days'' before consummation). The Agencies believe that this alignment will facilitate compliance and reduce consumer confusion by reducing the number of disclosures that consumers might receive at different times.

*Section 1026.35 Requirements for Higher-Priced Mortgage Loans*

35(c) Appraisals for Higher-Priced Mortgage Loans

35(c)(2) Exemptions

35(c)(2)(i)

Qualified Mortgages

By statute, qualified mortgages ''as defined in [TILA] section 129C'' are exempt from the special appraisal rules for ''higher-risk mortgages.'' 15 U.S.C. 1639c; TILA section 129H(f)(1), 15 U.S.C. 1639h(f)(1). The Agencies implemented this exemption in the Interagency Appraisals Final Rule by cross-referencing § 1026.43(e), the definition of qualified mortgage issued by the Bureau in its 2013 ATR Final Rule. *See* § 1026.35(c)(2)(i). The Bureau defined qualified mortgage under authority granted to the Bureau to issue ability-to-repay rules and define qualified mortgage. *See, e.g.,* TILA section 129C(a)(1), (b)(3)(A), and (b)(3)(B)(i), 15 U.S.C. 1639c(a)(1), (b)(3)(A), and (b)(3)(B)(i).

To align the regulation with the statute, the Agencies propose to revise the cross-referenced definition of qualified mortgage to include all qualified mortgages ''as defined pursuant to TILA section 129C.'' 15 U.S.C. 1639c. In addition to authority granted to the Bureau, TILA section 129C grants authority to the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), and the Rural Housing Service (RHS), which is a part of USDA, to define the types of loans ''insure[d], guarantee[d], or administer[ed]'' by those agencies, respectively, that are qualified mortgages. TILA section 129H(b)(3)(B)(ii), 15 U.S.C. 1639h(b)(3)(B)(ii). The Agencies recognize that HUD, VA, USDA, and RHS may issue rules defining qualified mortgages pursuant to their TILA section 129C authority. Therefore, the Agencies propose to expand the definition of qualified mortgages that are exempt from the HPML appraisal rules to cover qualified mortgages as defined by HUD, VA, USDA, and RHS. 15 U.S.C. 1639c.

*Question 2:* The Agencies request comment on this proposed revision.

35(c)(2)(ii)

35(c)(2)(ii)(A)

Loans Secured by a New Manufactured Home

In the Final Rule, the Agencies exempted several classes of loans from the HPML appraisal rules, including transactions secured by a ''new manufactured home.'' [9] § 1026.35(c)(2)(ii). The exemption for transactions secured by a new manufactured home applies regardless of whether the transaction is also secured by the land on which it is sited. *See* comment 35(c)(2)(ii)–1. The reasons for the exemption were discussed in the Final Rule.[10] The Agencies' general rationale was that alternative means for valuing new manufactured homes exist that, based upon the Agencies' understanding of historical practice, appeared more appropriate for these types of transactions. The Final Rule did not address loans secured by ''existing'' (used) manufactured homes, which are, therefore, subject to the appraisal requirements unless the Agencies adopt an exemption.

The Agencies propose to retain the exemption for transactions secured by new manufactured homes in re-numbered § 1026.35(c)(2)(ii)(A), but are seeking further comment on the scope of this exemption and whether certain conditions on the exemption might be appropriate. The Agencies further propose to re-number and revise comment 35(c)(2)(ii)–1 as proposed comment 35(c)(2)(ii)(A)–1. The proposed revisions to this comment are for clarity only; no substantive change is intended.

*Loans secured solely by a new manufactured home and not land.* As noted previously, the Final Rule exempted HPMLs secured solely by a new manufactured home and not land from the HPML appraisal rules—thus, the Final Rule applies no valuation requirement to these transactions.

*Question 3:* However, based on additional research and outreach, the Agencies seek comment on whether consumers in these transactions would benefit by receiving from the creditor a unit value estimate from an objective third-party source, such as an independent cost guide.

Since the Final Rule was issued, consumer advocates have expressed concerns that some transactions in the lending channel for new home-only (chattel) transactions can result in consumers owing more than the manufactured home is worth. For this type of loan, consumer and affordable housing advocates assert that networks of manufacturers, broker/dealers, and lenders are common, and that these parties can coordinate sales prices and loan terms to increase manufacturer, dealer, and lender profits, even where this leads to loan amounts that exceed the collateral value. Advocates have raised concerns that, where the original loan amount exceeds the collateral value and the consumer is unaware of this fact, the consumer is often unprepared for difficulties that can arise when seeking to refinance or sell the home at a later date. They have also noted that that chattel manufactured home loan transactions tend to have much higher rates than conventional mortgage loans.[11] Some consumer advocates have suggested that giving the consumer third-party information about the unit value could be helpful in educating the consumer, particularly as to the risk that the loan amount might exceed the collateral value, and might prompt the consumer to ask questions about the transaction. Consumer

[9] The Final Rule also exempts qualified mortgages; reverse mortgage loans; transactions secured by a mobile home, boat, or trailer; transactions to finance the initial construction of a dwelling; and loans with maturities of 12 months or less, if the purpose of the loan is a ''bridge'' loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling. *See* § 1026.35(c)(2).

[10] 78 FR 10368, 10379–80 (Feb. 13, 2013).

[11] *See, e.g.,* Howard Baker and Robin LeBaron, Fair Mortgage Collaborative, *Toward a Sustainable and Responsible Expansion of Affordable Mortgages for Manufactured Homes* (March 2013) at 10 (reporting that ''[c]hattel loans typically feature higher interest rates than mortgages: current rates range between 6% and 14%, depending on the borrower's credit history and the size of the downpayment, compared to 2.5% to 5% for mortgages at the present time.''). This report is available at *http://cfed.org/assets/pdfs/IM_HOME_Loan_Data_Collection_Project_Report.pdf.*

advocates and other outreach participants had questions about the accuracy of available cost services for estimating the unit value of new manufactured homes. They asserted, for example, that where a manufactured home will be sited can have a major impact on the value of the home and that cost services do not in all cases sufficiently account for that aspect of the value.[12] Nonetheless, some advocates expressed the view that giving the consumer some cost estimate would be beneficial.

Based on input from lenders and manufactured home valuation providers, the Agencies understand that in new home-only transactions, third-party cost services are not typically used to value the property. Instead, many creditors use the manufacturer's invoice, or wholesale unit price, and lend a percentage of that amount, which might exceed 100 percent to reflect, for example, a dealer mark-up and siting costs. As discussed in the Supplementary Information to the Proposed Rule, outreach participants have indicated that this practice—similar to that sometimes used for automobiles—is longstanding in new manufactured home transactions.[13] Lenders asserted that this method saves costs for consumers and creditors and has been found to be reasonably effective and accurate for purposes of ensuring a safe and sound loan.

*Question 4:* In light of additional concerns expressed about valuations in new manufactured home chattel transactions, the Agencies request comment on whether it may be appropriate to condition the exemption from the HPML appraisal requirements on the creditor providing the consumer with a third-party estimate of the manufactured home unit cost.

*Question 5:* If so, the Agencies request comment on which third-party estimate(s) should be used for this purpose.

*Question 6:* The Agencies also request comment on when this information should be required to be provided.[14]

*Question 7:* The Agencies request comment on whether the consumer typically receives unit cost information in a new manufactured home chattel transaction and what, if any, cost information from an independent third party source might be reasonably available to creditors, reliable, and useful to a consumer.

*Question 8:* The Agencies further request comment on the utility of third-party unit cost information to consumers in these transactions (even if the creditor is using a different method to value the home).

*Question 9:* The Agencies understand that the location of the property can impact the value of the home, even if the property on which the unit is sited is not owned by the consumer, and seek more information about the impact on home value of a unit's location and whether cost services are available that account adequately for differences in location.

*Question 10:* The Agencies further request comment on whether readily-accessible, publicly-available information exists that consumers could use to determine whether their loan amount exceeds the collateral value in a new manufactured home chattel transaction, and whether consumers are generally aware of this information.[15]

*Question 11:* Finally, the Agencies request comment on potential burdens and costs of imposing this condition on the exemption, and any implications for consumer access to credit (again, noting that any of these loans that are qualified mortgages are exempt under the separate exemption for qualified mortgages, § 1026.35(c)(2)(i)).

*Loans secured by a new manufactured home and land.* Since issuing the Final Rule, the Agencies have obtained additional information on valuation methods for manufactured homes.

Appraisers and state appraiser boards consulted in outreach efforts confirmed that USPAP-compliant real property appraisals with interior inspections are possible and conducted with at least some regularity in these transactions.[16] The Agencies understand that these appraisals value the land and the home together as a package based upon comparable transactions that have been exposed to the open market (as would be done with a site-built home or any other existing home).[17] They also can document additional value based on siting costs and the home's location, and in some cases can identify visible discrepancies between the manufacturer's specifications and the actual home once it is sited.

In addition, USPAP-compliant real property appraisals are regularly conducted for all transactions under federal government agency and government-sponsored enterprise (GSE) manufactured home loan programs.[18] HUD Title II program standards, for example, which apply to transactions secured by a manufactured home and land titled together as real property, require USPAP-compliant appraisals.[19]

A representative of manufactured home appraisers and a manufactured home community development financial institution (CDFI) representative stated that they conduct appraisals for loans secured by a new manufactured home and land before the home is sited based on plans and specifications for the new home. An interior property inspection occurs once the home is sited (although the CDFI representative indicated that it did not always use a state-certified or -licensed appraiser for the final inspection). These outreach participants suggested that, in their experience, qualified certified- or -licensed appraisers are not unduly

[12] The National Automobile Dealers Association (NADA) Manufactured Housing Cost Guide provides for adjustments based on, among other factors, the state in which the home is located and the quality of the land-lease community in which the home is located, if applicable. *See* NADAguides.com Value Report, available at *www.nadaguides.com/Manufactured-Homes/images/forms/MHOnlineSample.pdf.*

[13] *See* 77 FR 54722, 54732–33 (Sept. 5, 2012).

[14] Unless the manufactured home alone, without land, is titled as real property under state law, loans secured solely by a manufactured home are not subject to the early disclosure requirements under Regulation Z, 12 CFR 1026.19, because they are not subject to RESPA. *See* § 1026.19(a)(1)(i) and 12 CFR 1024.2 (defining ''federally related mortgage loan'' to include only loans secured by residential real property). Therefore, the Agencies believe that in some chattel transactions, the time between application and consummation may be relatively short.

[15] The Bureau's new Regulation B valuation disclosure rules under the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.* (2013 ECOA Valuations Rule), consistent with current ECOA Regulation B, does not provide for the consumer to receive a copy of the manufacturer's invoice. *See* 12 CFR 1002.14(c) and comment 14(c)–2.iii (current Regulation B); *see also* 78 FR 7216 (Jan. 31, 2013) (issuing new 12 CFR 1002.14(b)(3) and comment 1002.14(b)(3)–3.iv, with an effective date of January 18, 2014).

[16] Comments on the Proposed Rule from a large real estate agent trade association also suggested that exempting these transactions may not be appropriate.

[17] *See, e.g.,* Texas Appraiser Licensing and Certification Board, ''Assemblage As Applied to Manufactured Housing,'' available at *http://www.talcb.state.tx.us/pdf/USPAP/AssemblageAsAppliedToMfdHousing.pdf.*

[18] *See, e.g.,* HUD: 24 CFR 203.5(e); HUD Handbook 4150.2, Valuations for Analysis for Home Mortgage Insurance for Single Family One- to Four-Unit Dwellings (HUD Handbook 4150.2), chapter 8.4 and App. D; USDA: 7 CFR 3550.62(a) and 3550.73; USDA Direct Single Family Housing Loans and Grants Field Office Handbook (USDA Handbook), chapters 5.16 and, 9.18; VA: VA Lenders Handbook, VA Pamphlet 26–7 (VA Handbook), chapters 7.11, 11.3, and 11.4; Fannie Mae: Fannie Mae Single Family 2013 Selling Guide B5–2.2–04, Manufactured Housing Appraisal Requirements (04/01/2009); Freddie Mac: Freddie Mac Single Family Seller/Servicer Guide, H33: Manufactured Homes/H33.6: Appraisal requirements (02/10/12).

[19] Title II appraisal standards are available in HUD Handbook 4150.2. For supplemental standards for manufactured housing, see HUD Handbook 4150.2, chapters 8–1 through 8–4. The valuation protocol in Appendix D of HUD Handbook 4150.2 calls for a certification that the appraisal is USPAP compliant (page D–9).

difficult to find to perform these appraisals.[20]

In commenting on the Proposed Rule and in outreach, lenders have raised concerns that comparable sales (''comparables'') of other manufactured homes can be particularly difficult to find. The Agencies understand that this can be a barrier to obtaining a manufactured home appraisal, especially in certain loan programs that require appraisals of manufactured homes to use a certain number of manufactured home comparables and have other restrictions on the comparables that may be used.[21] The Agencies note, however, that USPAP does not require that manufactured home comparables be used. USPAP allows the appraiser to use site-built or other types of home construction as comparables with adjustments where necessary.[22] A current version of the Appraisal Institute seminar on manufactured housing appraisals confirms that when necessary, USPAP appraisals can use non-manufactured homes as comparables, making adjustments where needed.[23] Based on their experience, an appraiser representative and a manufactured home CDFI representative in informal outreach with the Agencies stated that comparable properties have not been unduly difficult to find, even in rural areas.

*Question 12:* Based on this information, the Agencies request comment and information concerning whether to require USPAP-compliant appraisals with interior property inspections conducted by a state-licensed or -certified appraiser for HPMLs secured by both a new manufactured home and land.

*Question 13:* The Agencies also seek comment on whether some other valuation method should be required as a condition of the exemption from the HPML appraisal requirements.

At the same time, the Agencies believe that questions remain about the impact on the industry and consumers of requiring USPAP-compliant real property appraisals with interior inspections in transactions secured by a new manufactured home and land for which these types of appraisals are not already required. For example, manufactured home lenders commented on the Proposed Rule and shared in subsequent outreach that they typically do not conduct an interior inspection appraisal of a new manufactured home, but use other methods, such as relying on the manufacturer's invoice for the new home and conducting a separate, USPAP-compliant appraisal of the land.[24] Thus, requiring a USPAP-compliant appraisal with an interior inspection could require systems changes for some manufactured home lenders. If the USPAP-compliant appraisal with an interior inspection required under the Final Rule were more expensive than existing methods, then imposing the requirements of the Final Rule on these transactions would lead to additional costs that could be passed on in whole or in part to consumers.

*Question 14:* Accordingly, the Agencies request data on the extent to which a USPAP-compliant real property appraisal with an interior property inspection would be of comparable cost to, or more or less expensive than, a USPAP-compliant appraisal of a lot combined with an invoice price for the home unit.

*Question 15:* The Agencies also request comment on the potential burdens on creditors and consumers and any potential reduction in access to credit that might result from imposing requirement for a USPAP-compliant appraisal with an interior property inspection on all manufactured home creditors of loans secured by both a new manufactured home and land. In this regard, the Agencies ask commenters to bear in mind that any of these transactions that are qualified mortgages are exempt from the HPML appraisal requirements under the separate exemption for qualified mortgages. *See* § 1026.35(c)(2)(i).

*Question 16:* Finally, the Agencies request comment on whether and the extent to which consumers in these transactions typically receive information about the value of their land and home and, if so, what information is received.

35(c)(2)(ii)(B)

Loans Secured Solely by an Existing Manufactured Home and Not Land

In new § 1026.35(c)(2)(ii)(B), the Agencies propose to exempt transactions secured solely by an existing (used) manufactured home and not land from the HPML appraisal requirements. Proposed comment 35(c)(2)(ii)(B)-1 would clarify that an HPML secured by a manufactured home and not land would not be subject to the appraisal requirements of § 1026.35(c), regardless of whether the home is titled as realty by operation of state law. The Agencies recognize that in certain states residential structures such as manufactured homes may be deemed real property, even though they are not titled together with the land.[25] The Agencies believe that the barriers discussed in more detail below to producing USPAP-compliant real property appraisals with interior property inspections for manufactured homes in home-only transactions are the same regardless of whether a jurisdiction categorizes the manufactured home as personal property (chattel) or real property.

*Question 17:* The Agencies request comment on this view and approach.

The Agencies also considered an exemption for loans secured by both an existing manufactured home and land, but are not proposing an exemption for these HPMLs. A discussion of the proposed treatment of both types of loans (secured solely by an existing manufactured home and secured by an existing manufactured home plus land) is below.

*Loans secured solely by an existing manufactured home and not land.* The Agencies propose an exemption for transactions secured solely by an existing manufactured home and not land based on additional research and outreach. For the loans secured solely by an existing manufactured home and not land, the Agencies understand that current valuation practices generally do not involve using a state-certified or -licensed appraiser to perform a USPAP- and FIRREA-compliant real property appraisal with an interior property inspection, as required under TILA section 129H and the Final Rule. 15 U.S.C. 1639h. Outreach to manufactured home lenders indicated that they

[20] For HUD-insured loans secured by real property—a manufactured home and lot together—the Federal Housing Administration (FHA) requires creditors to use a HUD Title II Roster appraiser that can certify to prior experience appraising manufactured homes as real property. *See* HUD Title I Letter 481, Appendix 10–5.

[21] *See* Robin LeBaron, FAIR MORTGAGE COLLABORATIVE, *Real Homes, Real Value: Challenges, Issues and Recommendations Concerning Real Property Appraisals of Manufactured Homes* (Dec. 2012) at 19–28. This report is available at http://cfed.org/assets/pdfs/Appraising_Manufacture_Housing.pdf.

[22] *See* HUD Handbook 4150.2, chapter 8.4 (providing the following instructions on appraisals for manufactured homes insured under HUD's Title II program: ''If there are no manufactured housing sales within a reasonable distance from the subject property, use conventionally built homes. Make the appropriate and justifiable adjustments for size, site, construction materials, quality, etc. As a point of reference, sales data for manufactured homes can usually be found in local transaction records.'').

[23] *See* Appraisal Institute, ''Appraising Manufactured Housing—Seminar Handbook,'' Doc. PS009SH–F (2008) at Part 8, 8–110.

[24] Some consumer and affordable housing advocates and appraisers in outreach have expressed the view that separately valuing the component parts of a manufactured home plus land transaction can result in material inaccuracies.

[25] *See,* N.H. Rev. Stat. Ann Sec. 477:44 (2013).

typically obtain replacement cost estimates derived from nationally-published cost services, taking into account the age (to derive depreciated values) and regional location of the home. One cost service adjustment form often used for this purpose also allows for an adjustment based upon the quality of the land-lease community where the property is located (if applicable).[26] Lenders have indicated that this method saves costs for consumers and creditors and has been found to be reasonably effective and accurate for purposes of ensuring a safe and sound loan.

In addition, lender commenters on the Proposed Rule raised concerns about the availability of data on comparable sales that may be used by appraisers for loans secured by an existing manufactured home and not land. They indicated that data from used manufactured home sales not involving land (usually titled as personal property) are not currently recorded in multiple listing services of most states, for example, so an appraiser's ability to obtain information on comparable manufactured homes without land is more limited than in real estate transactions. A provider of manufactured home valuation services subsequently confirmed to the Agencies that manufactured home sales information is generally not available through standard real estate data sources. The Agencies also understand that, in many states, appraisers are not currently required to be licensed or certified in order to perform personal property appraisals.

Accordingly, the Agencies believe that an exemption for these transactions from the HPML appraisal rules would be in the public interest because it would facilitate continued consumer access to HPML financing for existing manufactured homes, which are an important source of affordable housing.[27] The Agencies believe that this exemption also would promote the safety and soundness of creditors, because creditors would be able to continue using currently prevalent valuation methods, which can facilitate offering products that they have relied on to ensure profitability and product diversity to mitigate risk.

At the same time, consumer and affordable housing advocates have raised concerns about consumers borrowing more money than the home is worth in these transactions, which, as noted, also tend to have much higher rates than conventional loans secured by site-built homes.[28] The Agencies generally believe that consumers and creditors benefit when an accurate valuation is obtained for a credit transaction secured by the consumer's home. The Agencies further recognize that a manufactured home that has been previously occupied is subject to depreciation and might have wear and tear or other physical changes that can make the property value more difficult to assess than that of a new manufactured home.[29] The value of the home also may have changed as a result of changes in the broader housing market.

*Question 18:* The Agencies request comment on whether the proposed exemption should be conditioned on the creditor obtaining an alternative valuation (*i.e.,* a valuation other than a USPAP- and FIRREA-compliant real property appraisal with an interior property inspection) that is tailored to estimating the value of an existing manufactured home without land and providing a copy of it to the consumer.

The Agencies believe that an exemption conditioned in this way may be in keeping with the intent behind TILA section 129H to ensure that consumers have access to information about the value of the home that would secure the loan before entering into an HPML. *See* TILA section 129H(c), 15 U.S.C. 1639h(c) (requiring a creditor to provide the applicant with a copy of any appraisal obtained under TILA section 129H).

*Question 19:* To inform the Agencies in considering this condition, the Agencies request information on whether creditors typically obtain valuations for loans secured solely by an existing manufactured home and not land and, if so, what types of valuations they obtain.

*Question 20:* The Agencies also seek commenters' views on the efficacy and accuracy of any prevailing valuation methods used for these loans. Some of these methods are discussed below.

As noted, the Agencies are aware that HUD has property valuation standards for HUD-insured loans secured by an existing manufactured home and not land.[30] In addition, for appraisals of manufactured homes ''classified as personal property,'' HUD standards call for, among other requirements, the use of ''an independent fee appraiser who has been certified by NADA to use NADA's National Appraisal System.'' [31] Specifically, among other requirements, creditors of these types of HUD-insured loans must obtain an appraisal reflecting the retail value of comparable manufactured homes in similar condition and in the same geographic area.[32] Relevant HUD appraisal requirements for these loans also include specifications for appraiser qualifications, information that the creditor must provide to the appraiser, and the creditor's review of the appraisal.[33] The Agencies have concerns, however, that appraisers trained to conduct the types of appraisals required by HUD for its Title I program may be limited, but seek information on the availability of individuals to perform appraisals compliant with HUD Title I standards.

USPAP Standards 7 and 8 for personal property provide guidance for appraising personal property based on several approaches—the sales comparison approach, cost approach, and income approach—which are to be used as the appraiser determines necessary to produce a credible appraisal.[34] The Agencies are aware that there are comparable-based methods of valuing existing manufactured homes without land other than the method prescribed for the HUD Title I program. In addition, for the cost approach, cost services are available for creditors to consult and make adjustments based on several factors (which might differ depending on the cost service used), such as the property age, condition, the

[26] *See* NADA, Manufactured Housing Cost Guide, available at NADAguides.com Value Report, available at *www.nadaguides.com/Manufactured-Homes/images/forms/MHOnlineSample.pdf.*

[27] *See generally,* Howard Baker and Robin LeBaron, FAIR MORTGAGE COLLABORATIVE, *Toward a Sustainable and Responsible Expansion of Affordable Mortgages for Manufactured Homes* (March 2013) at 9. This report is available at *http://cfed.org/assets/pdfs/IM_HOME_Loan_Data_Collection_Project_Report.pdf.*

[28] *See, e.g.,* Howard Baker and Robin LeBaron, FAIR MORTGAGE COLLABORATIVE, *Toward a Sustainable and Responsible Expansion of Affordable Mortgages for Manufactured Homes* (March 2013) at 10.

[29] The Agencies understand that appraisers typically limit their valuations to clearly visible features or physical changes to the home that can impact value. Detailed examinations of wear and tear are the purview of home inspections, which generally are the responsibility of the consumer to obtain.

[30] *See* HUD Title I Letter 481 (Aug. 14, 2009), Appendices 8–9, C, and 10–5. The Agencies note that the HUD Title I program appraisal requirements are for determining eligibility for insurance that benefits the creditor.

[31] *See* HUD Title I Letter 481 (Aug. 14, 2009), Appendices 8–9, C, and 10–5, issued pursuant to authority granted to HUD under section 2(b)(10) of the National Housing Act, 12 U.S.C. 1703(b)(10). The Agencies understand that the NADA National Appraisal System is an appraisal method involving both the comparable sales and the cost approach.

[32] *See id.*

[33] *See id.* VA and USDA manufactured home programs do not involve transactions secured solely by a manufactured home and not land; thus, these programs do not incorporate special requirements for valuing these types of properties.

[34] *See, e.g.,* USPAP Standards Rule 7–4.

land-lease community, and the home's geographic location.[35] These resources enable the creditor to obtain a depreciated replacement cost for an existing manufactured home.

*Question 21:* The Agencies request comment on whether, to obtain the proposed exemption from the HPML appraisal rules for HPMLs secured by an existing manufactured home without land, a creditor should have to comply with the appraisal requirements for a manufactured home classified as personal property under HUD's Title I Manufactured Home Loan Insurance Program, or similar requirements involving comparable sales.

*Question 22:* In this regard, the Agencies also seek additional comment and information on the availability of: (1) Comparable sales data for appraisers to use in an appraisal of a manufactured home alone, without land; and (2) state-certified or -licensed appraisers to appraise these properties.

*Question 23:* The Agencies also request comment on whether the proposed exemption would appropriately be conditioned on the creditor obtaining, and providing to the consumer, a valuation of the dwelling that uses an independently published cost guide with appropriate adjustments for factors such as home condition, accessories, location, and community features, as applicable.

*Question 24:* The Agencies request comment on whether use of a cost service with adjustments generally involves a physical inspection of the property, who conducts that physical inspection, and whether any condition on the proposed exemption allowing use of a cost service estimate with adjustments should require a physical inspection of the unit.

*Question 25:* In addition, the Agencies seek comment on whether an appropriate condition for an exemption from the HPML appraisal rules would be more generally that the creditor have obtained and provided to the consumer an appraisal compliant with USPAP Standards 7 and 8 for personal property. The Agencies are considering whether it would be appropriate to provide the creditor with more than one option for obtaining an alternative valuation as a condition of this exemption.

*Loans secured by an existing manufactured home and land.* The Agencies considered also exempting transactions that are secured by both an existing manufactured home and land. However, at this stage, the Agencies believe that an exemption for these transactions from the USPAP-compliant real property appraisal standards in the Final Rule would not be in the public interest and promote the safety and soundness of creditors. As discussed in the section-by-section analysis of § 1026.35(c)(2)(ii)(A), federal government and GSE manufactured home loan programs generally require compliance with USPAP real property appraisal standards for appraisals in connection with transactions secured by both a manufactured home and land. The Agencies believe that these requirements may reflect that conducting a USPAP-compliant appraisal following USPAP Standards 1 and 2 for real property appraisals are feasible for existing manufactured homes together with land. This view was affirmed by several participants in informal outreach with experience in the area of manufactured home loan appraisals, who indicated that USPAP-compliant real property appraisals with an interior inspection are feasible and performed with regularity in these types of transactions.

For these reasons, the Agencies are not proposing to exempt loans secured by an existing manufactured home and land from the HPML appraisal requirements. The Agencies note that some commenters on the Proposed Rule recommended that the Agencies exempt these types of ''land/home'' transactions.[36]

*Question 26:* The Agencies request further comment whether to exempt these transactions and, if so, why an exemption would be in the public interest and promote the safety and soundness of creditors.

35(c)(2)(vii)

Certain Refinancings

The Agencies are also proposing to exempt from the HPML appraisal rules certain types of refinancings with characteristics common to refinance products often referred to as ''streamlined'' refinances. Specifically, the Agencies propose to exempt an extension of credit that is a refinancing where the owner or guarantor of the refinance loan is the current owner or guarantor of the existing obligation. In addition, the regular periodic payments under the refinance loan must not result in negative amortization, cover only interest on the loan, or result in a balloon payment. Finally, the proceeds from the refinance loan may be used solely to pay off the outstanding principal balance on the existing obligation and to pay closing or settlement charges.

As discussed more fully below, the Agencies believe that this exemption would be in the public interest and promote the safety and soundness of creditors. The following discussion of this proposed exemption includes a description of ''streamlined'' refinancing programs; a summary of the comments regarding an exemption for refinancings received on the 2012 Interagency Appraisals Proposed Rule; and an explanation of the requirements of, and conditions on, the proposed exemption.

Background

In an environment of historically low interest rates, the federal government has supported ''streamlined'' refinance programs as a way to promote the ongoing recovery of the consumer mortgage market. Notably, the Home Affordable Refinance Program (HARP) was introduced by the U.S. Treasury Department in 2009 to provide refinance relief options to consumers following the steep decline in housing prices as a result of the financial crisis. The HARP program was expanded in 2011 and is currently set to expire in 2015.

Federal government agencies—HUD, VA, and USDA—as well as the GSEs have developed ''streamlined'' refinance programs to address consumer, creditor and investor risks.[37] These programs enable many consumers to refinance the balance of those mortgages through an abbreviated application and underwriting process.[38] Under these

[35] *See, e.g.,* NADAguides.com Value Report, available at *www.nadaguides.com/Manufactured-Homes/images/forms/MHOnlineSample.pdf; see also* Fannie Mae Single Family 2013 Selling Guide B5–2.2–04, Manufactured Housing Appraisal Requirements (04/01/2009) and Freddie Mac Single Family Seller/Servicer Guide, H33: Manufactured Homes/H33.6: Appraisal requirements (02/10/12) (referencing the NADA Manufactured Housing Appraisal Guide® and the Marshall & Swift® Residential Cost Handbook as resources for manufactured home cost information).

[36] *See* 78 FR 10368, 10379–80 (Feb. 13, 2013).

[37] Under existing GSE ''streamlined'' refinance programs, Freddie Mac and Fannie Mae purchase and guarantee ''streamlined'' refinance loans for consumers under HARP (whose existing loans have loan-to-value ratios (LTVs) over 80 percent) as well as for consumers whose existing loans have LTVs at or below 80 percent.

[38] *See* Fannie Mae Single Family Selling Guide, chapter B5–5, section B5–5.2 (Refi Plus® and DU Refi Plus® loans); Freddie Mac Single Family Seller/Servicer Guide, chapters A24, B24, and C24 (Relief Refinance® Loans); HUD Handbook 4155.1, chapters 3.C and 6.C (Streamline Refinances) and Title I Appendix 11–3 (manufactured home streamline refinances); USDA Rural Development Admin. Notice 4615 (Rural Refinance Pilot); and VA Lenders Handbook, chapter 6 (Interest Rate Reduction Refinance Loans, or IRRRLs). Creditworthiness evaluations generally are not required for Refi Plus, Relief Refinance, HUD Streamline Refinance, or IRRRL loans unless borrower monthly payments would increase by 20

Continued

programs, consumers with little or no equity in their homes,[39] as well as consumers with significant equity in their homes,[40] can restructure their mortgage debt, often at lower interest rates or payment amounts than under their existing loans.[41]

*Valuation requirements of ''streamlined'' refinance programs.* The ''streamlined'' underwriting for certain refinancings often, but not always, does not include a USPAP-compliant appraisal with an interior-inspection appraisal. One reason for this is that, in currently prevailing ''streamlined'' refinance programs, the value of the property securing the existing and refinance obligations is not considered to determine borrower eligibility for the refinance. The owner or guarantor of the existing loan retains the credit risk, and the ''streamlined'' refinance does not change the collateral component of that risk.

For ''streamlined'' refinances where the LTV exceeds or nearly exceeds 100 percent, the principal concern is not whether the creditor or investor could in the near term recoup the mortgage amount by foreclosing upon and selling the securing property. The immediate goals for these loans are to secure payment relief for the borrower and thereby avoid default and foreclosure; to allow the borrower to take advantage of lower interest rates; or to restructure their mortgage obligation to build equity more quickly—all of which reduce risk for creditors and investors and benefit consumers.

However, a valuation—usually through an automated valuation model (AVM)—may be obtained to estimate LTV for determining the appropriate securitization pool for the loan. LTV as determined by this valuation can also affect the terms offered to the consumer. Sometimes an appraisal is required when the property is not standardized, or the current holder of the loan does not have what it deems to be sufficient information about the property in its databases.

Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac each have ''streamlined'' refinance programs: Fannie Mae DU (''Desktop Underwriter®'') Refi Plus and Refi Plus® and Freddie Mac Relief Refinance-Same Servicer/Open Access®. Under these programs, Fannie Mae must hold both the old and new loan, as must Freddie Mac under its program. An appraisal is not required when the GSEs are confident in an estimate of value, which is then provided to lenders originating loans under these programs.[42]

HUD/FHA. The HUD ''Streamline'' Refinance program administered by the Federal Housing Administration (FHA) permits but generally does not require a creditor to obtain an appraisal.[43] The Agencies understand that almost all FHA ''streamlined'' refinances are done without requiring an appraisal.[44] The FHA program does not require an alternative valuation type for transactions that do not have appraisals.

VA and USDA. VA and USDA programs do not require appraisals. The FHA, VA, and USDA streamline refinance programs also do not require an alternative valuation type for transactions that do not have appraisals.

Private ''streamlined'' refinance programs. The Agencies also believe that private creditors may offer ''streamlined'' refinance programs for borrowers meeting certain eligibility requirements.

*Question 27:* The Agencies seek comment and relevant data on how often private creditors obtain alternative valuation estimates in these transactions (*i.e.,* streamlined refinances outside of the government agency and GSE programs discussed above) when no appraisal is conducted.[45]

Public Comments on the 2012 Proposed Rule

A number of commenters on the 2012 Proposed Rule—a trade association representing community banks, a credit union association, a bank, and GSEs—recommended that the Agencies exempt refinancings. Some of these commenters expressed a view that the Dodd-Frank Act's ''higher-risk mortgage'' appraisal rules were not appropriate for refinancings designed to move a borrower into a more stable mortgage product with affordable payments. These types of refinancings often involve an abbreviated or ''streamlined'' underwriting process to facilitate the reduction of risks that the existing loan may pose for the consumer, the primary market creditor, and secondary market investors. Commenters pointed out, among other things, that these types of refinancings can be important credit risk management tools in the primary and secondary markets, and can reduce foreclosures, stabilize communities, and stimulate the economy. GSE commenters indicated that in many cases loans originated under federal government ''streamlined'' refinance programs do not require appraisals and asserted that doing so would interfere with these programs.

Consumer advocates did not comment on the 2012 Proposed Rule, but in subsequent informal outreach with the Agencies for this proposal, expressed concerns about not requiring appraisals in HPML ''streamlined'' refinance programs. They expressed the view that a quality appraisal that is also required to be made available to the consumer can be a tool to prevent fraud in refinance transactions. They also pointed out instances in which an appraisal on a refinance transaction revealed appraisal fraud on the original purchase transaction.

*Question 28:* The Agencies invite further comment on these and related concerns, and appropriate means of addressing these concerns as part of this rulemaking.

percent or more. *See* HUD Handbook 4155.1, chapter 6.C.2.d; Fannie Mae Single Family Selling Guide, chapter B5–5, section B5–5.2 (Refi Plus and DU Refi Plus loans); Freddie Mac Single Family Seller/Servicer Guide, chapters A24, B24, and C24; VA Lenders Handbook, chapter 6.1.c.

[39] For example, HARP supports refinancing through the GSEs for borrowers whose LTV exceeds 80 percent and whose existing loans were consummated on or before May 31, 2009. See *http://www.makinghomeaffordable.gov/programs/lower-rates/Pages/harp.aspx.*

[40] *See, e.g.,* Freddie Mac 2011 Annual Report at Table 52, reporting that the majority of Freddie Mac funding for Relief Refinances in 2011 was for borrowers with LTVs at or below 80%. This report is available at *http://www.freddiemac.com/investors/er/pdf/10k_030912.pdf.*

[41] Over two million streamlined refinance transactions occurred under FHA and GSE programs in 2012 (including both HPML and non-HPML refinances). According to public data recently reported by FHFA, 1,803,980 streamlined refinance loans occurred under Fannie Mae or Freddie Mac streamlined refinance programs. *See* FHFA Refinance Report for February 2013, available at *http://www.fhfa.gov/webfiles/25164/Feb13RefiReportFinal.pdf.* The Agencies estimate, based upon data received from FHA during outreach to prepare this proposal, that the FHA insured 378,000 loans under its ''Streamline'' program in 2012.

[42] For GSE ''streamlined'' refinance transactions purchased in 2012 at LTVs of above 80 percent, AVM estimates were obtained for approximately 81 percent and appraisals (either interior inspection or exterior-only) were obtained for approximately 19 percent. For GSE ''streamlined'' refinance transactions purchased in 2012 at LTVs of 80 percent or below, AVM estimates were obtained for approximately 87 and appraisals (either interior inspection or exterior-only) were obtained for approximately 13 percent.

[43] *See, e.g.,* HUD Handbook 4155.1, chapter 6.C.1.

[44] According to data from FHA, in calendar year 2012, only 1.1 percent of FHA streamline refinances required an appraisal.

[45] In general, FIRREA regulations governing appraisal requirements permit the use of an ''evaluation'' (or in the case of NCUA, a ''written estimate of market value'') rather than an appraisal in same-creditor refinances that involve no new monies except to pay reasonable closing costs and, in the case of the NCUA, no obvious and material change in market conditions or physical adequacy of the collateral. *See* OCC: 12 CFR 34.43 and 164.3; Board: 12 CFR 225.63; FDIC: 12 CFR 323.3; NCUA: 12 CFR 722.3. *See also* OCC, Board, FDIC, NCUA, *Interagency Appraisal and Evaluation Guidelines,* App. A–5, 75 FR 77450, 77466–67 (Dec. 10, 2010).

Discussion

The Agencies decline to propose an exemption for all refinance loans, as a few commenters suggested. The appraisal rules in TILA Section 129H apply to ''residential mortgage loans'' that are higher-priced and secured by the consumer's principal dwelling. TILA section 129H(f), 15 U.S.C. 1639h(f). The term ''residential mortgage loan'' includes refinance loans.[46] Accordingly, the Agencies believe that an exemption for all HPML refinances would be overbroad. For example, in refinances involving additional cash out to the consumer, consumer equity in the home can decrease significantly, increasing risks, so the Agencies do not believe an exemption from this rule would be appropriate.

The Agencies do, however, believe that a narrower exemption for certain types of HPML refinance loans, generally consistent with the program criteria for ''streamlined'' refinances under GSE and federal government agency programs, would be in the public interest and promote the safety and soundness of creditors. The Agencies recognize that, by reducing the risk of foreclosures and helping borrowers better afford their mortgages, ''streamlined'' refinancing programs can contribute to stabilizing communities and the economy, both now and in the future. ''Streamlined'' HPML refinances can help borrowers who are at risk of default in the near future, as well as those who might not default in the near term, but could significantly benefit by refinancing into a lower rate mortgage for considerable cost savings over time. The Agencies also recognize that ''streamlined'' refinancing programs assist creditors and secondary market investors in managing credit risks. Originating HPML refinances that are beneficial to consumers can be important to creditors to ensure the continuing performance of loans on their books and to strengthen customer relations. For investors holding these loans, the ''streamlined'' refinances can reduce financial risks associated with potential defaults and foreclosures.

The Agencies believe that an exemption from the HPML appraisal rules for certain HPML refinances would ensure that the time and cost generated by new appraisal requirements are not introduced into HPML transactions that are not qualified mortgages but that are part of programs to help consumers avoid defaults and improve their financial positions, and help creditors and investors avoid losses and mitigate credit risk.

As discussed previously, the Agencies understand that, under the ''streamlined'' underwriting standards for several government and GSE refinancing programs, a full interior inspection appraisal is often not required. One reason for this is that the current value of the property securing the existing and refinance obligations generally is not considered to determine borrower eligibility for the refinance. The owner or guarantor of the existing loan retains the credit risk, and the ''streamlined'' refinance does not change the collateral component of that risk.

In a ''streamlined refinance,'' the principal concern is not valuing the collateral to determine whether the creditor or investor could in the near term recoup the mortgage amount by foreclosing upon and selling the securing property if necessary. Goals for these loan programs include securing payment relief for the borrower and thereby avoid default and foreclosure; allowing the borrower to take advantage of lower interest rates; and enabling the borrower to restructure his or her mortgage obligation to build equity more quickly—all of which reduce risk of default and thereby promote the safety and soundness of creditors and investors and benefit consumers.

*Relationship to the 2013 ATR Final Rule.* Under the Bureau's 2013 ATR Final Rule, loans eligible to be purchased, guaranteed, or insured by Fannie Mae, Freddie Mac, HUD, VA, USDA, or RHS are subject to the general ability-to-repay rules (found in § 1026.43(c)). *See* § 1026.43(e)(4)(ii). However, if they meet certain criteria,[47] they are considered ''qualified mortgages'' entitled to either a presumption of compliance or a safe harbor ensuring compliance with the general ability-to-repay rules, depending on the loan's interest rate.[48] *See* § 1026.43(e)(1), (e)(4). (Of course, they also can be ''qualified mortgages'' if they meet all the ability-to-repay criteria under the general definition of ''qualified mortgage'' *See* § 1026.43(e)(2).) As qualified mortgages, they are exempt from the HPML appraisal rules. *See* § 1026.35(c)(2)(i).

However, the Agencies believe that the separate exemption for certain refinances from the HPML appraisal requirement proposed in § 1026.35(c)(2)(vii) may be needed. First, the 2013 ATR Final Rule limits the qualified mortgage status of loans purchased or guaranteed by Fannie Mae and Freddie Mac under the special rules of § 1026.43(e)(4). However, these loans will not be eligible to be qualified mortgages if consummated on or after January 10, 2021, unless they meet the general definition of a qualified mortgage in § 1026.43(e)(2). *See* § 1026.43(c)(4)(iii)(B). For loans eligible to be insured or guaranteed under a HUD, VA, USDA, or RHA program, the qualified mortgage status conferred under § 1026.43(e)(4)(i) would be replaced for each type of loan when those agencies respectively issue rules defining a qualified mortgage based on each agency's own programs. *See* § 1026.43(e)(4)(iii)(A); *see also* TILA section 129C(b)(3)(ii), 15 U.S.C. 1639c(b)(3)(ii).

Second, the Agencies believe that many private ''streamlined'' mortgage programs are likely to have similar benefits to consumers, creditors, and credit markets as those under GSE and government agency programs. However, not all private ''streamlined'' refinances that are HPMLs will be qualified mortgages because some could exceed the 43 percent debt-to-income ratio cap or fail to meet other qualified mortgage conditions. *See, e.g.,* § 1026.42(e)(2). The Agencies believe that an exemption for not only GSE and government agency ''streamlined'' refinances, but also refinance loans under proprietary ''streamlined'' refinance programs, may be warranted.

The Agencies considered limiting an exemption from the HPML appraisal rules for private ''streamlined'' refinances to refinances of non-standard to standard mortgages that would qualify for an exemption from the ability-to-repay rules under new § 1026.43(d) of the 2013 ATR Final

[46] ''The term 'residential mortgage loan' means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan . . .'' TILA section 103(cc)(5), 15 U.S.C. 1602(cc)(5).

[47] *See* § 1026.43(e)(4)(i)(A) (cross-referencing § 1026.43(e)(2)(i) through (iii), which require that the loan not result in negative amortization or provide for interest-only or balloon payments; limit the loan term at 30 years; and cap points and fees to three percent of the loan amount (with a higher cap for loans under $100,000).

[48] Creditors making qualified mortgages that are ''higher-priced'' are entitled to a rebuttal presumption of compliance with the general ability-to-repay rules, while creditors making qualified mortgages that are not ''higher-priced'' are entitled to a safe harbor of compliance. A ''higher-priced covered transaction'' under the Bureau's 2013 ATR Rule is a transaction covered by the general ability-to-repay rules ''with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction, or by 3.5 or more percentage points for a subordinate-lien covered transaction.'' § 1026.43(b)(4).

Rule. However, the Agencies believe that the refinances exempt from the ability-to-repay rules under § 1026.43(d) include a universe of refinances that is narrower than the Agencies believe desirable for an exemption from the HPML appraisal rules. For example, to qualify for the ability-to-repay exemption as a refinance under § 1026.43(d), the existing obligation must be an adjustable-rate mortgage (ARM), an interest-only loan, or a negative amortization loan. *See* § 1026.43(d)(1)(i). In addition, among other conditions, the creditor must have considered whether the refinance loan ''likely will prevent a default by the consumer on the non-standard mortgage once the loan is recast'' out of the introductory rate under an ARM or higher payments under an interest-only or negative amortization loan. *See* § 1026.43(d)(3)(ii). However, the Agencies believe that ''streamlined'' refinance programs can benefit consumers and promote the safety and soundness of financial institutions even where the consumer is not at risk of imminent default.

*Definition of ''refinancing.''* Proposed § 1026.35(c)(2)(vii) defines a ''refinancing'' to mean ''refinancing'' in § 1026.20(a).[49] However, in contrast to the definition of ''refinancing'' under § 1026.20(a), a ''refinancing'' under proposed § 1026.35(c)(2)(vii) does not restrict who the creditor is for either the refinancing or the existing obligation. Commentary to § 1026.20(a) clarifies that a ''refinancing'' under § 1026.20(a) includes ''only refinancings undertaken by the original creditor or a holder or servicer of the original obligation.'' *See* comment 20(a)–5. By contrast, the proposed exemption allows a different creditor to extend the refinance loan, as long as the owner or guarantor remains the same on both the existing loan and the refinance. This aspect of the proposal is discussed more fully below.

35(c)(2)(vii)(A)

*Same owner or guarantor.* Consistent with ''streamlined'' refinance programs discussed previously, proposed § 1026.35(c)(2)(vii)(A) requires that, for the exemption for certain refinancings to apply, the owner or guarantor of the refinance loan must be the current owner or guarantor of the existing obligation. The Agencies propose to include this requirement as a condition of obtaining the refinance loan exemption from the HPML appraisal rules because the Agencies believe that this restriction is important to promote the safety and soundness of financial institutions and in turn benefits the public.

The proposed rule uses the terms ''owner or guarantor'' rather than the term ''holder'' to clarify that the proposed regulation refers to the entity that either owns the credit risk because the loan is held in its portfolio or that guarantees the credit risk on a loan held in an asset-backed securitization. For example, assume Fannie Mae holds an existing obligation in its portfolio, which is then refinanced under one of Fannie Mae's ''streamlined'' refinance programs into a loan with a better rate and lower payments for the consumer. Fannie Mae might then decide to place the new refinance loan into a pool of loans guaranteed by Fannie Mae; in this case, Fannie Mae would technically be the guarantor, not the ''owner.'' However, under the proposal, the refinance would meet the condition of proposed § 1026.35(c)(2)(vii)(A)(*1*) because the owner or guarantor remains the same on the refinance loan as on the existing obligation. Proposed comment 35(c)(2)(vii)(A)–1 clarifies that the term ''owner'' in § 1026.35(c)(2)(vii)(A) refers to an entity that owns and holds a loan in its portfolio.

This comment would further clarify that ''owner'' does not refer to an investor in a mortgage-backed security. This proposed clarification is intended to ensure that creditors do not have to look to the individual owners of mortgage-backed securities to determine the same-owner status. The rationale for the same-owner requirement is not based upon the pooled mortgage situation where more than one investor holds an indirect interest in a loan through ownership of a mortgage-backed security. Accordingly, this comment also clarifies that the term ''guarantor'' in proposed § 1026.35(c)(2)(vii)(A)(*1*) refers to the entity that guarantees the credit risk on a loan held by the entity in a mortgage-backed security.

The Agencies believe that conditioning the exemption on the owner or guarantor remaining the same helps to promote the safety and soundness of creditors. This includes situations in which the refinancing creditor either owns the existing loan or has arranged to transfer the loan to a GSE or other entity that owns the existing loan. In these cases, the owner or guarantor of the refinance already holds the credit risk. In addition, the owner or guarantor of the existing obligation may have familiarity with the property or relevant market conditions as a result of having evaluated property value documents when taking on the original credit risk, as well as ongoing portfolio monitoring. By contrast, when the owner or guarantor of the ''streamlined'' refinance is not also the owner or guarantor of the existing loan, then the ''streamlined'' refinance involves new risk to the owner or guarantor of the ''streamlined'' refinance, whose safety and soundness would therefore be better served by a USPAP-compliant appraisal with an interior inspection.[50]

The Agencies generally believe that the ''same owner or guarantor'' criterion for the proposed exemption makes it unnecessary to require that the creditor (which is not necessarily the owner of the loan) also be the same for both the existing obligation and the refinance loan. If consumers can shop for a ''streamlined'' refinancing among multiple creditors without having to obtain an appraisal, they may be able to obtain better rates and terms.

As a general matter, the purpose of the exemption for certain refinance transactions is to facilitate transactions that can be beneficial to borrowers even though they are higher-priced loans. When the consumer is not obtaining additional funds to increase the amount of the debt, and the entity that will own or guaranty the refinance loan is already the credit risk holder on the existing loan, there may be insufficient benefit from obtaining a new appraisal to warrant the additional cost.

Questions have been raised, however, about whether safety and soundness issues might arise in some situations that would warrant an appraisal, even when the risk holder will remain the same. Specifically, in some private refinance transactions, the originating creditor for the refinance loan may be assuming ''put-back'' risk. This risk may be lessened if the holder or guarantor is a federal agency or GSE that operates under guidelines that limit the put-back risk for the originator.

*Question 29:* Accordingly, the Agencies solicit comment on the

[49] *See* § 1026.20(a) for the definition of ''refinancing.''

[50] Legislative history of the Dodd-Frank Act also suggests that Congress believed that certain underwriting requirements were not necessary in refinances where the holder of the credit risk remains the same: ''However, certain refinance loans, such as VA-guaranteed mortgages refinanced under the VA Interest Rate Reduction Loan Program or the FHA streamlined refinance program, which are rate-term refinance loans and are not cash-out refinances, may be made without fully reunderwriting the borrower. . . . It is the conferees' intent that the Federal Reserve Board and the CFPB use their rulemaking authority . . . to extend the same benefit for conventional streamlined refinance programs where the party making the refinance loan already owns the credit risk. This will enable current homeowners to take advantage of current loan interest rates to refinance their mortgages.'' Statement of Sen. Dodd, 156 Cong. Rec. S5928 (July 15, 2010).

circumstances in which the originator's assumption of put-back risk raises safety and soundness concerns that weigh in favor of requiring the originator to obtain a USPAP-compliant appraisal with an interior property inspection for a ''streamlined'' refinance loan.

*Question 30:* The Agencies also seek information on the valuation practices of private creditors for refinanced loans where the private owner or guarantor remains the same and the loans are not sold to a GSE or insured or guaranteed by a federal government agency, including how often no valuation is obtained.[51]

35(c)(2)(vii)(B)

*Prohibition on certain risky features.* Proposed § 1026.35(c)(2)(vii)(B) would require that a refinancing eligible for an exemption from the HPML appraisal rules not allow for negative amortization (''cause the principal balance to increase''), interest-only payments (''allow the consumer to defer repayment of principal''), or a balloon payment, as defined in § 1026.18(s)(5)(i).[52]

Proposed comment 35(c)(2)(vii)(B)–1 would state that, under § 1026.35(c)(2)(vii)(D), a refinancing must provide for regular periodic payments that do not: result in an increase of the principal balance (negative amortization), allow the consumer to defer repayment of principal (*see* comment 43(e)(2)(i)–2), or result in a balloon payment. The comment would thus clarify that the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. The comment would further state that, except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. The comment would cross-reference comment 43(c)(5)(i)–4 of the Bureau's 2013 ATR Final Rule for an explanation of the term ''substantially equal.''[53] The comment would also clarify that a single payment transaction is not a refinancing meeting the requirements of § 1026.35(c)(2)(vii) because it does not require ''regular periodic payments.''

The information provided by a USPAP-compliant real property appraisal with an interior property inspection may be particularly important for creditors and consumer where these features are present. For example, additional equity may be needed to support a loan with negative amortization, and the risk of default might be higher for loans with interest-only and balloon payment features.

The Agencies recognize that consumers who need immediate relief from payments that they cannot afford might benefit in the near term by refinancing into a loan that allows interest-only payments for a period of time. However, the Agencies believe that a reliable valuation of the collateral is important when the consumer will not be building any equity for a period of time. In that situation, the consumer and credit risk holder may be more vulnerable should the property decline in value than they would be if the consumer were paying some principal as well.[54]

The Agencies also recognize that, in most cases, balloon payment mortgages are originated with the expectation that a consumer will be able to refinance the loan when the balloon payment comes due. These loans are made for a number of reasons, such as to control interest rate risk for the creditor or as a wealth management tool, usually for higher-asset consumers. Regardless of why a balloon mortgage is made, however, there is always risk that a consumer will not be able to either independently make the balloon payment or refinance, with significant consequences if something unexpected happens and the consumer cannot do so. To protect the creditor's safety and soundness, the creditor should have a firm understanding of the value of the collateral and the trajectory of property values in the area in making a balloon mortgage. This can help the creditor adjust loan and payment terms to mitigate default risk, which benefits both the creditor and the consumer.

The Agencies note that the GSE and government ''streamlined'' refinance programs described above do not allow these features, in part because helping a consumer pay off debt more quickly is one of the goals of these programs.[55] In addition, the prohibition on risky features for this proposed exemption is consistent with provisions in the Dodd-Frank Act reflecting congressional concerns about these loan terms. For example, in Dodd-Frank Act provisions regarding exemptions from certain ability-to-repay requirements for refinancings under HUD, VA, USDA, and RHS programs, Congress similarly required that the refinance loan be fully amortizing and prohibited balloon payments.[56] The proposal is also consistent with a provision in the Bureau's 2013 ATR Final Rule that exempts from all ability-to-repay requirements the refinancing of a ''non-standard mortgage'' into a ''standard mortgage.'' *See* § 1026.43(d). To be eligible for this exemption from the ability-to-repay rules, the refinance loan must, among other criteria, not allow for negative amortization, interest-only payments, or a balloon payment. *See* § 1026.43(d)(1)(ii). Further, no GSE or federal government agency ''streamlined'' refinance program allows these features. The Agencies believe that these statutory provisions and program restrictions reflect a judgment on the part of Congress, government agencies, and the GSEs that refinances with negative amortization, interest-only payment features, or balloon payments may increase risks to consumers and creditors.

[51] *See* OCC: 12 CFR 34.43 and 164.3; Board: 12 CFR 225.63; FDIC: 12 CFR 323.3; NCUA: 12 CFR 722.3. *See also* OCC, Board, FDIC, NCUA, *Interagency Appraisal and Evaluation Guidelines,* App. A–5, 75 FR 77450, 77466–67 (Dec. 10, 2010).

[52] Section 1026.18(s)(5)(i) defines ''balloon payment'' as ''a payment that is more than two times a regular periodic payment.''

[53] Comment 43(c)(5)(i)–4 states as follows: ''In determining whether monthly, fully amortizing payments are substantially equal, creditors should disregard minor variations due to payment-schedule irregularities and odd periods, such as a long or short first or last payment period. That is, monthly payments of principal and interest that repay the loan amount over the loan term need not be equal, but the monthly payments should be substantially the same without significant variation in the monthly combined payments of both principal and interest. For example, where no two monthly payments vary from each other by more than 1 percent (excluding odd periods, such as a long or short first or last payment period), such monthly payments would be considered substantially equal for purposes of this section. In general, creditors should determine whether the monthly, fully amortizing payments are substantially equal based on guidance provided in § 1026.17(c)(3) (discussing minor variations), and § 1026.17(c)(4)(i) through (iii) (discussing payment-schedule irregularities and measuring odd periods due to a long or short first period) and associated commentary.''

[54] The Agencies acknowledge that these increased risks may be lower where the interest-only period is relatively short (such as one or two years), because the payments in the early years of a mortgage are heavily weighted toward interest; thus the consumer would be paying down little principal even in making fully amortizing payments.

[55] *See, e.g.,* Fannie Mae, ''Home Affordable Refinance (DU Refi Plus and Refi Plus) FAQs'' (June 7, 2013) at 11 (describing options for meeting the requirement that the refinance provide a borrower benefit); Freddie Mac, ''Freddie Mac Relief Refinance Mortgages℠—Open Access Eligibility Requirements'' (January 2013) at 1 (describing options for meeting the requirement that the refinance provide a borrower benefit).

[56] *See* Dodd-Frank Act section 1411(a)(2), TILA section 129C(a)(5)(E) and (F), 15 U.S.C. 1639c(a)(5)(E) and (F). TILA section 129C(a)(5) authorizes HUD, VA, USDA, and RHS to exempt ''refinancings under a streamlined refinancing'' from the Act's income verification requirement of the ability-to-repay rules. 15 U.S.C. 1639c(a)(5). *See also* TILA section 129c(a)(4), 15 U.S.C. 1639c(a)(4).

In sum, the Agencies are concerned that negative amortization, interest-only payments, and balloon payments are loan features that may increase a loan's risk to consumers as well as to primary and secondary mortgage markets.[57] Thus, in the Agencies' view, permitting these non-qualified mortgage HPML refinances to proceed without USPAP-compliant real property appraisals with interior inspections would not be consistent with the Agencies' exemption authority, which permits exemptions only if they promote the safety and soundness of creditors and are in the public interest.

*Question 31:* The Agencies request comment on whether prohibiting the regular periodic payments on the refinance loan from resulting in negative amortization, payment of only interest, or a balloon payment is an appropriate condition for an exemption from the HPML appraisal rules for ''streamlined'' refinances.

35(c)(2)(vii)(C)

*No cash out.* Proposed § 1026.35(c)(2)(vii)(C) would require that the proceeds from a refinancing eligible for an exemption from the HPML appraisal rules be used for only two purposes: (1) To pay off the outstanding principal balance on the existing first-lien mortgage obligation; and (2) to pay closing or settlement charges required to be disclosed under RESPA.

Proposed comment 35(c)(2)(vii)(C)–1 would state that the exemption for a refinancing under § 1026.35(c)(2)(vii) is available only if the proceeds from the refinancing are used exclusively for two purposes: paying off the consumer's existing first-lien mortgage obligation and paying for closing costs, including paying escrow amounts required at or before closing. According to this comment, if the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the refinancing exemption from the HPML appraisal rules under § 1026.35(c)(2)(vii).

The Agencies also view the proposed limitation on the use of the refinance loan's proceeds as necessary to ensure that the principal balance of the loan does not increase, or increases only minimally. This in turn helps ensure that the consumer is not losing significant additional equity and that the holder of the credit risk is not taking on significant new risk, in which case a full interior inspection appraisal to assess the change in risk could be beneficial to both parties.

The Agencies also note that limiting the use of proceeds to allow for no extra cash out for the consumer other than closing costs is consistent with prevailing ''streamlined'' refinance programs.[58] It is also consistent with the exemption from the Bureau's ability-to-repay rules for refinances of ''non-standard mortgages'' into ''standard mortgages.''[59] *See* § 1026.43(d)(1)(ii)(E). The Agencies believe that consistency across mortgage rules can help facilitate compliance and ease compliance burden.

*Question 32:* The Agencies request comment on this proposed condition on the ''streamlined'' refinance exemption, and whether other protections are warranted to ensure that the loan's principal balance and overall costs to the consumer do not materially increase.

*Question 33:* In this regard, the Agencies specifically seek comment on whether the Agencies should require that financed points and fees on the refinance loan not exceed a certain percent, such as the percentage caps for points and fees on qualified mortgages. *See* § 1026.43(e)(3); *see also* § 1026.43(d)(1)(ii)(B) (capping points and fees for refinances of ''non-standard mortgages'' into ''standard mortgages'' exempt from ability-to-repay requirements). For example, the Agencies heard from consumer advocates that frequent, serial refinancing with higher points and fees could lead to a significant loss of equity, and increased exposure for creditors, that would warrant a new appraisal for the same or similar reasons that an appraisal would be important where additional cash out is obtained.

*Additional condition: obtaining an alternative valuation and providing a copy to the consumer.*

*Question 34:* The Agencies also seek comment on whether the exemption for refinance loans should be conditioned on the creditor obtaining an alternative valuation (*i.e.,* a valuation other than a FIRREA- and USPAP-compliant real property appraisal with an interior inspection) and providing a copy to the consumer three days before consummation. In requesting comment on this issue, the Agencies note that the purpose of TILA section 129H is, in part, to protect consumers by ensuring that they receive a copy of an appraisal with an interior property inspection of the home before entering into a HPML that is not a qualified mortgage. 15 U.S.C. 1639h. Specifically, TILA section 129H mandates providing a copy of an appraisal with an interior property inspection for HPMLs that are not exempt from the appraisal requirements, three days before closing, with no option to waive this right. *See* TILA section 129H(c), 15 U.S.C. 1639h(c).[60] The Agencies' Final Rule implements these requirements. *See* § 1026.35(c)(6).

A refinanced mortgage loan is a significant financial commitment: For example, the refinance loan can have an extended term, typically as long as 30 or 40 years; the refinance loan can be an adjustable-rate mortgage that creates interest rate risk in the future; the refinance loan may actually have increased payments (for example, if the term of the new loan is shorter); and a ''streamlined'' refinance transaction has transaction costs.

*Question 35:* Because refinances do involve potential risks and costs, the Agencies seek comment on whether conditioning the proposed exemption on creditors obtaining an alternative valuation and giving a copy to the consumer would better position consumers to consider alternatives to refinancing, and whether consumers seeking refinances typically need or want to consider alternatives. These alternatives might include, among others, remaining in the home with the existing loan; refinancing through a different program that would involve underwriting, potentially at a better rate or other improved terms; seeking a possible loan modification; or selling the home.

*Question 36:* The Agencies seek comment and relevant data on whether this additional condition would be necessary. In this regard, the Agencies understand that some type of estimate of value is typically developed in a

[57] *See also* OCC, Board, FDIC, NCUA, ''Interagency Guidance on Nontraditional Mortgage Product Risks,'' 71 FR 58609 (Oct. 4, 2006).

[58] *See, e.g.,* Fannie Mae Single Family Selling Guide, chapter B5–5, Section B5–5.2; Freddie Mac Single Family Seller/Servicer Guide, chapters A24, B24 and C24.

[59] Under the 2013 ATR Final Rule, a refinance loan or ''standard mortgage'' is one for which, among other criteria, the proceeds from the loan are used solely for the following purposes: (1) To pay off the outstanding principal balance on the non-standard mortgage; and (2) to pay closing or settlement charges required to be disclosed under RESPA. *See* § 1026.43(d)(1)(ii)(E).

[60] A similar requirement under ECOA permits the consumer to waive the right to receive a copy of valuations or appraisals in connection with an application for a first-lien mortgage secured by a dwelling no later than three days before closing. The consumer may not, however, waive the right to receive copies of valuations or appraisals altogether. *See* ECOA section 701(e)(2), 15 U.S.C. 1691(e)(2). Regulations implementing this provision were adopted by the Bureau earlier this year in the 2013 ECOA Valuations Rule. *See* 78 FR 7216 (Jan. 31, 2013); Regulation B, 12 CFR 1002.14(a)(1).

''streamlined'' refinance transaction. For example, for any loan not eligible for a federal government program or to be sold to a GSE, federally-regulated depositories have to obtain either an ''evaluation'' or an appraisal for a refinance transaction.[61]

In addition, as of January 2014, amendments to ECOA, implemented by the Bureau in revised Regulation B, will require all creditors to provide to credit applicants free copies of appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling.[62] *See* 12 CFR 1002.14(a)(1); 78 FR 7216 (Jan. 31, 2013) (2013 ECOA Valuations Final Rule). The copies must be provided to the applicant promptly upon completion or three business days before consummation. *See id.* Regulation B defines ''valuation'' to mean ''any estimate of the value of a dwelling developed in connection with an application for credit.'' [63] *Id.* § 1002.14(b)(3).

The Agencies recognize, however, that estimates of value might not always be required by federal law or investors. For example, certain non-depositories and depositories are not subject to the appraisal and evaluation requirements that apply to depositories under FIRREA, and might not obtain a valuation on a ''no cash out'' refinance.

*Question 37:* The Agencies request comment generally on the extent to which either appraisals or other valuation tools such as AVMs or broker price opinions are used in connection with ''streamlined'' refinances by non-depositories in particular.

*Question 38:* The Agencies also seek comment on whether additional criteria or guidance would be needed to describe the type of home value estimate that a creditor would have to obtain and provide to the consumer and, if so, what the additional criteria or guidance should address.

*Other conditions.* The Agencies are not proposing additional conditions in the regulation text on the types of refinancings eligible for the exemption from the HPML appraisal rules. In this way, the Agencies seek to maintain flexibility for government agencies, GSEs, and private creditors to adapt and change their borrower eligibility requirements and other requirements for ''streamlined'' HPML refinances to address changing market environments and factors that may be unique to their programs. At this time the Agencies do not see the need to impose conditions that address borrower eligibility, such as requiring that the borrower have been on-time with payments on the existing mortgage for a certain period of time.

For example, some ''streamlined'' refinance programs currently require that borrower eligibility criteria be met, such as that the consumer have been current on the existing obligation for a certain period of time.[64] Some of these programs also provide that certain benefits must be present in the transaction, such a lower monthly payment or lower interest rate. For this proposed exemption from the HPML appraisal requirements for refinances, the Agencies are not proposing to impose conditions that address borrower eligibility or to define what types of benefits must result from the transaction. The Agencies believe that it is unclear how the need for a particular type of appraisal (versus some other type of valuation that the creditor may perform under other regulations or its own policies) relates to borrower eligibility requirements or the existence of a borrower benefit in the new transaction.

*Question 39:* However, the Agencies request comment on whether the Agencies should adopt additional criteria for HPML ''streamlined'' refinancings that would be exempt from the HPML appraisal rules, including, but not limited to, requirements regarding whether the consumer has an on-time payment history and whether consumer ''benefits'' exist as part of the refinance transaction. The Agencies request that commenters supporting inclusion of these types of criteria explain why and comment on what the parameters of an on-time payment history should be and how ''benefit'' should be defined.

Conclusion

For the reasons discussed previously, the Agencies believe that an exemption from the HPML appraisal rules for refinances under the proposed conditions would be ''in the public interest and promotes the safety and soundness of creditors.'' TILA section 129H(b)(4)(B), 15 U.S.C. 1639h(b)(4)(B). The Agencies believe that an exemption from the HPML appraisal rules for these loans would ensure that the time and cost of new appraisal requirements are not introduced into non-qualified mortgage HPML transactions that are part of programs designed to help consumers avoid defaults and improve their financial positions, and help creditors and investors avoid losses and mitigate credit risk. The Agencies further believe that the exemption is appropriately narrow in scope to capture the types of refinancings that Congress has generally expressed an intent to facilitate, without being overbroad by exempting all HPML refinances from the HPML appraisal rules. *See, e.g.,* TILA sections 129C(a)(5) and (6), 15 U.S.C. 1639c(a)(5) and (6).[65]

35(c)(viii)

Extensions of Credit for $25,000 or Less

The Agencies are also proposing an exemption from the HPML appraisal rules for extensions of credit of $25,000 or less, indexed every year for inflation. In the 2012 Proposed Rule, the Agencies requested comment on exemptions from the final rule that would be appropriate. In response, several commenters recommended an exemption for smaller dollar loans. These commenters generally believed that interior inspection appraisals on these loans would significantly raise total costs as a proportion of the loan and thus potentially be detrimental to consumers.

Public Comments on the 2012 Proposed Rule

Commenters on the 2012 Proposed Rule that indicated support for a smaller dollar loan exemption included a state credit union association, representatives of six banks, two manufactured housing trade associations, a national community development organization, and two individuals. No comments received opposed an exemption for smaller dollar loans, though no comments were received from consumers or consumer advocates.

[61] *See* OCC: 12 CFR 34.43 and 164.3; Board: 12 CFR 225.63; FDIC: 12 CFR 323.3; NCUA: 12 CFR 722.3. *See also* OCC, Board, FDIC, NCUA, *Interagency Appraisal and Evaluation Guidelines,* 75 FR 77450, 77458–61 and App. A, 77465–68 (Dec. 10, 2010). In addition, as noted (*see infra* note 42), data on GSE ''streamlined'' refinances indicates that either an AVM or an appraisal (interior inspection or exterior-only) was obtained for all ''streamlined'' refinances purchased by the GSEs in 2012.

[62] All refinances proposed for an exemption would be first-lien mortgage loans.

[63] ''Valuation'' is separately defined in Regulation Z, § 1026.42(b)(3). That definition does not include AVMs, however, which was deemed appropriate for purposes of the appraisal independence rules under § 1026.42. Here, however, the Agencies believe that an estimate of value provided to the consumer could appropriately include an AVM.

[64] *See also* 2013 ATR Final Rule § 1026.43(d)(2)(iv) and (v). The exemption from the ability-to-repay rules for refinances of ''non-standard mortgages'' into ''standard mortgages'' under the 2013 ATR Final Rule requires that, among other conditions: (1) The consumer made no more than one payment more than 30 days late on the non-standard mortgage in 12-month period before applying for the standard mortgage; and (2) the consumer made no payments more than 30 days late in the six-month period before applying for the standard mortgage. *See* § 1026.43(d)(2)(iv) and (v).

[65] *See also* Statement of Sen. Dodd, 156 Cong. Rec. S5928 (July 15, 2010).

The commenters on this issue shared concerns that requiring an appraisal for smaller dollar residential mortgage loans would result in excessive costs to consumers without sufficient offsetting benefits. Some asserted that applying the HPML appraisal rules to smaller loans might disproportionately burden smaller institutions and potentially reduce access to credit for their consumers.

In outreach since the Final Rule was issued, however, a consumer advocacy group expressed the view that low- to moderate-income (LMI) consumers obtaining or refinancing loans secured by lower-value homes may have a particular need for the protections of the HPML appraisal rules. During informal outreach with the Agencies for this proposal, consumer advocates expressed the view that requiring quality appraisals for smaller dollar loans, and requiring that they be provided to the consumer, can help prevent the kinds of appraisal fraud that can lead to consumers borrowing more money than is supported by the equity in their home or taking out loans that are otherwise not appropriate for them.

Regarding the appropriate threshold for a smaller loan exemption, the comments varied widely. One individual commenter suggested that a smaller dollar loan amount appropriate for an exemption from the final rule would be $10,000 or less. A comment letter from a community bank indicated that a $25,000 home improvement loan might not be an appropriate transaction type to cover in a final rule; this commenter asserted that to avoid the burden and expense to the consumer of the HPML appraisal rules, a community bank would have to lower its rates on smaller loans to below HPML levels, which could make them unprofitable.[66]

A national manufactured housing trade association asserted that the median price of a manufactured home is $27,000[67] and that, relative to these small loan amounts, the cost of a traditional interior inspection appraisal is ''extremely expensive'' and could reduce manufactured home lending. Similarly, a bank representative asserted that when the purchase price is $30,000, for example, the cost of a traditional appraisal is ''substantial.'' Comments from a community bank representative, the community development organization, and another individual indicated that loans of $50,000 or less might be appropriately exempted. A state bank commenter suggested that loans of $100,000 or less should be exempt. Finally, a state manufactured housing trade association recommended exempting manufactured home loans under $125,000.

Discussion

The Agencies are concerned that the potential burden and expense of imposing the HPML appraisal requirements on HPMLs of $25,000 or less (that are not qualified mortgages) will outweigh potential consumer protection benefits in many cases. The primary concern is the expense to the consumer of an interior inspection appraisal, which could be significant and unduly burdensome to consumers of smaller loans. Thus, an appraisal requirement could hamper consumers' use of smaller home equity loans for home improvements, educational or medical expenses, and debt consolidation.[68] The interior inspection appraisal requirement also may pose an additional cost for consumers who seek to purchase lower-dollar homes (using HPMLs that are not qualified mortgages); these tend to be LMI consumers who are less able to afford extra financing costs than higher-income consumers.

In addition, the Agencies believe that the proposed exemption can facilitate creditors' ability to meet consumers' smaller dollar credit needs. This could in turn promote the soundness of an institution's operations by supporting profitability and an institution's ability to spread risk over a variety of products. Public comments on the 2012 Proposed Rule suggested that applying the rule to smaller dollar loans might affect smaller institutions in particular, and that for these institutions the reduction in costs and burdens associated with this exemption would be most beneficial.

*Question 40:* The Agencies seek data from commenters on this point.

Finally, the Agencies believe that creditors would generally be better able to absorb losses that might be associated with a loan of $25,000 or less than with, for example, a typical home purchase loan, which is several times larger than a $25,000 loan.[69]

*$25,000 threshold.* A $25,000 threshold is within the range of thresholds recommended by proponents of a smaller dollar loan exemption in their comments on the 2012 Proposed Rule, noted previously. In light of public comments, the Agencies examined data submitted under the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.,* as one reference point for informing an exemption for smaller dollar loans. A subordinate-lien home improvement loan is one example of a loan type for which, in the Agencies' view, an interior inspection appraisal might be burdensome on a consumer without sufficient off-setting consumer protection or safety and soundness benefits.[70] Based on HMDA data, the Agencies found that in 2009, the mean loan size for subordinate-lien home improvement loans that were HPMLs was $26,000 and the median loan size for this category of loans was $17,000.[71] In 2010, the mean loan size was $24,900 for subordinate-lien home improvement loans that were HPMLs and the median loan size for this category of loans was $19,000.[72] In 2011, the corresponding loan sizes for subordinate-lien home improvement

[66] This comment was filed before the Agencies had finalized exemptions from the HPML appraisal rules, including the exemption for ''qualified mortgages.'' *See* § 1026.35(c)(2); *see also* 2013 ATR Final Rule (defining ''qualified mortgage'' at § 1026.42(e)).

[67] The trade association's estimate of median manufactured home prices was based on the U.S. Census Bureau's 2009 American Housing Survey. According to the 2011 American Housing Survey, the median purchase price of all existing occupied manufactured homes is $30,000 (median value self-reported by respondents also is the same). *See http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C13OO&prodType=table.* However, this median price reflects purchases that may have occurred as much as a decade earlier (*see id.* for acquisition dates). The average price of manufactured homes purchased more recently is higher; as of March 2013, the average price was $62,400. *See http://www.census.gov/construction/mhs/mhsindex.html.*

[68] The Agencies recognize that, absent an exemption for smaller dollar loans from the HPML appraisal rules (which apply solely to closed-end loans), consumers might have the option of borrowing a home equity line of credit (HELOC) rather than a closed-end home equity loan (HEL) to avoid the costs of an appraisal. However, the Agencies are aware that HELs and HELOCs are not in all cases readily interchangeable. HELs and HELOCs are different product types used by consumers for different purposes; they also present different risks for creditors. As a consequence, they are priced differently and are subject to different sets of rules. *See, e.g.,* § 1026.42(a)(1) (implementing a statutory exemption for HELOCs from TILA's ability-to-repay rules; *see* TILA sections 103(cc)(5) and 129C(a)(1), 15 U.S.C. 1602(cc)(5) and 1639c(a)(1)).

[69] Based on HMDA data, for example, the mean loan size in 2011 for a first-lien, home purchase HPML secured by a one- to four-family site-built property was $141,600; the median loan size for this category of loans was 109,000. *See* Robert B. Avery, Neil Bhutta, Kenneth B. Brevoort, and Glenn Canner, ''The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act,'' Table 10, FR Bulletin, Vol. 98, no. 6 (Dec. 2012) *http://www.federalreserve.gov/pubs/bulletin/2012/PDF/2011_HMDA.pdf.*

[70] Consumer advocates have expressed concerns to the Agencies that home improvement loans can be part of schemes that are abusive to consumers in some cases, such as when little or no work or substandard work is performed. Whether an appraisal requirement could be used to combat these abuses is unclear.

[71] *See* Federal Financial Institutions Examination Council (FFIEC), Home Mortgage Disclosure Act (HMDA), *http://www.ffiec.gov/Hmda/default.htm.*

[72] *See id.*

loans that were HPMLs were $26,500 (mean) and $20,000 (median).[73]

The Agencies recognize that loan types other than home improvement loans would qualify for the proposed exemption and that other data and considerations may be relevant to determining the appropriate threshold.

*Question 41:* The Agencies are proposing a threshold for a smaller dollar loan exemption of $25,000 or less, but request comment on whether a lower or higher threshold is appropriate and, if so, why. The Agencies strongly encourage commenters to offer data to support their view of an appropriate threshold.

*Annual adjustment for inflation.* The Agencies also propose to adjust the threshold for inflation every year, based on the percentage increase of Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Thus, under the proposal, if the CPI–W decreases in an annual period, the percentage increase would be zero, and the dollar amount threshold for the exemption would not change. The Agencies note that inflation adjustments for other thresholds in Regulation Z are also annual, and believe that consistency across mortgage rules can facilitate compliance.[74]

*Question 42:* The Agencies request comment on whether the threshold for a smaller dollar loan exemption should be adjusted periodically for inflation and whether the period for adjustments should be one year or some other period.

In comments 35(c)(2)(viii)–1, –2, and –3, the Agencies propose to provide the threshold amount and additional guidance on applying it. Proposed comment 35(c)(2)(viii)–1 sets forth the applicable threshold to be updated every year. This comment states that, for purposes of § 1026.35(c)(2)(viii), the threshold amount in effect during a particular one-year period is the amount stated in comment 35(c)(2)(viii) for that period. The comment states that the threshold amount is adjusted effective January 1 of every year by the percentage increase in the CPI–W that was in effect on the preceding June 1. The comment goes on to state that every year, the comment will be amended to provide the threshold amount for the upcoming one-year period after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. The comment states that any increase in the threshold amount will be rounded to the nearest $100 increment, and provides the following examples: if the percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. Finally, the comment states that, from January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

Proposed comment 35(c)(2)(viii)–2 states that a transaction meets the condition for an exemption under § 1026.35(c)(2)(viii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

Proposed comment 35(c)(2)(viii)–3 clarifies that a transaction does not meet the condition for an exemption under § 1026.35(c)(2)(viii) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. As an example, the comment assumes a closed-end loan that qualified for an exemption under § 1026.35(c)(2)(viii) at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. The comment states that, in these circumstances, the creditor must comply with all of the applicable requirements of § 1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 1026.35(c) applies. The comment cross-references § 1026.35(c)(2) and § 1026.35(c)(4)(vii) for other exemptions from the HPML appraisal rules.

Additional Condition: Providing a Copy of a Valuation to the Consumer.

*Question 43:* The Agencies seek comment on whether certain conditions should be placed on the proposed exemption from the HPML appraisal requirements for loans of $25,000 or less.

In particular, the Bureau has concerns that, as a result of borrowing so-called ''smaller'' dollar home purchase or home equity loans, some consumers may be at risk of high LTVs, including LTVs that lead to going ''underwater''—owing more than their home is worth. Data suggest that many existing homes are worth under $25,000 and that many consumers with lower value homes are underwater or nearly underwater.[75] In addition, based upon HMDA data, more than half of subordinate liens originated in 2011 were at or below $25,000.[76] Studies suggest that subordinate-lien loans and other forms of equity extraction can make consumers more likely to default, as they reduce the amount of equity in the home and raise LTVs.[77] Receiving a written valuation might be helpful in informing a consumer's decision to take the loan by making the consumer better aware of how the value of the home compares to the amount that the consumer might borrow.

*Question 44:* The Agencies seek comment on the risks that smaller dollar loans could lead to high LTV or ''underwater'' loans without the knowledge of the consumer, including whether these risks outweigh the burden to the consumer of added appraisal costs and transaction time in covered transactions. *See* § 1026.35(c)(2) for additional exemptions.

*Question 45:* The Agencies also request comment on protections that may reduce these risks if loans of $25,000 or less are generally exempt from the HPML requirement for a USPAP-compliant appraisal with an interior inspection.

*Question 46:* In particular, the Agencies request comment on whether the exemption should be conditioned on the creditor providing the consumer with any estimate of the value of the home that the creditor relied on in making the credit decision.[78]

[73] *See id.*

[74] *See* 12 CFR 1026.3(b) (exempting from Regulation Z for loans over the applicable threshold dollar amount, adjusted annually); 12 CFR 1026.32(a)(1)(ii) (setting the points and fees trigger for high-cost mortgages, adjusted annually).

[75] As of 2011, approximately 2.8 million homes had a value of less than $20,000. *See* 2011 American Housing Survey, ''Value, Purchase Price, and Source of Down Payment—Owner Occupied Units (NATIONAL),'' available at *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C13OO&prodType=table.* A recent study shows that at the end of 2012, 10.4 million properties with a residential mortgage (21.5 percent of residential properties with a mortgage) were in ''negative equity'' and an additional 11.3 million had less than 20 percent equity. This study also suggests that negative equity is greater with smaller home values (*i.e.,* below $200,000). *See* Core Logic Press Release and Negative Equity Report Q4 2012 (Mar. 19, 2013) available at *http://www.corelogic.com.*

[76] *See* FFIEC, HMDA, *http://www.ffiec.gov/Hmda/default.htm.*

[77] *See, e.g.,* Steven Laufer, ''Equity Extraction and Mortgage Default,'' Financial and Economics Discussion Series, Federal Reserve Board Division of Research & Statistics and Monetary Affairs (2013–30), available at *http://www.federalreserve.gov/pubs/feds/2013/201330/201330pap.pdf. See also, e.g.,* Michael LaCour-Little, California State University-Fullerton, Eric Rosenblatt and Vincent Yao, Fannie Mae, ''A Close Look at Recent Southern California Foreclosures,'' (May 23, 2009), available at *http://www.areuea.org/conferences/papers/download.phtml?id=2133.*

[78] Subordinate-lien loans are not covered by ECOA's requirement that the creditor provide the

Continued

*Question 47:* To inform the Agencies' consideration of this condition, the Agencies seek data from commenters on the extent to which creditors anticipate originating HPMLs of $25,000 or less that are not qualified mortgages.

*Question 48:* The Agencies also seek comment on the extent to which creditors typically obtain an estimate of the value of the home to calculate the LTV or combined LTV (CLTV) associated with a transaction of $25,000 or less. The Agencies note that FIRREA's appraisal and evaluation regulations apply to federally-regulated depositories, but that certain non-depositories and depositories are not subject to FIRREA.[79]

*Question 49:* In addition, the Agencies request comment on whether and what guidance would be needed regarding the type and quality of valuation that would meet the condition (or, if the creditor obtained more than one valuation, which valuation the creditor should provide).

*Question 50:* The Agencies further request comment on whether other limitations on the exemption might be more appropriate. One alternative might be to limit the exemption to loans that do not bring the consumer's CLTV over a certain threshold. The Agencies seek comment on what an appropriate threshold would be and the valuation sources on which a creditor should appropriately rely to calculate CLTV for this alternative limitation on the exemption.

*Question 51:* The Agencies request comment and data on whether adding these or similar criteria to qualify for a smaller dollar exemption is an appropriate and adequate means for addressing the concerns raised about high LTV lending.

*Question 52:* Finally, the Agencies also seek comment and data on whether these conditions would likely result in creditors of smaller dollar HPMLs (that are not exempt as qualified mortgages) deciding to forego the exemption and charge the consumer for an appraisal, offer the consumer an open-end home equity product instead (which is not covered by the HPML appraisal rules), or not offer a loan at all.

35(c)(6) Copy of Appraisals

35(c)(6)(ii) Timing

In the Final Rule, comment 35(c)(6)(ii)–2 provides that, for appraisals prepared by the creditor's internal appraisal staff, the date that a consumer receives a copy of an appraisal as required under § 1026.35(c)(6) is the date on which the appraisal is completed. The Agencies propose to delete this comment as unnecessary, because the relevant timing requirement is based on when the creditor provides the appraisal, not when the consumer receives it. *See* § 1026.35(c)(6)(i).

## VI. Bureau's Dodd-Frank Act Section 1022(b)(2) Analysis[80]

In developing this supplemental proposal, the Bureau has considered potential benefits, costs, and impacts to consumers and covered persons.[81] In addition, the Bureau has consulted, or offered to consult with HUD and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies. The Bureau also held discussions with or solicited feedback from the USDA, RHS, and VA regarding the potential impacts of this supplemental proposal on their loan programs.

In this supplemental proposal, the Agencies are proposing to exempt three additional classes of HPMLs from the 2013 Interagency Appraisals Final Rule: (1) Certain refinance HPMLs whose proceeds are used exclusively to satisfy an existing first-lien loan and to pay for closing costs; (2) new HPMLs that have a principal amount of $25,000 or less (indexed to inflation); and (3) HPMLs secured by existing manufactured homes but not land. As discussed in the section-by-section analysis, the Agencies also are seeking comment on whether to place conditions on these proposed exemptions that would ensure the consumer receives a copy of a home value estimate in transactions covered by the exemptions.

The Bureau will further consider the benefits, costs and impacts of the proposed provisions and asks interested parties to provide general information, data, research results and other information that may inform the analysis of the benefits, costs, and impacts.

### *A. Potential Benefits and Costs to Consumers and Covered Persons*

This analysis considers the benefits, costs, and impacts of the key provisions of the Interagency Appraisals Supplemental Proposal relative to the baseline provided by existing law, including the 2013 Interagency Appraisals Final Rule and the Bureau's ATR Rules.[82]

The Bureau has relied on a variety of data sources to analyze the potential benefits, costs and impacts of the proposed rule.[83] However, in some instances, the requisite data are not available or are quite limited. Data with which to quantify the benefits of the proposed rule are particularly limited. As a result, portions of this analysis rely in part on general economic principles to provide a qualitative discussion of the benefits, costs, and impacts of the rule.

The primary source of data used in this analysis is data collected under the Home Mortgage Disclosure Act (HMDA). The empirical analysis generally uses 2011 data, including from the 4th quarter 2011 bank and thrift Call Reports,[84] the 4th quarter 2011 credit

consumer with a copy of valuations and appraisals obtained in connection with an application. *See* 15 U.S.C. 1691(e)(1), implemented by the 2013 ECOA Valuations Rule at 12 U.S.C. 1002.14 (eff. Jan. 18, 2014). Thus, the consumer of a subordinate-lien smaller dollar loan would not have a right to receive valuations from the creditor under ECOA.

[79] *See* OCC: 12 CFR 34.43 and 164.3; Board: 12 CFR 225.63; FDIC: 12 CFR 323.3; NCUA: 12 CFR 722.3. *See also* OCC, Board, FDIC, NCUA, *Interagency Appraisal and Evaluation Guidelines,* App. A–5, 75 FR 77450, 77466–67 (Dec. 10, 2010).

[80] The analysis and views in this Part VI reflect those of the Bureau only, and not necessarily those of all of the Agencies.

[81] Specifically, Section 1022(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas.

[82] The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

[83] The estimates in this analysis are based upon data and statistical analyses performed by the Bureau. To estimate counts and properties of mortgages for entities that do not report under the Home Mortgage Disclosure Act (HMDA), the Bureau has matched HMDA data to Call Report data and National Mortgage Licensing System (NMLS) and has statistically projected estimated loan counts for those depository institutions that do not report these data either under HMDA or on the NCUA call report. The Bureau has projected originations of HPMLs in a similar fashion for depositories that do not report HMDA. These projections use Poisson regressions that estimate loan volumes as a function of an institution's total assets, employment, mortgage holdings, and geographic presence. Neither HMDA nor the Call Report data have loan level estimates of debt-to-income (DTI) ratios that, in some cases, determine whether a loan is a qualified mortgage. To estimate these figures, the Bureau has matched the HMDA data to data on the historic-loan-performance (HLP) dataset provided by the FHFA.

This allows estimation of coefficients in a prohibit model to predict DTI using loan amount, income, and other variables. This model is then used to estimate DTI for loans in HMDA.

[84] Every national bank, State member bank, and insured nonmember bank is required by its primary Federal regulator to file consolidated Reports of Condition and Income, also known as Call Report data, for each quarter as of the close of business on the last day of each calendar quarter (the report date). The specific reporting requirements depend upon the size of the bank and whether it has any foreign offices. For more information, see *http://www2.fdic.gov/call_tfr_rpts/.*

union call reports from the NCUA, and de-identified data from the National Mortgage Licensing System (NMLS) Mortgage Call Reports (MCR) [85] for the 4th quarter of 2011 also were used to identify financial institutions and their characteristics. Most of the analysis relies on a dataset that merges this depository institution financial data from Call Reports with the data from HMDA including HPML counts that are created from the loan-level HMDA dataset. The unit of observation in this analysis is the entity: if there are multiple subsidiaries of a parent company, then their originations are summed and revenues are total revenues for all subsidiaries.

Other portions of the analysis rely on property-level data regarding parcels and their related financing from DataQuick [86] Tabulations of the DataQuick data are used for estimation of the frequency of properties being sold within 180 days of a previous sale. In addition, in analyzing alternatives for the proposed exemption for certain refinances, the Bureau has considered data provided by FHFA and FHA regarding valuation practices under their streamlined refinance programs (and in particular regarding the frequency with which appraisals or automated valuations are conducted). These FHFA and FHA data are described below in greater detail.

1. Overview: Estimated Number of Covered HPMLs

To estimate the number of additional HPMLs that could be exempted by the proposal, it is first necessary to recall the number of HPMLs that are covered by the Final Rule. The 2013 Interagency Appraisal Rule exempts all qualified mortgages under the Bureau's 2013 ATR Final Rule. *See* § 1026.35(c)(2)(i).[87] Therefore, the only additional loans that would be exempted by the proposed rule would be HPMLs that are not qualified mortgages. Under special temporary provisions in the Bureau's 2013 ATR Final Rule, any loans eligible for purchase or guarantee by HUD, USDA, or VA (until they adopt their own qualified mortgage rules or 2021, whichever is earlier), or by GSEs (until 2021), generally would be qualified mortgages. *See* § 1026.43(e)(4). This temporary qualified mortgage definition incorporates the criteria in § 1026.43(e)(2)(i)–(iii)—a limit on the mortgage term of 30 years, regular periodic payments without changes in payment amounts except as part of an adjustable-rate or step-rate product, no negative amortization, no balloon payments except in certain cases, and a cap on points and with points and fees of three percent. The Bureau believes that virtually all transactions that are eligible for purchase, insurance, or guarantee by HUD, FHA, VA, or GSEs, as applicable, would meet these criteria. The Bureau requests additional data from commenters on the extent to which the three transaction types covered by this proposal may exceed the three percent cap on points and fees and therefore not satisfy the definition of a qualified mortgage.[88]

The Bureau seeks data from commenters on this point. Accordingly, the Bureau believes that almost all if not all of the loans that would be exempted solely by virtue of the proposed exemptions would be transactions originated by private lenders for their own portfolio, which are not eligible for purchase, insurance, or guarantee by HUD, USDA, VA, or GSEs,[89] and which also are not qualified mortgages under the general definition at § 1026.43(e)(2). This definition includes the criteria in § 1026.43(e)(2)(i)–(iii) discussed above as well as one additional criterion—a maximum debt-to-income ratio of 43 percent at § 1026.43(e)(2)(iv).

As discussed in the Section 1022(b) analysis in the 2013 Final Interagency Appraisals Rule, the Bureau estimates, based upon 2011 HMDA data, that there were 26,000 HPMLs that would not have been qualified mortgages, 12,000 of which were purchase-money mortgages, 12,000 of which were first-lien transactions that were refinancings, and 2,000 of which were closed-end subordinate lien mortgages that were not part of a purchase transaction. For purposes of this Section 1022(b) analysis, the Bureau refers to these loans as ''covered loans.'' The impact on creditors and consumers of the proposed exemptions—which at most would exempt some of these estimated 26,000 covered loans annually—is discussed below.

The impact of the proposed exemptions on creditors and consumers generally varies by exemption. It should be noted, however, that there are no mandatory costs imposed on creditors as a result of any of the proposed exemptions. Creditors are not required to utilize an exemption. Therefore, any associated burdens are also optional. Moreover, voluntary compliance costs should be minimal: Creditors complying with the 2013 Interagency Appraisals

[85] The NMLS is a national registry of non-depository financial institutions including mortgage loan originators. Portions of the registration information are public. The Mortgage Call Report data are reported at the institution level and include information on the number and dollar amount of loans originated, and the number and dollar amount of loans brokered. The Bureau noted in its summer 2012 mortgage proposals that it sought to obtain additional data to supplement its consideration of the rulemakings, including additional data from the NMLS and the NMLS Mortgage Call Report, loan file extracts from various lenders, and data from the pilot phases of the National Mortgage Database. Each of these data sources was not necessarily relevant to each of the rulemakings. The Bureau used the additional data from NMLS and NMLS Mortgage Call Report data to better corroborate its estimate the contours of the non-depository segment of the mortgage market. The Bureau has received loan file extracts from three lenders, but at this point, the data from one lender is not usable and the data from the other two is not sufficiently standardized nor representative to inform consideration of the Final Rule or this supplemental proposal. Additionally, the Bureau has thus far not yet received data from the National Mortgage Database pilot phases.

[86] DataQuick is a database of property characteristics on more than 120 million properties and 250 million property transactions.

[87] This exemption implemented the statute, which excluded qualified mortgages from the scope of the HPML appraisal requirements. 15 U.S.C. 1639h(f)(1). The Bureau notes, however, that in order for qualified mortgages to be eligible for the qualified residential mortgage (QRM) exemption from Dodd-Frank Act risk retention requirements, a USPAP appraisal would be required under rules proposed under other provisions of the Dodd-Frank Act. *See* Proposed Credit Retention Rule, 76 FR 24090, 24125 (April 29, 2011) (QRM Proposal ''proposing that a QRM be supported by a written appraisal that conforms to generally accepted appraisal standards, as evidenced by [USPAP]'' and other specified laws).

[88] In the absence of data indicating otherwise, the Bureau believes few if any streamlined refinance HPMLs would fail to meet qualified mortgage definitions by virtue of having points and fees in excess of three percent. Indeed, points and fees on streamlined refinances may be lower than other mortgage loans because of the reduced complexity in refinance transactions generally and the further reduced complexity of the streamlined origination process. In addition, for HPMLs secured by existing manufactured homes, the Bureau believes that the points and fees threshold for qualified mortgages would be less likely to be exceeded, insofar as these transactions are less likely to include loan originator compensation to dealers or their employees, whose business focuses more on new manufactured homes. (In any event, the Bureau also has proposed comment 32(b)(1)(ii)–5 to the 2013 ATR Final Rule to clarify that the sales price for manufactured homes does not include points and fees, and that payments of the sales commission to dealer employees also does not count as points and fees. *See* Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z) (proposed rule issued June 24, 2013), *available at http://files.consumerfinance.gov/f/201306_cfpb_proposed-modifications_mortgage-rules.pdf*. Finally, for smaller dollar closed-end dwelling-secured transactions, such as home equity loans up to $25,000, the Bureau has not identified data indicating that in the current market a significant number of these transactions have points and fees at the elevated levels for smaller loans in the 2013 ATR Final Rule. *See* § 1026.43(e)(3)(i)(C)–(E) (setting points and fees caps of eight percent for loans up to $12,500, $1,000 for loans from $12,500 up to $20,000, and five percent for loans from $20,000 up to $60,000).

[89] Focusing on whether the loan is insured or guaranteed, instead of eligible for insurance or guarantee, is conservative; the qualified mortgage exemption, at § 1026.43(e)(4), is defined in terms of eligibility.

Final Rule should be able to incorporate these exemptions into their underwriting process and personnel training with little additional cost.

2. Streamlined Refinances

The Agencies are proposing to exempt first-lien refinances that satisfy certain restrictions, many of which are commonly referred to as ''streamlined refinances.'' As discussed in the preceding section-by-section analysis, the Agencies are seeking comment on whether this proposed exemption should be subject to the condition that the creditor obtain an estimate of the value of the dwelling that will secure the refinancing and provide a copy of it to the consumer before consummation.

Background on Possible Condition on Proposed Exemption

Before discussing the proposed exemption in detail, it would be useful to first discuss the request for comment on conditioning the exemption on obtaining and providing a home value estimate to the consumer. This condition would apply to any loan that is otherwise eligible for the streamlined refinance exemption and that is not exempt under another provision of the Final Rule, such as the exemption for qualified mortgages, § 1026.35(c)(2)(i). Other types of valuations [90] that are offered in the marketplace typically include exterior appraisals, automated valuation model (AVM) reports, and broker-price opinions, among others. Alternative forms of valuation might not be as accurate as a USPAP- and FIRREA-compliant appraisal with an interior inspection; for example, they might implicitly assume an interior of average quality. Nonetheless, the Bureau believes a valuation provides the consumer with more information with which to make decisions than no valuation. Obviously, more accurate valuations (including valuations that are more current and based upon more rigorous, validated methods) provide more meaningful information than less accurate valuations. However, the cost of providing this information also must be considered, particularly in a streamlined refinance transaction because the consumer already owns the home and thus the appraisal would not inform a home purchase decision. The Bureau estimates the cost of a full appraisal with an interior inspection to be approximately $350 in addition to the time required to obtain the appraisal. For an alternative valuation method such as an AVM, the Bureau believes the cost may be as little as $5 and the time to obtain it may be only a few minutes.[91] The Bureau seeks comment on the costs, benefits, and impacts of conditioning the proposed exemption on the requirement that the creditor obtain an estimate of value and provide a copy of it to the consumer. The Bureau also seeks data on the accuracy of AVMs relative to full interior appraisals.

Discussion of Proposed Exemption

In practice, the refinances eligible for the proposed exemption would fall into two categories. The first category is refinances held in the portfolios of private creditors or sold to a private investor that satisfy all of the criteria for an exempt refinance under proposed § 1026.35(c)(2)(vii). The second category is refinances under GSE, FHA, USDA, or VA programs that satisfy the proposed criteria. The Bureau believes that virtually all transactions in the second category (under any public refinance programs) already would be exempted from this rule by virtue of being qualified mortgages under § 1043(e)(4). As discussed in the section-by-section analysis above, however, under the 2013 ATR Final Rule streamlined refinances under GSE programs originated in or after 2021 would not be qualified mortgages if they do not meet all of the general criteria for a qualified mortgage in the 2013 ATR Final Rule, including debt-to-income limits. *See* § 1026.43(e)(2).

Private Refinances

Refinances originated by private creditors that are not eligible under public programs still could satisfy the criteria in the proposed exemption. The Bureau believes that the condition in the proposed exemption of no cash-out except for closing costs would be satisfied in most private HPML refinances. In the current market, cash-out refinances have become less common.[92] In addition, when the consumer's existing loan is a ''non-standard'' loan, creditors may seek to qualify for the exemption from the ability-to-repay rules of the 2013 ATR Final Rule for the refinance of a ''non-standard'' mortgage into a ''standard'' mortgage. To qualify, the ''standard'' refinance must involve no cash out to the consumer: the proceeds may be used only to pay off the existing principal obligation and for closing costs. *See* § 1026.43(d)(1)(ii)(E). Thus, the Bureau believes that the most reasonable assumption is that lenders are unlikely to originate private cash-out HPML refinance mortgages that are not qualified mortgages. Moreover, the proposed exemption from this rule would reduce costs of the loan if an appraisal is not otherwise required, and therefore create an additional economic incentive to refinance without taking cash out. From the 2013 Interagency Appraisals Final Rule, Section 1022(b) Analysis, 78 FR 10419, the Bureau estimates that roughly 12,000 refinances were covered loans.[93] Because the Bureau does not estimate that non-qualified mortgages will be originated under public programs, the Bureau estimates that these 12,000 covered loans would be private refinances. Some of these private refinances would be ineligible for the proposed exemption due to having a different holder/guarantor, having negative amortization or interest-only features, or having balloon payments. The Bureau seeks data from commenters on how many of these private refinance loans would have these features. However, the Bureau believes that the vast majority of private refinance loans will not have these features. Accordingly, the Bureau believes this is a reasonable estimate of the number of refinance loans that would be covered by the proposed exemption.

[90] In this analysis under Section 1022(b) of the Dodd-Frank Act, the Bureau uses the term ''valuation'' generically to refer to any estimate of value of the dwelling.

[91] Based upon research in anticipation of this proposal, the Bureau has not identified easily-accessible public information on current pricing practices of AVM providers. The Bureau notes, however, that one GSE charges a flat fee of $20 per loan for a report that includes an estimated home value. This report is primarily a risk assessment tool to assist loan originators (*http://www.loanprospector.com/about/#howmuch*). It provides many features, including a no-fee home estimate (*http://www.freddiemac.com/hve/faq.html#3*). Given that the home estimate is not listed on the report's Web page (*http://www.loanprospector.com/about/#howmuch*), the Bureau assumes that the value of the estimate itself is relatively minor, in particular far less than $20 per loan. Even if the estimate itself is not available for a much lower price than $20, the price introduces competitive pressure that constrains other AVM providers from charging more for their services.

[92] *See* Fannie Mae Annual Report 2011, at 156, and Fannie Mae Annual Report 2012, at 127 (reporting that ''cash out'' refinances have been decreasing from 2009–2012, including for the conventional business, from 27% to 20% to 17% to 14% in these four years, just as other refinances have been increasing). *See also* American Housing Survey (2011), Table C–14b–OO (approximately 14% of homes with a refinance had obtained the refinance for purposes of receiving cash), *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C14BOO&prodType=table.*

[93] The actual number may be lower, however, to the extent any of these refinances do not meet the additional restriction in the proposed exemption—that the owner or guarantor of the new refinance loan is the same as the owner or guarantor of the existing loan being refinanced.

As indicated in the section-by-section analysis above, the Agencies are seeking data from commenters on the extent to which creditors obtain appraisals or other valuations in no-cash out portfolio refinances that are not originated under public programs.

The Bureau also believes that conditioning the exemption on obtaining a valuation and providing a copy of it to the consumer would be consistent with existing industry valuation practices for private refinances. The Bureau believes that creditors that do not obtain an appraisal obtain an alternative valuation. For example, private streamlined refinance programs administered by banks, thrifts, or credit unions are subject to FIRREA regulations and the Interagency Appraisal and Evaluation Guidelines. Under these standards, the creditors must obtain ''evaluations,'' which can include (but not consist solely of) estimates from AVMs, to support streamlined refinances that are kept on their portfolio and are not backed by public programs.[94] Because the Bureau understands that an ''evaluation'' must include an estimate of the property value, 75 FR 77450, 77461 (Dec. 10, 2010), creditors in these programs also would be required already to provide copies of these estimates to consumers under the Bureau's 2013 ECOA Valuations Rule, 12 CFR 1002.14(a)(1).

Public Program Refinances Including Streamlined Refinance Programs

As mentioned above, in the short and medium term, the Bureau believes that no public program refinance loans will be covered loans because they will be exempt as qualified mortgages. Accordingly, the proposed exemption would only affect some of the HPML refinances under GSE programs starting in 2021 (and some HPML refinances under HUD, USDA, and VA programs at that time if those agencies have not already adopted their own qualified mortgage rules)—an impact that is too remote to quantify at this time as the state of the GSEs, the public refinance programs, and the market environment at that time is not possible to predict.

Below, the Bureau analyzes the impact of the proposed exemption for certain refinances on covered persons and consumers.

a. Covered Persons

Any creditors originating refinances that are currently covered loans and which meet the criteria of the proposed exemption could choose to make use of the proposed exemption, which would reduce burden. In particular, these loans would not be subject to the estimated per-loan costs described in the 2013 Interagency Appraisals Final Rule.[95] For these transactions, these creditors would not be required to spend time reviewing the appraisals conducted for conformity to this rule, and providing copies of those appraisals to applicants.

The Bureau is requesting that commenters provide data on the rate at which appraisals and other valuations are conducted for private refinances. If the Bureau is able to obtain this additional information, it can better estimate the burden that would be reduced if the proposed exemption is finalized for private refinances.

In addition, the Bureau believes that conditioning the proposed exemption on the creditor obtaining and providing the consumer with an alternative valuation would not significantly decrease the amount of burden relieved by the exemption. Such alternative valuations cost significantly less than full interior appraisals and, in many cases, already are required by regulations or are otherwise obtained under current industry practice and therefore subject to disclosure to the consumer under the Bureau's 2013 ECOA Valuations Rule. According to the data that was provided to the Agencies by the FHFA, in 2012, all GSE streamlined refinance transactions have either an automated valuation estimate (more than 80%) or an appraisal performed (less than 20%). The Bureau also understands that the Agencies' FIRREA regulations also generally mandate alternative valuation methods for streamlined refinances where appraisals are not used and the transaction is not sold to, guaranteed by, or insured by a government agency or GSE.[96] A condition on the proposed exemption still could allow flexibility for creditors to determine the type of alternative valuation to provide; and just as Section 129H(d) of TILA notes that the appraisal required under the Dodd-Frank Act for covered HPMLs is for the creditor's sole use, a condition would not necessarily prevent a creditor from informing the consumer that he or she uses the alternative valuation ''at their own risk.'' As noted in the section-by-section analysis above, the Agencies seek comment on the extent to which creditors originating loans eligible for the proposed exemption obtain valuations currently. In any case, even if a condition were adopted, use of the proposed exemption would be voluntary.

b. Consumers

For those consumers whose HPML streamlined refinance would not have been a qualified mortgage (such as those HPMLs not associated with public programs and not otherwise meeting the general definition of qualified mortgage), the proposed exemption would ensure the rule—including its appraisal requirement—does not apply to their loan. This can result in several types of cost savings to consumers of these loans. First, as discussed in the in the 2013 Interagency Appraisals Final Rule, the Bureau believes the cost of appraisals—$350 on average—is generally passed on to consumers.[97] In addition, streamlined refinance transactions may close more quickly without an appraisal, and recent data indicates that these refinances in the current rate environment have interest rates on average nearly two percent lower than the loan being refinanced.[98] As a result, those consumers described above typically would save money because the transaction will not have to wait to close until an appraisal is conducted and reviewed: for example, if the consumer can close a refinance transaction two weeks earlier because a full appraisal is not performed, that will provide the consumer with an additional two weeks of payments at the reduced interest rate of the refinance loan. The exemption therefore may result in some reduced interest rate expenses for consumers seeking private streamlined refinance HPMLs that are not qualified mortgages and which would not have otherwise had an appraisal. The Bureau believes that the number of consumers affected by this benefit annually is quite small: Of the 12,000 estimated private refinances eligible for the exemption discussed above, only the fraction that would not otherwise have had an appraisal would benefit.[99]

[94] *See* OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b) (FDIC); NCUA: 12 CFR 722.3(d); *see also* OCC, Board, FDIC, NCUA, *Interagency Appraisal and Evaluation Guidelines,* 75 FR 77450, 77461 (Dec. 10, 2010) (Parts XII–XIV).

[95] *See* Section 1022(b) analysis, 78 FR 10418–21.

[96] *See* OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b) (FDIC); NCUA: 12 CFR 722.3(d).

[97] Section 1022(b) Analysis, 78 FR 10420.

[98] *See* Freddie Mac Press Release, ''84 Percent of Refinancing Homeowners Maintain or Reduce Mortgage Debt in Fourth Quarter'' (Feb. 4, 2013), *available at http://freddiemac.mwnewsroom.com/press-releases/84-percent-of-refinancing-homeowners-maintain-or-r-pinksheets-fmcc-981668. See also* Fannie Mae 2012 Annual Report at 11 (reporting $237 average decrease in monthly payment under Fannie Mae Refi Plus® program in fourth quarter 2012).

[99] The Bureau does not have information indicating that there a significant number of other streamlined refinance HPMLs that are not otherwise qualified mortgages.

The Bureau is uncertain, however, whether the proposed exemption would make it more likely that the transaction is consummated for these consumers. As noted above, when an appraisal is not conducted, an evaluation is generally required under FIRREA regulations for depository institutions. The Bureau does not believe, and had not identified any data indicating, that an appraisal is any more or less likely than an evaluation to cause a transaction to fail (for example because the valuation exceeds the price, or causes the loan to exceed any LTV limits). Accordingly, the Bureau requests data from commenters on whether the exemption would increase the likelihood of consummation for refinances eligible for the exemption. If the exemption made consummation of the transaction more likely for these consumers, the Bureau believes this would provide a benefit to these consumers whenever the refinance transaction is beneficial for the consumer.

As discussed in the Bureau's analysis under Section 1022 in the 2013 Interagency Appraisals Final Rule, in general, consumers who are borrowing HPMLs that are covered loans and who would not otherwise have appraisals conducted for the transaction could benefit from an appraisal being conducted.[100] Benefits of appraisals in residential mortgage transactions generally can range from having a valuation that better accounts for the interior and exterior of their particular property, to having information that can be used to evaluate insurance coverage levels and real estate tax valuations, to being better informed as to the value of their property before making a final decision to enter into a new transaction, among others. Consumers who are better informed before consummating a streamlined refinance loan would be better able to assess their alternatives, which can include the following, among others:

- Remaining in the home with the existing loan;
- Refinancing through a different program at a better rate or other improved terms (such as not requiring mortgage insurance);[101]
- Seeking a modification;
- Selling the home; or
- Negotiating with the servicer to provide the deed-in-lieu without defaulting, among others.

Of course, in a refinance transaction, a consumer having better home value information through an appraisal will not affect the consumer's decision of whether to buy the home in the first place. Nonetheless, when considering a refinance loan, the appraisal can inform the consumer with respect to options to pursue such as those listed above, which could be more beneficial or appropriate for the consumer than refinancing the loan.[102]

For example, if the appraisal establishes that the value of the dwelling is higher than otherwise estimated, the consumer's cost of credit could decrease and the consumer might even be able to borrow at rates below HPML thresholds. On the other hand, if an appraisal establishes that the value of the dwelling is lower than otherwise estimated, the consumer might be better positioned to consider alternative options discussed above. The new appraisal also may alert the consumer, in some cases, to flaws or even to an inflated valuation in the original appraisal used to purchase the home.

The cost to consumers of the proposed exemption therefore would be the loss of these potential benefits for the number of covered loans that would be newly-exempted by the proposed exemption and which would not have otherwise included an appraisal. As noted above, the Bureau estimates this would be very few transactions.

Nonetheless, to mitigate the loss of potential benefits to consumers arising from not having an appraisal in an exempt refinance transaction, the Agencies are seeking comment on whether to condition the proposed exemption on the creditor obtaining and providing to the consumer an alternative valuation as a condition of the loan being eligible for the proposed streamlined refinance exemption. The Bureau believes that, in general, a consumer's receipt of a home value estimate other than an appraisal can mitigate the information disadvantage when an appraisal is not obtained. More specifically, the Bureau believes that the cost of getting an AVM estimate is minimal and that it is already done as a standard business practice in many cases. Also, the Bureau believes that the cost of a broker price opinion (BPO) or any other reasonable valuation method that would be permitted under applicable law is well below the cost of a USPAP-compliant appraisal. The Bureau seeks comment on these assumptions.

As discussed in the section-by-section analysis above, the Agencies also are requesting comment on whether consumers would benefit from a condition on the exemption relating to the amount of transaction costs that can be charged. One of the principal reasons why an appraisal may be less important to a consumer in a streamlined refinance transaction is that, except for closing costs that may be financed by the loan, the consumer is not losing equity. This rationale appears to be strongest if the exemption cannot be used in refinance transactions that also finance high transaction costs, especially given that consumers can engage in serial refinancing. Serial refinancing at high points and fees that are financed can reduce a consumer's equity as much if not more than a cash-out refinance.

3. Smaller Dollar Loans

As discussed in the section-by-section analysis above, the Agencies are proposing to exempt HPMLs secured by new loans with principal amounts of $25,000 or less (indexed to inflation) from the HPML appraisal rules, while seeking comment on whether the threshold for the exemption should be different. The Agencies also are seeking comment on whether to condition this exemption on the creditor providing the consumer with a copy of a valuation, as described in more detail in the section-by-section analysis above. The Bureau estimates the number of transactions potentially eligible for this exemption as follows: HMDA data for 2011 indicates there were approximately 25,000 HPMLs at or below $25,000 that were not insured or guaranteed by government agencies or purchased by the GSEs (so, not qualified mortgages on that basis). Of these, the Bureau estimates that 4,800 were HPMLs with debt-to-income above 43 percent (so they would not meet the more general definition of a qualified mortgage). Accordingly, the Bureau estimates that approximately 4,800 covered loans are originated annually in an amount up to $25,000.[103] Of these estimated 4,800 covered loans at or below $25,000, the Bureau estimates that the types most

[100] Section 1022(b) Analysis, 78 FR 10417–18.

[101] The proposed exemption already excludes loans with terms that are generally viewed as reducing consumer protection, such as negative amortization, interest-only, or balloons.

[102] Indeed, unlike in a home purchase transaction, in a streamlined refinance transaction (unless the originating creditor on the new loan is the same as on the existing loan), the consumer has an absolute three-day right of rescission under Regulation Z, § 1026.23. This right underscores the need for consumers to be informed prior to its expiration.

[103] As discussed above, the Bureau does not believe that a significant number of smaller dollar HPML would exceed the points and fees threshold in the 2013 ATR Final Rule, but is requesting data from commenters on this issue. If a significant number of smaller dollar HPMLs did exceed that threshold, then the number of loans eligible for the proposed exemption would increase.

affected by this proposed exemption, in that they would be unlikely to include appraisals if the exemption applies, would be home improvement loans, subordinate lien transactions not for home improvement purposes, and transactions secured by manufactured homes. The HPML appraisal rules could lead to significant changes in valuation methods used for these types of loans. For example, current practice includes appraisals for only an estimated five percent of subordinate lien transactions as explained in the 2013 Interagency Appraisals Final Rule.[104]

a. Covered Persons

Creditors originating smaller dollar covered loans would experience some reduced burden as a result of the proposed exemption for HPMLs of $25,000 or less. If the proposed exemption were adopted, these loans would not be subject to the estimated per-loan costs described in the 2013 Interagency Appraisals Finale Rule.[105] For these transactions, creditors would not need to spend time or resources on complying with the requirements in the HPML appraisal rules: Checking for applicability of the second appraisal requirement on a flipped property (in a purchase transaction) and paying for that appraisal when the requirement applies, obtaining and reviewing the appraisals conducted for conformity to this rule, providing a copy of the required disclosure, and providing copies of these appraisals to applicants. Creditors therefore may find it relatively easier to originate HPMLs that are eligible for this exemption, for example if they are not qualified mortgages.

Even if the proposed exemption reduces the number of interior inspection appraisals conducted for smaller dollar HPMLs, the overall impact of this proposed exemption on creditors is likely minimal for most creditors given that only 4,800 such loans were made among 12,000 creditors.

Finally, the Bureau does not estimate that the burden reduced by the exemption would be significantly lowered by conditioning the exemption on the creditor providing the consumer a copy of a valuation that the creditor relied on in extending credit. As noted above, for depository institutions and credit unions, FIRREA regulations generally require evaluations when an appraisal is not obtained because the transaction amount is below $250,000; thus, the Bureau estimates that most transactions of $25,000 involve a home estimate of some type. In first lien transactions, providing copies of valuations is already required under the 2013 ECOA Valuations Rule, so the condition would impose no added burden. *See* 12 CFR 1002.14(a)(1). For subordinate lien transactions, the cost of such a condition would not be more than the small cost of copying and mailing a valuation, or scanning and transmitting it electronically.[106] The Bureau seeks data from commenters on the extent to which depository institutions, credit unions, and non-depository institutions obtain appraisals or other types of valuations in these transactions.

b. Consumers

For consumers who seek to borrow smaller dollar loans, such as home improvement loans and other subordinate lien transactions, and who are not able to obtain a qualified mortgage, the proposed exemption for smaller dollar HPMLs (at or less than $25,000) would provide some benefits. Industry practice prior to implementation of the 2013 Final Rule suggests that appraisals are not otherwise frequently done for home improvement and subordinate lien transactions.[107] Thus, by not requiring an appraisal, the cost of which typically would be passed on to consumers, the proposed exemption could facilitate access to smaller dollar HPMLs that are not otherwise exempt from the HPML appraisal rules. Without an exemption, some consumers may try to avoid the cost of an appraisal by either not entering into a smaller dollar HPML (unless it is otherwise exempt from the rules, such as a qualified mortgage) or pursuing an alternative source of credit that is not subject to the rules, such as an open-end home equity line of credit.

Under the proposed exemption, consumers in smaller dollar HPMLs (that are not otherwise exempt) would lose the benefits of the Final Rule, however. As discussed in the Bureau's analysis under Section 1022 in the Final Rule, in general, consumers who are borrowing HPMLs could benefit from an appraisal. For HPMLs that are not purchase transactions, the general benefits discussed above may be relatively less valuable to the consumer in some cases, given the lower size of the loan and also the likelihood that the consumer already would have had an appraisal in the original purchase transaction. Nonetheless, having an appraisal could provide a particularly significant benefit to those consumers who are informed by the appraisal that they have significantly less equity in their home than they realize. A smaller dollar mortgage could push these consumers even further into negative equity, without the consumers realizing it. This effect is even more pronounced for consumers whose homes have lower value. All else equal, a $25,000 loan will pose greater risk to a consumer whose home is worth $20,000, than to a consumer whose house is worth $200,000. According to a periodic government survey, as of 2011 more than 2.75 million homes were worth less than $20,000, including a greater proportion of homes whose owners were below the poverty level or elderly.[108] In addition, according to a recent study, as of the end of 2012, 10.4 million properties with a residential mortgage were in ''negative equity'' and an additional 11.3 million had less than 20 percent equity.[109] In addition, some recent studies suggest that subordinate liens can increase the risk of default, as they reduce the amount of equity in the home.[110] Moreover, based upon HMDA

[104] *See* 78 FR 10419.

[105] *See* Section 1022(b) analysis, 78 FR 10418–21.

[106] Of course, this cost also would not be more than the cost of complying with the Final Rule without the proposed exemption, as the Final Rule requires providing a copy of an appraisal to the consumer in covered transactions. *See* § 1026.35(c)(6).

[107] 78 FR 10419.

[108] See 2011 American Housing Survey, ''Value, Purchase Price, and Source of Down Payment—Owner Occupied Units (NATIONAL),'' C–13–OO, *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C13OO&prodType=table.* In addition, in seven metropolitan statistical areas, as of the end 2012 the median home value was less than $100,000. See National Association of Realtors® Median Sales Price of Existing Single-Family Homes for Metropolitan Statistical Areas Q4 2012, *available at http://www.realtor.org/sites/default/files/reports/2013/embargoes/hai-metro-2-11-asdlp/metro-home-prices-q4-2012-single-family-2013-02-11.pdf.*

[109] Core Logic Press Release and Negative Equity Report Q4 2012 (Mar. 19, 2013), *available at http://www.corelogic.com.*

[110] *See* Steven Laufer, ''Equity Extraction and Mortgage Default,'' Financial and Economics Discussion Series Federal Reserve Board Division of Research & Statistics and Monetary Affairs (2013–30), *available at http://www.federalreserve.gov/pubs/feds/2013/201330/201330pap.pdf.* The study concludes, at 2, that ''through cash-out refinances, second mortgages and home equity lines of credit, . . . homeowners [in the sample studied] had extracted much of the equity created by the rising value of their homes. As a result, their loan-to-value (LTV) ratios were on average more than 50 percentage points higher than they would have been without this additional borrowing and the majority had mortgage balances that exceeded the value of their homes.''). *See also* Michael LaCour-Little, California State University-Fullerton, Eric Rosenblatt and Vincent Yao, Fannie Mae, ''A Close Look at Recent Southern California Foreclosures,'' (May 23, 2009) at 17 (finding that, based upon a sample of homes, the existence of a subordinate lien is correlated more strongly with default than whether the home was purchased in 2005–06 period), *available at http://www.areuea.org/conferences/papers/download.phtml?id=2133.*

data, more than half of subordinate liens originated in 2011 were at or below $25,000.

Therefore, smaller dollar loans of $25,000 or less could still pose significant risks to consumers who own these lower-value homes or other homes that are highly leveraged, consuming most or all of any remaining equity. In some of those cases, knowledge of the current value of the home could prevent consumers from unwittingly using up too much equity in their homes or going underwater or going further underwater, which could make it more difficult for them to sell or refinance in the future. The Bureau therefore seeks comment on the extent to which smaller dollar loans of $25,000 or less are nonetheless higher LTV loans, for example resulting in combined loan-to-value of 90 percent or more.[111] In addition, the section-by-section analysis above seeks comment on whether the exemption should include a condition—such as providing the consumer with a copy of a valuation relied upon by the creditor in the transaction;[112] the purpose of the condition would be to prevent consumers from entering into loans that unwittingly use up most or all of the equity in their homes and which also could impede their ability to refinance or sell their home in the future.

In summary, the cost of the proposed exemption to consumers would be the loss of benefits generally associated with appraisals for the number of covered loans that would be newly-exempted by the proposed exemption for smaller dollar loans—that is, for an estimated 4,800 loans annually, assuming that none of these loans currently get full interior appraisals. This cost could be mitigated by conditioning the exemption in a manner that reduces the risk the consumer would unwitting borrow an amount that consumes available equity in the home.

4. Proposed Approach to Transactions Secured by Manufactured Homes

As discussed in the section-by-section analysis above, the market for manufactured home loans can be classified according to collateral type: New home only, new home and land, existing home only, and existing home and land. The proposal seeks comment on whether changes are warranted to the exemption adopted 2013 Interagency Appraisals Final Rules regarding transactions secured by new homes. Such changes may include narrowing the exemption to apply only to transactions secured by a new manufactured home but not land. The proposal also seeks comment on conditioning the exemption for transactions secured by new manufactured homes on obtaining and providing the consumer with a home value estimate other than a USPAP- and FIRREA-compliant appraisal with an interior inspection prior to consummation. (The types of estimates that might satisfy such a condition are discussed in the section-by-section analysis above.) As also discussed in the section-by-section analysis above, the Agencies are proposing to exempt HPMLs secured by existing manufactured homes, and are seeking comment on conditioning this proposed exemption on obtaining and providing a home value estimate to the consumer. The Agencies' proposed exemption for existing manufactured homes would not apply when land provides security; as indicated in the section-by-section analysis above, the Agencies believe that USPAP-compliant appraisals are feasible and commonly performed for these transactions.

To assess the impact of the proposal's provisions concerning manufactured housing, it is necessary to estimate the volume of transactions potentially affected, by collateral type. The Bureau's analysis of 2011 HMDA data, matched with the historic loan performance (HLP) data from the FHFA, indicates that roughly eight percent of all manufactured home purchases were covered loans: HPMLs that were not qualified mortgages because the debt-to-income ratio exceeded 43 percent and the loan was not insured, guaranteed, or purchased by a federal government agency or GSE.[113] Because HMDA data does not differentiate between transactions with each of the relevant collateral types, including new versus used, the Bureau is applying this ratio to each of the transaction types to derive the estimated number of covered loans below. Manufactured home loans of $25,000 or less also would be exempt under the proposed smaller dollar exemption discussed above. For purposes of this discussion, however, the Bureau analyzes all manufactured home loans regardless of amount.

*Transactions financing the purchase of a new manufactured home.* Census data reports shipment of approximately 51,000 new manufactured homes in 2011, with approximately 17 percent titled as real estate.[114] For purposes of this analysis, the Bureau assumes that all of these homes were used as principal dwellings for consumers and that all of these purchases were financed. In addition, the Bureau believes that the proportion of homes titled as real estate is a reasonable estimate of the number of new manufactured home purchase transactions that are secured in part by land.[115] The Bureau therefore estimates that based upon 2011 data approximately 42,400 new manufactured home sales were financed by chattel loans (which can include homes located on leased land such as in trailer parks and other land-lease communities) and 8,600 transactions were secured by new manufactured homes and land. Applying a factor of approximately eight percent, the Bureau estimates that, of these, almost 3,400 were chattel HPMLs that were not qualified mortgages, and almost 700 were land and home-secured HPMLs that were not qualified mortgages.[116]

*Transactions financing the purchase of an existing manufactured home.* Census data also reports an estimated 369,000 move-ins to owner-occupied manufactured homes in 2011.[117] As noted above, approximately 51,000 new manufactured homes were shipped. Therefore, the Bureau estimates that approximately 318,000 existing manufactured homes were purchased in 2011. Again, the Bureau assumes that all of these purchases were financed. Further, based upon a review of nearly

[111] *See, e.g.,* GAO Report GAO/GCD–98–169, High Loan-to-Value Lending—Information on Loans Exceeding Home Value (Aug. 1998), *available at http://www.gao.gov/assets/230/226291.pdf* at 2 (''data provided by a lender responsible for about one-third of HLTV lending showed that, in 1997, HLTV loans averaged about $30,000. The data also showed that the average contract interest rate was between 13 and 14 percent, with an average loan term of 25 years. The average combined indebtedness of the first mortgage and the HLTV loan represented about 110 percent of the borrower's property value, although in some cases the combined loans reached or exceeded 125 percent of value.'').

[112] The consumer would not otherwise receive a copy of valuations for a subordinate lien transaction because the requirement to provide the consumer with a copy of valuations obtained in connection with an application for credit under Regulation B, 12 CFR 1002.14(a), does not apply to subordinate-lien loans.

[114] See Cost & Size Comparisons: New Manufactured Homes, *available at http://www.census.gov/construction/mhs/pdf/sitebuiltvsmh.pdf.*

[115] Only a few states provide for treating manufactured homes sited on leased land as real property.

[116] This estimate would increase to the extent any other manufactured home purchase HPMLs would not be qualified mortgages solely because they exceed caps on points and fees in the Bureau's ATR Rule. As noted in the footnote at the outset of the Section 1022 analysis above, however, the Bureau believes this is less likely based upon existing and potentially forthcoming clarifications on this issue.

[117] The Census report refers to these homes as ''manufactured/mobile homes'', but the Census definitions note that all of these homes are ''HUD Code homes'', which is the fundamental characteristic of what are currently referred to as manufactured homes.

two decades of Census data on shipments of new manufactured homes, the Bureau estimates that approximately one third of the existing manufactured homes are titled as real property. Therefore, the Bureau estimates that approximately 105,000 purchases of existing manufactured homes also involved the acquisition of land which provided security for the purchase loan,[118] while approximately 213,000 purchases were secured only by the manufactured home (chattel loans). Applying the same eight percent factor for other purchases discussed above, of these, approximately 17,000 were chattel HPMLs that were not qualified mortgages, and approximately 8,400 were land- and home-secured HPMLs that were not qualified mortgages. As with new homes, this estimate would increase to the extent that any other manufactured home purchase HPMLs would not be qualified mortgages solely because they exceed caps on points and fees in the Bureau's 2013 ATR Rule.

*Refinances and home improvement loans on existing manufactured homes.* The Bureau's analysis of 2011 HMDA data, matched with the HLP data from the FHFA, indicates that, approximately, for every four covered purchase manufactured housing loans, there is one refinance or home improvement loan. Applying this factor of 4:1, approximately 4,300 (17,000/4) were chattel HPMLs that were not qualified mortgages, and approximately 2,100 (8,400/4) were land and home-secured HPMLs that were not qualified mortgages.[119]

a. Covered Persons

Transactions Secured by New Manufactured Homes

The proposal seeks comment on narrowing the exemption adopted in the Final Rule to cover only transactions secured solely by a new manufactured home but not land. The proposal also seeks comment on conditioning the exemption for those transactions on providing to the consumer an estimate of the replacement cost of the new manufactured home, including any appropriate adjustments, using a third-party published cost service such as the NADAGuides.com Value Report[120] or other methods discussed in more detail in the section-by-section analysis. The proposal also seeks comment on maintaining the exemption for transactions secured by both new manufactured homes and land but conditioning that exemption on use of an alternative valuation method.

If the exemption were narrowed to no longer cover HPMLs secured by both a new manufactured home and land, the creditor would need to obtain USPAP- and FIRREA-compliant appraisal with an interior inspection in these transactions. The Bureau believes the cost of this appraisal is not likely to be significantly higher than the cost of current valuation practices in these transactions. As discussed in the section-by-section analysis above, the Bureau understands that GSE, HUD Title II, USDA, and VA manufactured housing finance programs all require USPAP-compliant appraisals on standard GSE forms for transactions secured by manufactured homes and land, and that thousands of these transactions occur each year in these programs, some at HPML rates. Even if a creditor's appraisal does not meet the appraisal standards for these programs (for example, GSE requirements mandating a minimum number of manufactured homes be used as comparables), it still may comply with USPAP.[121] In addition, based upon further research, the Bureau has confirmed that USPAP appraisals of manufactured homes and land cost approximately the same on average as USPAP appraisals of other types of homes and land titled together as real property.[122] Moreover, information obtained in outreach and research from a large manufactured housing lender and a large bank indicate that it is common to obtain at least an appraisal of the land in these transactions. The Bureau believes that the cost of a USPAP-complaint appraisal of a vacant lot is unlikely to cost more than the average $350 cost for a USPAP-compliant appraisal of a home. Therefore, based upon available information, the Bureau does not believe that narrowing the exemption to exclude these transactions is likely to lead to significant new costs for creditors.

If the exemption were conditioned on obtaining an estimate of the value of the new manufactured home from a published cost service (such as a NADA Guide Valuation Report or a report from the Marshall & Swift Cost Estimator) and providing this to the consumer, the costs likely would be minimal. The Bureau has received information in outreach indicating that annual subscriptions to the NADA Guide may cost between $100 and $200 for an unlimited number of value reports, while similar unlimited-use subscriptions to the Marshall & Swift service may cost approximately $1,200.[123] In addition, for transactions secured by both a new manufactured home and land, if this condition also required obtaining an appraisal of the land, costs are unlikely to increase in many of these transactions because information obtained in outreach suggests appraisals of the land already are a common practice in these transactions. The Bureau seeks comment on the frequency with which the type of valuation information is described in this paragraph is obtained in a new manufactured home transaction.

Finally, the proposal requests comment on whether any condition on the exemption also should call for the consumer to receive a copy of the valuation obtained before consummation. The Bureau does not believe this aspect of any condition on an exemption would add significant

[118] According to data provided by HUD for the fiscal year 2011, approximately 5,900 existing manufactured homes were purchased together with land under the FHA Title II program.

[119] These estimates would increase to the extent any other manufactured home purchase HPMLs would not be qualified mortgages solely because they exceed caps on points and fees in the Bureau's ATR Rule. As noted in the footnote at the outset of the Section 1022 analysis above, however, the Bureau believes this is less likely based proposed clarifications on this issue.

[120] A sample of this report, as noted in the section-by-section analysis, is available at *http://www.nadaguides.com/Manufactured-Homes/images/forms/MHOnlineSample.pdf.*

[121] Outreach to a large appraiser trade association indicates that between 1998 and 2007 nearly 10,000 individuals took their in-person or online seminars on appraising manufactured housing. The current version of these seminar materials, as well as outreach to state appraisal boards and related research, confirms that when necessary USPAP appraisals can use non-manufactured homes as comparables, making adjustments where needed. Therefore, the Bureau does not believe that appraiser availability and appraisal feasibility should affect its cost estimates here.

[122] For example, a survey in Texas—the state with the highest number of new manufactured home purchases—estimated that manufactured home appraisals cost approximately the same as single-family appraisals. *See* Texas A&M Univ. Real Estate Center, Univ. of Chicago, and Univ. of Houston, ''The Texas Appraisers and Appraisal Management Company Survey'' (Oct. 2012) at Table 2 (indicating that manufactured home appraisal costs cluster in the range of $351–400). In addition, in all nine Veterans Administration (VA) regions, VA appraiser fee schedules either do not separately break out the cost of manufactured home appraisals or provide for fees that are the same or lower than single-family appraisals.

[123] The average cost per-loan would therefore depending on the covered person's total level of lending activity. This cost also could increase to the extent the condition were to require the creditor to gather information necessary to make adjustments to the estimate from the published cost service, such as information on the land lease community or location, or information necessary to confirm the accuracy of the estimate from the published cost service, such as verifying by interior inspection that the proper model was sited. The extent of cost increase generated by these steps would depend on how often they are performed under existing practice.

burden. For first-lien transactions, delivery already would be required under Regulation B. *See* 12 CFR 1002.14(a)(1). For first- and subordinate-lien transactions, transmission generally would occur electronically and the cost would be minimal, as discussed in the Bureau's Section 1022(b) analysis in the Final Rule, 78 FR 10421.

Transactions Secured by Existing Manufactured Homes and Not Land

Creditors originating covered transactions secured by existing manufactured homes but not land that would be covered loans would experience some reduced burden as a result of the proposed exemption. In particular, these loans would not be subject to the estimated per-loan costs for a USPAP-complaint appraisal described in the 2013 Interagency Appraisals Final Rule.[124] For these transactions, creditors also would not need to spend time or resources on complying with the requirements in the HPML appraisal rules: checking for applicability of the second appraisal requirement on a flipped property (in a purchase transaction) and paying for that appraisal when the requirement applies, obtaining and reviewing the appraisals conducted for conformity to this rule, and providing disclosures and appraisal report copies to applicants.

USPAP-complaint appraisals may currently be conducted for transactions secured by existing manufactured homes but not land much less frequently than in connection with HPMLs overall. For example, the Bureau believes that USPAP is a set of standards typically followed by appraisers who are state-certified or licensed, and that state laws generally do not require certifications or licenses to appraise personal property. Therefore, even though USPAP includes standards for the appraisal of personal property, it is unclear that these standards are applied when individuals who are not state-licensed or state-certified value manufactured homes. Indeed, the Bureau believes that currently, in some transactions, lenders may simply prepare their own estimates of the value of the home without engaging a licensed or certified appraiser.

As a result, for purposes of analyzing the benefits of the proposed exemption, the Bureau assumes that very few, if any, transactions secured by existing manufactured homes but not land include USPAP-compliant appraisals.[125] While the Bureau believes that this is a reasonable assumption, it seeks nationally-representative data from commenters on valuation practices for these transactions. Meanwhile, the estimated burden reduced as a result of this proposed exemption would be the difference between the cost of a USPAP-complaint appraisal (which the Bureau assumes would be no more than the cost of an appraisal in a transaction secured by a site-built home, i.e., $350) and the cost of current valuation practices, such as obtaining an estimate from a published cost service or an evaluation in the case of financial institutions subject to FIRREA regulations. The Bureau believes that most lenders obtain estimates from published cost services in most if not all of these transactions, thus, the Bureau believes the burden reduction of the exemption would be approximately the same, regardless of whether the exemption were conditioned on the creditor obtaining an estimate based upon a published cost service.[126]

b. Consumers

The Bureau believes that consumers using HPMLs that are not qualified mortgages in an amount over $25,000 to purchase, improve, or refinance any manufactured home generally would benefit as much as any other type of homeowner from an estimate of the value of the home, including an appraisal, in the ways discussed in the Bureau's analysis under Section 1022 in the 2013 Interagency Appraisals Final Rule. In some cases, this benefit could be even greater; some recent data suggests the risk of negative equity may be as much as two times greater for owners of manufactured homes than for owners of other types of housing. One reason that negative equity may be a more acute risk in manufactured home transactions is that, according to research and outreach conducted by the Agencies, the loan amount can frequently exceed the collateral value from the outset of the transaction without the consumer's knowledge.[127] Obtaining an appraisal, or in some cases an alternative valuation, can be an important means of informing the consumer (and creditor) of the equity position in the home at the time of consummation and preventing transactions where the consumer unknowingly begins home ownership in a negative equity position. This type of knowledge can be critical to making informed choices about what type of transactions to pursue. If a consumer who purchases a manufactured home has negative equity at the time of purchase (or a consumer who seeks to make home improvements has negative equity at the time of the improvements), this decreases the chance that the consumer will build equity for a significant period of time and, according to outreach with a consumer advocacy group, the consumer is more likely to face impediments when seeking to refinance the HPML (which in the case of chattel lending is more often at a high rate than loans for other types of housing) or sell the home (which can be an important loss mitigation option if the HPML becomes difficult to afford).

Transactions Secured by New Manufactured Homes

For HPMLs secured by new manufactured homes, as discussed in the section-by-section analysis above, the Agencies are seeking comment on options for ensuring the consumer is informed of the value of the dwelling serving as collateral—whether via narrowing or placing conditions on the exemption. If the exemption were narrowed to exclude transactions secured by both manufactured homes and land so that an appraisal is required and consumers receive an appraisal report copy, then, as noted above, information obtained in outreach suggests that the cost of the valuation (which typically is passed on to the consumer) would not necessarily increase relative to existing practice. Similarly, valuation costs would not necessarily increase if the exemption were conditioned on following an alternative practice, such as adding the appraised value of the land alone to the estimated value of the home using a cost approach, because that practice appears to be common currently.

[124] *See* Section 1022(b) analysis, 78 FR 10418–21.

[125] Outreach to a provider of reports including comparables on existing manufactured homes in transactions secured by the home but not land indicates that they provide these reports to some of the lenders in the industry, and sell a total of approximately 3,000 reports at an average price of nearly $300. In addition, a large industry trade association also maintains a service that provides reports on comparables for manufactured homes located in larger lease communities.

[126] The creditor also may have some per-transaction costs for obtaining information about the condition of the home, including through an inspection, used to develop the cost estimate. The Bureau believes, however, that it is standard industry practice for lenders to obtain information about the condition of the home as part of their underwriting process, whether by hiring a third party property inspector or obtaining photos of the home from the borrower.

[127] *See* American Housing Survey, ''Mortgage Characteristics—Owner Occupied Units (NATIONAL),'' Table C14a–OO (2011) (as of 2011, 39% of manufactured homes had outstanding loan-to-value (LTV) ratios of over 100%, while the overall rate for owner-occupied housing was only 19%), *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C14AOO&prodType=table.*

Finally, for transactions secured by a new manufactured home but not land, published cost estimates are not likely to add a significant expense, as discussed above. Any of these options also would ensure that consumers are informed of an estimate of the value of the manufactured home. Otherwise, the manufacturer's invoice may be the only document relating to the value of the home, and the consumer would not have a right to receive a copy of that document under the ECOA Valuations Rule.[128]

Transactions Secured by Existing Manufactured Homes and Not Land

For consumers seeking refinances or home improvement loans secured by existing manufactured homes, seeking to sell existing manufactured homes, or seeking to buy existing manufactured homes without using land as collateral for the transaction, the proposed exemption for transactions secured by existing manufactured homes but not land could provide a significant benefit if it would be difficult for a significant number of these transactions to be consummated without an exemption. The Bureau does not have information indicating that USPAP-complaint appraisals by state-certified or state-licensed appraisers for these transactions are common industry practice. In the section-by-section analysis above, the Agencies also have requested comment on how often state-certified or state-licensed appraisers are available to service these transactions. If such appraisers are not consistently available in these transactions, then without the exemption, buyers using HPMLs to purchase, and owners using HPMLs to refinance, existing manufactured homes without offering land as security could be faced with a significant barrier. Consumers selling their homes could be similarly affected because the Bureau believes that many buyers of these properties use HPMLs that are not qualified mortgages, which would make it difficult to find a buyer who could close the loan using an available valuation method.

As discussed in the Bureau's analysis under Section 1022 in the 2013 Interagency Appraisals Final Rule, in general, consumers who are borrowing HPMLs that are covered by the rule nonetheless could benefit if an appraisal can be conducted. If the proposed exemption is for transactions secured by existing manufactured homes and not land is adopted, these benefits could be lost if creditors do not obtain a reliable home estimate in the transaction.[129] The Agencies therefore have sought comment on conditioning the proposed exemption on use of a different type of home estimate, such as an independent estimate based upon comparables (as is required in HUD Title I transactions) or an estimate from a published cost service is more likely to achieve all of these same benefits. At least the latter type of valuation appears to be more common for these types of transactions based upon industry comments on the 2012 Interagency Appraisals Proposal and further outreach and research in preparation for this proposal. As a result, the proposed exemption with such a condition would help to preserve access to credit for consumers seeking HPMLs secured by existing manufactured homes but not land (and not otherwise exempt as a qualified mortgage or in an amount of $25,000 or less) because the transactions could be supported not only by a market value (comparable-based) appraisal if available but also by an estimate from a published cost service. Allowing for a broader range of valuation options helps to ensure access to this type of credit for consumers who own or are seeking to buy existing manufactured homes without offering land as security for the transaction.

As noted in the section-by-section analysis, consumer advocates in outreach raised questions about the accuracy of estimates derived from a published cost service such as the NADA Guide value report in part because this method of estimating home values does not analyze the market value of the home in the particular location based upon comparables. The Bureau notes, however, that one cost method—the NADAGuide.com Value Report—provides for adjustments based upon region and land-ease community which can take into account location factors. In addition, comparable-based estimates for existing manufactured homes can cost nearly $300 according to outreach to one provider, which the Bureau believes would be significantly more costly than an estimate based upon a published cost service. If such a valuation for a new manufactured home would be similarly priced, then it would be significantly more expensive than the cost estimate noted above (which can be used for new manufactured homes as well as existing manufactured homes). The Bureau believes that a lower-cost method would result in less cost passed along to the consumer. In any event, for both new and existing manufactured homes, the Bureau requests data from commenters on the cost and accuracy of valuations developed from local market comparables, and valuations based upon published cost services that provide for adjustments such as those noted above.

Transactions Secured by Existing Manufactured Homes and Land

Finally, as noted above, the Bureau does not believe that continuing to require USPAP-compliant appraisals for transactions secured by existing manufactured homes and land would pose any significant impediment to these transactions, as the cost of the appraisal is on par with that of other homes and the process used of selecting and adjustment comparables also is standard.

*B. Potential Specific Impacts of the Supplemental Proposal*

1. Potential Reduction in Access by Consumers to Consumer Financial Products or Services

The proposed rule includes only exemptions. Exempting loans from the requirements of the HPML Appraisal Rule will not reduce access to credit. While the Agencies are seeking comment on whether to include certain conditions on these proposed exemptions as discussed in the section-by-section analysis, these conditions would not reduce access to credit. The cost of complying with any conditions, if adopted, would not exceed the cost of complying with the HPML Appraisal Rule (which in turn could increase the cost of credit) because any exemptions are optional and thus cost or burdens of exemptions also are optional. In addition, as discussed above, the Agencies are seeking comment on whether to narrow the exemption for new manufactured homes and/or to include conditions on this exemption. The Bureau does not believe that requiring a USPAP- and FIRREA-compliant appraisal with an interior inspection for transactions secured by a new manufactured home and land or conditioning these or other new manufactured home transactions on the alternative valuation methods described above would reduce access to credit in these transactions. Such valuation methods at most would entail only slightly increased costs where different from existing methods, such that they do not carry the potential to impede access to credit.

[128] *See* 12 CFR 1002.14(a); comment 14(b)(3)–3.iv (clarifying that the manufacturer's invoice is not a valuation that must be provided to the consumer under Regulation B).

[129] Section 1022(b) Analysis, 78 FR 10417–18.

2. Impact of the Proposed Rule on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026 of the Dodd-Frank Act

Small depository banks and credit unions may originate loans of $25,000 or less more often, relative to their overall origination business, than other depository institutions (DIs) and credit unions. Therefore, relative to their overall origination business, these small depository banks and credit unions may experience relatively benefits from the proposed exemption for smaller dollar loans. These benefits would not be high in absolute dollar terms, however, because the number of transactions that would be uniquely exempted by the proposed small loan exemption is still relatively low—less than 5,000, as discussed above.

Otherwise, the Bureau does not believe that the impact of the proposal would be substantially different for the DIs and credit unions with total assets below $10 billion than for larger DIs and credit unions. The Bureau has not identified data indicating that small depository institutions or small credit unions disproportionately engage in lending secured by manufactured homes. Finally, the Bureau has not identified data indicating that these institutions engage in streamlined refinances that would be newly-exempted by the proposed exemption at any greater rate than other financial institutions. The Bureau requests relevant data on the impact of the proposed rule on DIs and credit unions with total assets below $10 billion.

3. Impact of the Proposed Rule on Consumers in Rural Areas

The Bureau understands that a significantly greater proportion of existing manufactured homes are located in rural areas compared to other single-family homes.[130] Therefore, any impacts of the proposed exemption for transactions secured by these homes (but not land) would proportionally accrue more often to rural consumers. With respect to streamlined refinances, the Bureau does not believe that streamlined refinances are more or less common in rural areas. Accordingly, the Bureau currently believes that the proposed exemption for streamlined refinances would generate a similar benefit for consumers in rural areas as for consumers in non-rural areas. Finally, the Bureau does not believe the magnitude of the difference of the smaller dollar loans originated, between consumers in rural areas and not in rural areas, is significant. The Bureau requests comment and relevant data on the impact of the proposed rule on rural areas.

## VII. Regulatory Flexibility Act

*Board*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments apply to certain banks, other depository institutions, and non-bank entities that extend HPMLs.[131] The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[132] The size standard to be considered a small business is: $175 million or less in assets for banks and other depository institutions; and $7 million or less in annual revenues for the majority of nonbank entities that are likely to be subject to the proposed regulations.[133] Based on its analysis, and for the reasons stated below, the Board believes that the proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

The Board requests public comment on all aspects of this analysis.

*A. Reasons for the Proposed Rule*

This proposal relates to the 2013 Interagency Appraisals Final Rule, issued jointly by the Agencies on January 18, 2013, which goes into effect on January 18, 2014. *See* 78 FR 10368 (Feb. 13, 2013). The Final Rule implements a provision added to TILA by the Dodd-Frank Act requiring appraisals for ''higher-risk mortgages.'' For certain mortgages with an annual percentage rate that exceeds the APOR by a specified percentage (designated as ''HPMLs'' in the Final Rule), the Final Rule requires creditors, among other requirements, to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. The definition of higher-risk mortgage in new TILA section 129H expressly excludes qualified mortgages, as defined in TILA section 129C, as well as open-end mortgages reverse mortgage loans that are qualified mortgages as defined in TILA section 129C.

The Agencies are now proposing amendments to the Final Rule to exempt the following transactions: (1) Transactions secured by existing manufactured homes and not land; (2) certain ''streamlined'' refinancings; and (3) transactions of $25,000 or less. The Agencies are also proposing to revise the Final Rule's definition of ''business day.''

*B. Statement of Objectives and Legal Basis*

As discussed above, section 1471 of the Dodd-Frank Act created new TILA section 129H, which establishes special appraisal requirements for ''higher-risk mortgages.'' 15 U.S.C. 1639h. The Final Rule implements these requirements and includes certain exemptions from the Rule's requirements. The Agencies believe that several additional exemptions from the new appraisal rules may be appropriate. Specifically, the Agencies are proposing an exemption for transactions secured by an existing manufactured home (and not land), certain types of refinancings, and transactions of $25,000 or less (indexed for inflation). In addition, the Agencies are proposing to revise the Final Rule's definition of ''business day'' for consistency with disclosure timing requirements under existing Regulation Z mortgage disclosure timing requirements and the Bureau's proposed

[130] Census data from 2011 indicates that approximately 45 percent of owner-occupied manufactured homes are located outside of metropolitan statistical areas, compared with 21 percent of owner-occupied single-family homes. *See* U.S. Census Bureau, 2011 American Housing Survey, General Housing Data—Owner-Occupied Units (National), *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C01OO&prodType=table. See also* Housing Assistance Council Rural Housing Research Note, ''Improving HMDA: A Need to Better Understand Rural Mortgage Markets,'' (Oct. 2010), *available at http://www.ruralhome.org/storage/documents/notehmdasm.pdf.* Industry comments on the 2012 Interagency Appraisals Proposed Rule noted that manufactured homes sited on land owned by the buyer are predominantly located in rural areas; one commenter estimated that 60 percent of manufactured homes are located in rural areas.

[131] For its RFA analysis, the Board considered all creditors to which the Final Rule applies. The Board's Regulation Z at 12 CFR 226.43 applies to a subset of these creditors. *See* § 226.43(g).

[132] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[133] The Board recognizes that the SBA's revised size standards will be effective July 22, 2013 (*see* 78 FR 37409 (June 20, 2013)). The Board will update its regulatory flexibility analysis accordingly in its final rule.

rules for combined mortgage disclosures under TILA and the RESPA (2012 TILA–RESPA Proposed Rule). *See* § 1026.19(a)(1)(ii) and (a)(2); *see also* 77 FR 51116 (Aug. 23, 2012) (*e.g.,* proposed § 1026.19(e)(1)(iii) (early mortgage disclosures) and (f)(1)(ii) (final mortgage disclosures).

The legal basis for the proposed rule is TILA section 129H(b)(4). 15 U.S.C. 1639h(b)(4). TILA section 129H(b)(4)(A), added by the Dodd-Frank Act, authorizes the Agencies jointly to prescribe regulations implementing section 129H. 15 U.S.C. 1639h(b)(4)(A). In addition, TILA section 129H(b)(4)(B) grants the Agencies the authority jointly to exempt, by rule, a class of loans from the requirements of TILA section 129H(a) or section 129H(b) if the Agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors. 15 U.S.C. 1639h(b)(4)(B).

*C. Description of Small Entities to Which the Regulation Applies*

The proposed rule applies to creditors that make HPMLs subject to 12 CFR 1026.35(c) (published by the Board in 12 CFR 226.43). In the Board's Regulatory Flexibility Analysis for the Final Rule, the Board relied primarily on data provided by the Bureau to estimate the number of small entities that would be subject to the requirements of the rule.[134] According to the data provided by the Bureau, approximately 3,466 commercial banks, 373 savings institutions, 3,240 credit unions, and 2,294 non-depository institutions are considered small entities and extend mortgages, and therefore are potentially subject to the Final Rule.

Data currently available to the Board are not sufficient to estimate how many small entities that extend mortgages will be subject to 12 CFR 1026.35(c) (published by the Board in 12 CFR 226.43), given the range of exemptions provided in the Final Rule, including the exemption for qualified mortgages. Further, the number of these small entities that will make HPMLs that would qualify for the proposed exemptions is unknown.

*D. Projected Reporting, Recordkeeping and Other Compliance Requirements*

The proposed rule does not impose any new recordkeeping, reporting, or compliance requirements on small entities. The proposed rule would reduce the number of transactions that are subject to the requirements of the Final Rule. The Final Rule generally applies to creditors that make HPMLs subject to 12 CFR 1026.35(c) (published by the Board in 12 CFR 226.43), which are generally mortgages with an APR that exceeds the APOR by a specified percentage, subject to certain exemptions. The proposal would exempt three additional classes of HPMLs from the Final Rule: HPMLs secured by existing manufactured loans (but not land); certain refinance HPMLs whose proceeds are used exclusively to satisfy an existing first-lien loan and to pay for closing costs; and new HPMLs that have a principal amount of $25,000 or less (indexed to inflation). Accordingly, the proposal would decrease the burden on creditors by reducing the number of loan transactions that are subject to the Final Rule.

*E. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations*

The Board has not identified any Federal statutes or regulations that would duplicate, overlap, or conflict with the proposed revisions.

*F. Discussion of Significant Alternatives*

The Board is not aware of any significant alternatives that would further minimize the economic impact of the proposed rule on small entities. The proposed rule would exempt three additional classes of HPMLs from the Final Rule and not impose any new recordkeeping, reporting, or compliance requirements on small entities.

Bureau

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[135] These analyses must ''describe the impact of the proposed rule on small entities.'' [136] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[137] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[138]

An IRFA is not required for this proposal because if adopted it would not have a significant economic impact on a substantial number of small entities.

The analysis below evaluates the potential economic impact of the proposed rule on small entities as defined by the RFA. The analysis generally examines the regulatory impact of the provisions of the proposed rule against the baseline of the Final Rule the Agencies issued on January 18, 2013.

*A. Number and Classes of Affected Entities*

The proposed rule would apply to all creditors that extend closed-end credit secured by a consumer's principal dwelling. All small entities that extend these loans are potentially subject to at least some aspects of the proposal. This proposal may impact small businesses, small nonprofit organizations, and small government jurisdictions. A ''small business'' is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards.[139] Under such standards, depository institutions with $175 million or less in assets are considered small; other financial businesses are considered small if such entities have average annual receipts (*i.e.,* annual revenues) that do not exceed $7 million. Thus, commercial banks, savings institutions, and credit unions with $175 million or less in assets are small businesses, while other creditors extending credit secured by real property or a dwelling are small businesses if average annual receipts do not exceed $7 million.

The Bureau can identify through data under HMDA, Reports of Condition and Income (Call Reports), and data from the National Mortgage Licensing System (NMLS) the approximate numbers of small depository institutions that would be subject to the final rule. Origination data is available for entities that report in HMDA, NMLS or the credit union

[134] *See* the Bureau's Regulatory Flexibility Analysis in the Final Rule (78 FR 10368, 10424 (Feb. 13, 2013)).

[135] 5 U.S.C. 601 *et seq.*

[136] *Id.* at 603(a). For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. *Id.* at 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. *Id.* at 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' *Id.* at 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. *Id.* at 601(5).

[137] *Id.* at 605(b).

[138] *Id.* at 609.

[139] 5 U.S.C. 601(3). The current SBA size standards are located on the SBA's Web site at *http://www.sba.gov/content/table-small-business-size-standards.*

call reports; for other entities, the Bureau has estimated their origination activities using statistical projection methods.

The following table provides the Bureau's estimate of the number and types of entities to which the proposed rule would apply: [140]

Counts of Creditors by Type.

| Category | NAICS Code | Total Entities | Small Entities | Entities That Originate Any Mortgage Loans[b] | Small Entities that Originate Any Mortgage Loans |
|---|---|---|---|---|---|
| Commercial Banking | 522110 | 6,505 | 3,601 | 6,307[a] | 3,466[a] |
| Savings Institutions | 522120 | 930 | 377 | 922[a] | 373[a] |
| Credit Unions[c] | 522130 | 7,240 | 6,296 | 4,178[a] | 3,240[a] |
| Real Estate Credit[d e] | 522292 | 2,787 | 2,294 | 2,787 | 2,294[a] |
| Total | | 17,462 | 12,568 | 14,194 | 9,373 |

Source: 2011 HMDA, Dec 31, 2011 Bank and Thrift Call Reports, Dec 31, 2011 NCUA Call Reports, Dec 31, 2011 NMLSR Mortgage Call Reports.

[a] For HMDA reporters, loan counts from HMDA 2011. For institutions that are not HMDA reporters, loan counts projected based on Call Report data fields and counts for HMDA reporters.

[b] Entities are characterized as originating loans if they make one or more loans.

[c] Does not include cooperativas operating in Puerto Rico. The Bureau has limited data about these institutions or their mortgage activity.

[d] NMLSR Mortgage Call Report (MCR) for 2011. All MCR reporters that originate at least one loan or that have positive loan amounts are considered to be engaged in real estate credit (instead of purely mortgage brokers). For institutions with missing revenue values, the probability that institution was a small entity is estimated based on the count and amount of originations and the count and amount of brokered loans.

[e] Data do not distinguish nonprofit from for-profit organizations, but Real Estate Credit presumptively includes nonprofit organizations.

*B. Impact of Proposed Exemptions*

The provisions of the proposed rule all provide or modify exemptions from the HPML appraisal requirements. Measured against the baseline of the burdens imposed by the 2013 Interagency Appraisals Final Rule, the Bureau believes that these proposed provisions impose either no or insignificant additional burdens on small entities. The Bureau believes that these proposed provisions would reduce the burdens associated with implementation costs, additional valuation costs, and compliance costs stemming from the HPML appraisal requirements. The Bureau also notes that creditors voluntarily choose whether to avail themselves of the exemptions.

1. Exemption for Certain Transactions Secured by Manufactured Homes

The proposed rule would exempt from the HPML appraisal requirements a transaction secured by an existing manufactured home and not land. This provision would remove certain burdens imposed by the Final Rule on small entities extending HPMLs covered by the final rule when they are secured solely by existing manufactured homes, whether for refinance, home improvement, purchase transactions, or other purposes. The burdens removed would be those of providing a consumer notice, determining the applicability of the second appraisal requirement in purchase transactions, and obtaining, reviewing, and disclosing to consumers USPAP- and FIRREA-compliant appraisals. As discussed in the section-by-section analysis above, the Agencies are seeking comment on whether, to be eligible for this burden-reducing exemption, the creditor should be required to obtain an estimate of the value of the home based upon a published cost service method, a method required under HUD Title I programs, or an otherwise USPAP-complaint method, and provide a copy to the consumer no later than three business days before closing.

The requirement of obtaining an alternative valuation to qualify for the exemption might result in relatively less regulatory burden reduction. However, the Bureau understands from outreach that at least a cost estimate is often obtained in these transactions and, in any event, even if such a condition were adopted in the Final Rule, the decision to obtain an alternative estimate would be voluntary under this rule and the Bureau presumes that a small entity would not do so unless the exemption provided a net burden reduction versus obtaining a USPAP appraisal. Thus, the Bureau believes that the creditors would still experience a significant benefit from the exemption, even with this additional requirement. The Bureau requests comment on the impact of this proposed exemption on small entities. The Bureau also requests comment on how the impact would change, if at all, if the Agencies included a condition that the creditor obtain an estimate of the value of the home and provide this to the consumer.

As also discussed in the Bureau's Section 1022(b) analysis and in the section-by-section analysis, the Agencies are seeking comment on whether to narrow the scope of the exemption for new manufactured homes, and thereby subject transactions secured by both a new manufactured home and land to the HPML appraisal rules in the Final Rule, or to a condition that another type of valuation be obtained. If so narrowed or conditioned, the exemption adopted in the 2013 Final Rule would no longer relieve as much burden in these transactions.

[140] The Bureau assumes that creditors who originate chattel manufactured home loans are included in the sources described above, but to the extent commenters believe this is not the case, the Bureau seeks data from commenters on this point.

However, the Bureau believes it already is a common existing practice for creditors in these transactions to obtain either (1) an appraisal of the land and a separate estimate of the value of the home or (2) an appraisal of the land and home together. As discussed in the Section 1022 analysis above, the Bureau does not believe that there is a significant difference in cost between these methods. As also discussed in the Section 1022 analysis above, the Bureau does not believe there would be a significant cost to obtaining an estimate of the value of the home using a published cost service, including with adjustments. Accordingly, if the exemption from the requirement to obtain an appraisal were removed, or if the exemption were conditioned on obtaining an appraisal of the land and an estimate of the home using a published cost service, the Bureau does not believe these changes would impose significant economic impacts. Further, regardless, the requirements relating to ''flipped'' properties would not apply to a new home.

Finally, as discussed in the Bureau's Section 1022(b) analysis and in the section-by-section analysis, the Agencies are seeking comment on whether to require the creditor to provide the consumer with a cost estimate of the value of the new manufactured home in transactions that are secured by a new manufactured home but not land. If adopted, this condition would not significantly change the amount of burden reduced by the existing exemption in these transactions, which comprise the significant majority of transactions involving new manufactured homes. The Bureau believes that the cost of obtaining an estimate of the value of the new manufactured home using a third-party cost source, and making appropriate adjustments, would be significantly less than the cost of obtaining a USPAP-complaint appraisal.

2. Proposed Exemption for ''Streamlined'' Refinancing Programs

The proposed rule would provide an exemption for any transaction that is a refinancing satisfying certain conditions. In brief, the proceeds of the loan may only be used to pay off an existing first lien loan and to pay closing or settlement charges is exempt from the HPML appraisal requirements, provided the new loan has the same owner or guarantor as the existing loan, and provided further that the new loan provides for periodic payments that do not cause the principal balance to increase, allow for deferment in payment of principal, or result in a balloon payment.

This provision would remove the burden to small entities extending any HPMLs covered by the Final Rule under ''streamlined'' refinance programs of providing a consumer notice and obtaining, reviewing, and disclosing to consumers USPAP- and FIRREA-compliant appraisals. Under an alternative discussed in the section-by-section analysis above, to be eligible for this burden-reducing exemption, the creditor would need to obtain a valuation—which need not be a USPAP- and FIRREA-compliant appraisal—and provide it to the consumer no later than three business days before closing.

The regulatory burden reduction might be lower since a creditor would have to determine whether the refinancing loan is of the type that meets the exemption requirements. However, the Bureau believes that little if any additional time would be needed to make these determinations, as they depend upon basic information relating to the transaction that is typically already known to the creditor. Regulatory burden reduction might also be lower due to any additional condition the Agencies could adopt such as the condition of obtaining a valuation and providing it to the consumer, if one is not otherwise obtained through the normal creditor process as required by FIRREA regulations for some creditors and disclosed to the consumer as already required by the 2013 ECOA Valuations Rule. In either case, however, the decision to ensure eligibility for the exemption is voluntary and the Bureau presumes that a small entity would not do so unless the exemption provided a net burden reduction. The Bureau requests comment on the impact of this proposed exemption on small entities.

3. Proposed Exemption for Smaller Dollar Loans

The proposed rule would exempt from the HPML appraisal requirements loans equal to or less than $25,000, adjusted annually for inflation. This provision would remove burden imposed by the final rule on small entities extending any HPMLs covered by the final rule up to $25,000.

Regulatory burden reduction might also be lower due to any additional condition the Agencies could adopt such as the condition of obtaining a valuation and/or providing the consumer with a copy of any valuation the creditor has obtained in connection with the application. However, the decision to ensure eligibility for the exemption is voluntary and the Bureau presumes that a small entity would not do so unless the proposed exemption provided a net burden reduction. The Bureau requests comment on the impact of this proposed exemption on small entities.

*C. Conclusion*

Each element of this proposal would reduce economic burden for small entities. The proposed exemption for HPMLs secured by existing manufactured homes and not land would lessen any economic impact resulting from the HPML appraisal requirements. The proposed exemption for ''streamlined'' refinance HPMLs also would lessen any economic impact on small entities extending credit pursuant to those programs, particularly those relating to the refinancing of existing loans held on portfolio. The proposed exemption for smaller-dollar HPMLs similarly would lessen burden on small entities extending credit in the form of HPMLs up to the threshold amount.

These impacts would be reduced to the extent the transactions are not already exempt from the Final Rule as qualified mortgages. While all of these proposed exemptions may entail additional recordkeeping costs, the Bureau believes that these costs are minimal and outweighed by the cost reductions resulting from the proposal. Small entities for which such cost reductions are outweighed by additional record keeping costs may choose not to utilize the proposed exemptions.

Certification

Accordingly, the undersigned certifies that if adopted this proposal would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on the analysis above and requests any relevant data.

FDIC

The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[141] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the SBA to include banking organizations with total assets of less than or equal to $175 million) and publishes its certification and a short, explanatory statement in

[141] *See* 5 U.S.C. 601 *et seq.*

the **Federal Register** together with the rule.

As of March 31, 2013, there were approximately 3,711 small FDIC-supervised banks, which include 2,275 state nonmember banks and 158 state-chartered savings banks. The FDIC analyzed the 2011 HMDA[142] dataset to determine how many loans by FDIC-supervised banks might qualify as HPMLs under section 129H of the TILA as added by section 1471 of the Dodd-Frank Act. This analysis reflects that only 70 FDIC-supervised banks originated at least 100 HPMLs, with only four banks originating more than 500 HPMLs. Further, the FDIC-supervised banks that met the definition of a small entity originated on average less than 8 HPMLs of $25,000 or less each in 2011.

The proposed rule relates to the 2013 Interagency Appraisals Final Rule, issued by the Agencies on January 18, 2013, which goes into effect on January 18, 2014. The 2013 Interagency Appraisals Final Rule requires that creditors satisfy the following requirements for each HPML they originate that is not exempt from the Final Rule:

- The creditor must obtain a written appraisal; the appraisal must be performed by a certified or licensed appraiser; and the appraiser must conduct a physical property visit of the interior of the property.
- At application, the consumer must be provided with a statement regarding the purpose of the appraisal, that the creditor will provide the applicant a copy of any written appraisal, and that the applicant may choose to have a separate appraisal conducted for the applicant's own use at his or her own expense.
- The consumer must be provided with a free copy of any written appraisals obtained for the transaction at least three (3) business days before consummation.
- The creditor of an HPML must obtain an additional written appraisal, at no cost to the borrower, when the loan will finance the purchase of a consumer's principal dwelling and there has been an increase in the purchase price from a prior acquisition that took place within 180 days of the current purchase.

The Agencies are now proposing to amend the 2013 Interagency Appraisals Final Rule to provide the following changes and exemptions to requirements of the Final Rule:

- To provide a different definition of ''business day'' than the definition used in the Final Rule, as well as a few non-substantive technical corrections.
- To exempt transactions secured solely by an existing (used) manufactured home and not land.
- To exempt certain types of refinancings with characteristics common to refinance products often referred to as ''streamlined'' refinances.
- To exempt extensions of credit of $25,000 or less, indexed every year for inflation.

The proposed rule would exempt certain transactions that qualify as HPMLs under the 2013 Interagency Appraisals Final Rule from the appraisal requirements of the Final Rule, resulting in reduced regulatory burden to FDIC-supervised institutions that would have otherwise been required to obtain an appraisal and comply with the requirements for such HPML transactions.

It is the opinion of the FDIC that the proposed rule will not have a significant economic impact on a substantial number of small entities that it regulates in light of the fact that: (1) The proposed rule would reduce regulatory burden on small institutions by exempting certain transactions from the requirements of the 2013 Interagency Appraisals Final Rule; and (2) the FDIC previously certified that the 2013 Interagency Appraisals Final Rule would not have a significant economic impact on a substantial number of small entities. Accordingly, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Nonetheless, the FDIC seeks comment on whether the proposed rule, if adopted in final form, would impose undue burden on, or have unintended consequences for, small FDIC-supervised institutions and whether there are ways such potential burden or consequences could be minimized in a manner consistent with section 129H of TILA.

FHFA

The supplemental proposal to amend the 2013 Interagency Appraisals Final Rule applies only to institutions in the primary mortgage market that originate mortgage loans. FHFA's regulated entities—Fannie Mae, Freddie Mac, and the Federal Home Loan Banks—operate in the secondary mortgage markets. In addition, these entities do not come within the meaning of small entities as defined in the RFA. *See* 5 U.S.C. 601(6).

NCUA

The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[143] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. NCUA defines small entities as small credit unions having less than fifty million dollars in assets[144] in contrast to the definition of small entities in the rules issued by the SBA, which include banking organizations with total assets of less than or equal to $175 million.

However, for purposes of the 2013 Interagency Appraisals Final Rule and for consistency with the Agencies, NCUA reviewed the dataset for FICUs that met the small entity standard for banking organizations under the SBA's regulations. As of March 31, 2012, there were approximately 6,060, FICUs with total assets of $175 million or less. Of the FICUs which reported 2010 HMDA data, 452 reported at least one HPML. The data reflects that only three FICUs originated at least 100 HPMLs, with no FICUs originating more than 500 HPMLs, and eighty-eight percent of reporting FICUs originating 10 HPMLs or less. Further, FICUs that met the SBA's definition of a small entity originated an average of 4 HPML loans each in 2010. [145]

The 2013 Interagency Appraisals Final Rule requires that creditors satisfy the following requirements for each HPML they originate that is not exempt from the Final Rule:

- The creditor must obtain a written appraisal; the appraisal must be

[142] The FDIC based its analysis on the HMDA data, as it provided a proxy for the characteristics of HPMLs. While the FDIC recognizes that fewer higher-price loans were generated in 2011, a more historical review is not possible because the average offer price (a key data element for this review) was not added until the fourth quarter of 2009. The FDIC also recognizes that the HMDA data provides information relative to mortgage lending in metropolitan statistical areas, but not in rural areas.

[143] *See* 5 U.S.C. 601 *et seq.*

[144] NCUA Interpretative Ruling and Policy Statement (IRPS) 87–2, 52 FR 35231 (Sept. 18, 1987); *as amended by* IRPS 03–2, 68 FR 31951 (May 29, 2003); and IRPS 13–1, 78 FR 4032, 4037 (Jan. 18, 2013).

[145] With only a fraction of small FICUs reporting data to HMDA, NCUA also analyzed FICUs not observed in the HMDA data. Using the total number of real estate loans originated by FICUs with less than $175M in total assets, NCUA estimated the average number of HPMLs per real estate loan originated. Using this ratio to interpolate the likely number of HPML originations, the analysis suggests that small FICUs originate on average less than 2 HPML loans each year.

performed by a certified or licensed appraiser; and the appraiser must conduct a physical property visit of the interior of the property.

• At application, the consumer must be provided with a statement regarding the purpose of the appraisal, that the creditor will provide the applicant a copy of any written appraisal, and that the applicant may choose to have a separate appraisal conducted for the applicant's own use at his or her own expense.

• The consumer must be provided with a free copy of any written appraisals obtained for the transaction at least three (3) business days before consummation.

• The creditor of an HPML must obtain an additional written appraisal, at no cost to the borrower, when the loan will finance the purchase of a consumer's principal dwelling and there has been an increase in the purchase price from a prior acquisition that took place within 180 days of the current purchase.

The Agencies are now proposing to amend the 2013 Interagency Appraisals Final Rule to provide the following changes and exemptions to requirements of the Final Rule:

• To provide a different definition of ''business day'' than the definition used in the Final Rule, as well as a few non-substantive technical corrections.

• To exempt transactions secured solely by an existing (used) manufactured home and not land from the HPML appraisal requirements.

• To exempt from the HPML appraisal rules certain types of refinancings with characteristics common to refinance products often referred to as ''streamlined'' refinances.

• To exempt from the HPML appraisal rules extensions of credit of $25,000 or less, indexed every year for inflation.

As previously explained, the proposed rule would align the definition of ''business day'' under the Final Rule with the definition of ''business day'' for the required disclosures to, among other things, improve streamlining and consistency in Regulation Z disclosures by avoiding the creditor having to provide the copy of the appraisal under the HPML rules and corrected Regulation Z disclosures at different times (because different definitions of ''business day'' would apply). In addition, the proposed rule would exempt certain transactions that qualify as HPMLs under the 2013 Interagency Appraisal Final Rule from the requirements of the Final Rule, resulting in reduced regulatory burden to FICUs that would have otherwise been required to obtain an appraisal and comply with the requirements for such HPML transactions. NCUA believes these proposed changes will only serve to lessen regulatory burdens imposed by the Final Rule.

In light of the fact that few loans made by FICUs would qualify as HPMLs, the fact that the NCUA certified that the 2013 Interagency Appraisal Final Rule would not have a significant economic impact on a substantial number of small entities, and that the proposal would only further reduce any regulatory burdens imposed on small credit unions by the Final Rule, NCUA believes the proposed rule will not have a significant economic impact on small FICUs.

For the reasons provided above, NCUA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

OCC

Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 603 of the RFA is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks, savings institutions and other depository credit intermediaries with assets less than or equal to $500 million and trust companies with total assets of $35.5 million or less [146]) and publishes its certification and a short, explanatory statement in the **Federal Register** along with its proposed rule.

As described previously in this preamble, section 1471 of the Dodd-Frank Act establishes a new TILA section 129H, which sets forth appraisal requirements applicable to higher-risk mortgages (termed ''higher-priced mortgage loans'' or HPMLs in the 2013 Interagency Appraisals Final Rule). The statute expressly excludes from these appraisal requirements coverage of ''qualified mortgages,'' the terms of which have been established by the CFPB as an exemption from its new TILA mortgage ''ability to repay'' underwriting requirements rule. In addition, the Agencies may jointly exempt a class of loans from the requirements of the statute if the Agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors.

The Agencies issued the Final Rule on January 18, 2013, which will be effective on January 18, 2014. Pursuant to the general exemption authority in the statute, the Final Rule exempts from coverage of the HPML appraisal rules the following transactions: Transactions secured by new manufactured homes; transactions secured by mobile homes, boats, or trailers; transactions to finance the initial construction of a dwelling; temporary or ''bridge'' loans with a term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months; and reverse mortgage loans. The Agencies are issuing this supplemental proposed rule to include three additional exemptions from the HPML appraisal requirements of section 129H of TILA: Transactions secured solely by an existing manufactured home and not land; certain ''streamlined'' refinancings; and extensions of credit of $25,000 or less, indexed every year for inflation.

The OCC currently supervises 1,842 banks (1,204 commercial banks, 63 trust companies, 527 federal savings associations, and 48 branches or agencies of foreign banks). We estimate that less than 1,291 of the banks supervised by the OCC are currently originating one- to four-family residential mortgage loans that could be HPMLs. Approximately 867 OCC supervised banks are small entities based on the SBA's definition of small entities for RFA purposes. Of these, the OCC estimates that 428 banks originate mortgages and therefore may be impacted by the proposed rule.

The OCC classifies the economic impact of total costs on a bank as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense. The OCC estimates that the average cost per small bank, if the proposed rule is promulgated, will be zero. The proposal does not impose new requirements on banks or include new mandates. The OCC assumes any costs (e.g., alternative valuations) or requirements that may be associated with the proposed exemptions will be less than the cost of

[146] ''Based on the number of banks and their size (as of December 31, 2012) the OCC supervises 1,291 small entities. We base our estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $500 million and $35.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify a bank we supervise as a small entity. We use December 31, 2012, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

compliance for a comparable loan under the Final Rule.

Therefore, we believe the proposed rule will not have a significant economic impact on a substantial number of small entities. The OCC certifies that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities.

## VIII. Paperwork Reduction Act

*Board, Bureau, FDIC, NCUA and OCC*

Certain provisions of the 2013 Interagency Appraisals Final Rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). *See* 78 FR 10368, 10429 (Feb. 13, 2013). Under the PRA, the Agencies may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this joint notice of proposed rulemaking to amend the 2013 Final Rule have been submitted to OMB for review and approval by the Bureau, FDIC, NCUA, and OCC under section 3506 of the PRA and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

*Title of Information Collection:* HPML Appraisals.

*Frequency of Response:* Event generated.

*Affected Public:* Businesses or other for-profit and not-for-profit organizations.[147]

*Bureau:* Insured depository institutions with more than $10 billion in assets, their depository institution affiliates, and certain non-depository mortgage institutions.[148]

*FDIC:* Insured state non-member banks, insured state branches of foreign banks, and certain subsidiaries of these entities.

*OCC:* National banks, Federal savings associations, Federal branches or agencies of foreign banks, or any operating subsidiary thereof.

*Board:* State member banks, uninsured state branches and agencies of foreign banks.

*NCUA:* Federally-insured credit unions.

*Abstract:*

The collection of information requirements in the 2013 Final Rule are found in paragraphs (c)(3)(i), (c)(3)(ii), (c)(4), (c)(5), and (c)(6) of 12 CFR 1026.35.[149] This information is required to protect consumers and promote the safety and soundness of creditors making HPMLs subject to 12 CFR 1026.35(c). This information is used by creditors to evaluate real estate collateral securing HPMLs subject to 12 CFR 1026.35(c) and by consumers entering these transactions. The collections of information are mandatory for creditors making HPMLs subject to 12 CFR 1026.35(c). The 2013 Final Rule requires that, within three business days of application, a creditor provide a disclosure that informs consumers of the purpose of the appraisal, that the creditor will provide the consumer a copy of any appraisal, and that the consumer may choose to have a separate appraisal conducted at the expense of the consumer (Initial Appraisal Disclosure). *See* 12 CFR 1026.35(c)(5). If a loan is a HPML subject to 12 CFR 1026.35(c), then the creditor is required to obtain a written appraisal prepared by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction (Written Appraisal), and provide a copy of the Written Appraisal to the consumer. *See* 12 CFR 1026.35(c)(3)(i) and (c)(6). To qualify for the safe harbor provided under the 2013 Final Rule, a creditor is required to review the Written Appraisal as specified in the text of the rule and Appendix N. *See* 12 CFR 1026.35(c)(3)(ii).

A creditor is required to obtain an additional appraisal (Additional Written Appraisal) for a HPML that is subject to 12 CFR 1026.35(c) if (1) the seller acquired the property securing the loan 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the resale price exceeds the seller's acquisition price by more than 10 percent; or (2) the seller acquired the property securing the loan 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the resale price exceeds the seller's acquisition price by more than 20 percent. *See* 12 CFR 1026.35(c)(4). The Additional Written Appraisal must meet the requirements described above and also analyze: (1) The difference between the price at which the seller acquired the property and the price the consumer agreed to pay; (2) changes in market conditions between the date the seller acquired the property and the date the consumer agreed to acquire the property; and (3) any improvements made to the property between the date the seller acquired the property and the date on which the consumer agreed to acquire the property. *See* 12 CFR 1026.35(c)(4)(iv). A creditor is also required to provide a copy of the Additional Written Appraisal to the consumer. 12 CFR 1026.35(c)(6).

The requirements provided in the 2013 Final Rule were described in the PRA section of that rule. *See* 78 FR 10368, 10429 (February 13, 2013). As described in its section 1022 analysis in the 2013 Final Rule and in Table 3 to that rule, the estimated burdens allocated to the Bureau reflected an institution count based upon data that had been updated from the proposal stage and reduced to reflect those exemptions in the 2013 Final Rule for which the Bureau has identified data. As discussed in the 2013 Final Rule, the other Agencies did not adjust the calculations to account for the exempted transactions provided in the 2013 Final Rule. Accordingly, the estimated burden calculations in Table 3 in the 2013 Final Rule are overstated.

*Calculation of Estimated Burden*

As explained in the 2013 Final Rule, for the Initial Appraisal Disclosure, the creditor is required to provide a short, written disclosure within three days of application. Because the disclosure is classified as a warning label supplied by the Federal government, the Agencies have assigned it no burden for purposes of this PRA analysis.[150]

The estimated burden for the Written Appraisal requirements includes the creditor's burden of reviewing the Written Appraisal in order to satisfy the safe harbor criteria set forth in the rule and providing a copy of the Written Appraisal to the consumer. Additionally, as discussed above, an Additional Written Appraisal containing additional analyses is required in certain circumstances. The

[147] The burdens on the affected public generally are divided in accordance with the Agencies' respective administrative enforcement authority under TILA section 108, 15 U.S.C. 1607.

[148] The Bureau and the Federal Trade Commission (FTC) generally both have enforcement authority over non-depository institutions for Regulation Z. Accordingly, for purposes of this PRA analysis, the Bureau has allocated to itself half of the Bureau's estimated burden for non-depository mortgage institutions. The FTC is responsible for estimating and reporting to OMB its share of burden under this proposal.

[149] As explained in the section-by-section analysis, these requirements are also published in regulations of the OCC (12 CFR 34.203(c)(1), (c)(2), (d), (e) and (f)) and the Board (12 CFR 226.43(c)(1), (c)(2), (d), (e), and (f)). For ease of reference, this PRA analysis refers to the section numbers of the requirements as published in the Bureau's Regulation Z at 12 CFR 1026.35(c).

[150] The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within the definition of ''collection of information.'' 5 CFR 1320.3(c)(2).

Additional Written Appraisal must meet the standards of the Written Appraisal. The Additional Written Appraisal is also required to be prepared by a certified or licensed appraiser different from the appraiser performing the Written Appraisal, and a copy of the Additional Written Appraisal must be provided to the consumer. The creditor must separately review the Additional Written Appraisal in order to qualify for the safe harbor provided in the 2013 Final Rule.

The Agencies continue to estimate that respondents will take, on average, 15 minutes for each HPML that is subject to 12 CFR 1026.35(c) to review the Written Appraisal and to provide a copy of the Written Appraisal. The Agencies further continue to estimate that respondents will take, on average, 15 minutes for each HPML that is subject to 12 CFR 1026.35(c) to investigate and verify the need for an Additional Written Appraisal and, where necessary, an additional 15 minutes to review the Additional Written Appraisal and to provide a copy of the Additional Written Appraisal. For the small fraction of loans requiring an Additional Written Appraisal, the burden is similar to that of the Written Appraisal.

The Agencies use the estimated burden from the PRA section of the 2013 Final Rule as the starting baseline for analyzing the impact the three exemptions in the proposal would have on PRA burden if adopted. The estimated number of appraisals per respondent for the FDIC, Board, OCC, and NCUA respondents has been updated to account for the exemption for qualified mortgages adopted in the 2013 Final Rule, which had not been accounted for in the table published at that time, as discussed in the PRA section of the Final Rule. *See* 78 FR 10368, 10430–31 (February 13, 2013). In addition, the impact of the proposed rule has been considered as follows:

First, the Agencies find that, currently, only a small minority of refinances involves cash out beyond the levels eligible for this proposed exemption, and as a result most refinance loans may qualify for this exemption. The Agencies therefore assume that the proposed exemption for certain refinances affects all the refinance loans discussed in the analysis under Section 1022(b)(2) of the 2013 Final Rule, and thus would eliminate all of the approximately 1,200 new appraisals that had been estimated to result from these refinances as a result of Final Rule (out of the 3,800 total new Written Appraisals estimated to occur in the Final Rule, or roughly 32%).

Second, based on the HMDA 2011 data, the Agencies find that 12 percent of all HPMLs are under $25,000. The Agencies believe that this implies that there will be, proportionately, 12 percent fewer appraisals based on the exemption for small dollar loans.

Third, the Agencies find that many of the transactions secured by existing manufactured homes and not land involve either refinances (all of which are conservatively assumed to be covered by the proposed exemption for certain refinances), or smaller dollar loans (which cover many types of manufactured housing transactions).[151] While covered HPMLs above smaller dollar levels that are secured by existing manufactured homes and not land may be newly-exempted, these transactions may need alternative valuations depending upon how the exemption is finalized. The Agencies therefore conservatively make no adjustment to the data in the first panel of Table 3 in the 2013 Final Rule as a result of that proposed exemption.[152]

The numbers above affect only the first panel in the Table 3 of the PRA section of the Final Rule. Refinances are not subject to the requirement to obtain an Additional Written Appraisal under the 2013 Final Rule, and it is conservatively assumed that none of the smaller dollar loans or the loans secured by manufactured homes sited on leased land were used to purchase homes being resold within 180 days with the requisite price increases to trigger that requirement (and thus the proposed exemptions for those loans will not reduce any burden associated with that requirement). Accordingly, only the first panel in Table 3 from the 2013 Final Rule is being updated and the estimates in the second and third panels remain the same. The updated table is reproduced below. The one-time costs are also not affected.

The following table summarizes the resulting burden estimates.

Estimated PRA Burden

SUMMARY OF PRA BURDEN HOURS FOR INFORMATION COLLECTIONS IN HPML APPRAISALS FINAL RULE IF THE EXEMPTIONS IN THE SUPPLEMENTAL PROPOSAL ARE ADOPTED [153]

| | Estimated number of respondents [a] | Estimated number of appraisals per respondent [154] [b] | Estimated burden hours per appraisal [c] | Estimated total annual burden hours [d] = (a*b*c) |
|---|---|---|---|---|
| **Review and Provide a Copy of Written Appraisal** | | | | |
| Bureau: [155] [156] [157] [158] | | | | |
| Depository Inst. > $10 B in total assets + Depository Inst. Affiliates | 132 | 3.73 | 0.25 | 123 |
| Non-Depository Inst. and Credit Unions | 2,853 | 0.23 | 0.25 | [159] 82 |
| FDIC | 2,571 | 0. | 0.25 | 93 |
| Board [160] | 418 | 0.18 | 0.25 | 19 |

[151] In particular, the Bureau believes that a substantial proportion of the existing manufactured homes that are sold would be sold for less than $25,000. According to the Census Bureau 2011 American Housing Survey Table C–13–OO, the average value of existing manufactured homes is $30,000. See *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C13OO&prodType = table*. The estimate includes not only the value of the home, but also appears to include the value of the lot where the lot is also owned. According to the AHS Survey, the term ''value'' is defined as ''the respondent's estimate of how much the property (house and lot) would sell for if it were for sale. Any nonresidential portions of the property, any rental units, and land cost of mobile homes, are excluded from the value. For vacant units, value represents the sales price asked for the property at the time of the interview, and may differ from the price at which the property is sold. In the publications, medians for value are rounded to the nearest dollar.'' See *http://www.census.gov/housing/ahs/files/Appendix%20A.pdf.*

[152] The Bureau assumes that manufactured housing loans secured solely by a manufactured home and not land mortgages are reflected in the data provided by the institutions to the datasets that are used by the Bureau (Call Reports for Banks and Thrifts, Call Reports for Credit Unions, and NMLS's Mortgage Call Reports), and thus are reflected in the Bureau's loan projections utilized for the table below. The Bureau is asking for comment if any institutions believe that this is not the case.

SUMMARY OF PRA BURDEN HOURS FOR INFORMATION COLLECTIONS IN HPML APPRAISALS FINAL RULE IF THE EXEMPTIONS IN THE SUPPLEMENTAL PROPOSAL ARE ADOPTED [153]—Continued

| | Estimated number of respondents [a] | Estimated number of appraisals per respondent [154] [b] | Estimated burden hours per appraisal [c] | Estimated total annual burden hours [d] = (a*b*c) |
|---|---|---|---|---|
| OCC | 1,399 | 0.16 | 0.25 | 55 |
| NCUA | 2,437 | 0.07 | 0.25 | 44 |
| Total | 9,810 | | | 416 |
| **Investigate and Verify Requirement for Additional Written Appraisal** | | | | |
| Bureau: | | | | |
| Depository Inst. > $10 B in total assets + Depository Inst. Affiliates | 132 | 20.05 | 0.25 | 662 |
| Non-Depository Inst. and Credit Unions | 2,853 | 1.22 | 0.25 | 435 |
| FDIC | 2,571 | 0.78 | 0.25 | 502 |
| Board | 418 | 0.97 | 0.25 | 102 |
| OCC | 1,399 | 0.85 | 0.25 | 299 |
| NCUA | 2,437 | 0.38 | 0.25 | 232 |
| Total | 9,810 | | | 2,232 |
| **Review and Provide a Copy of Additional Written Appraisal** | | | | |
| Bureau: | | | | |
| Depository Inst. > $10 B in total assets + Depository Inst. Affiliates | 132 | 0.64 | 0.25 | 21 |
| Non-Depository Inst. and Credit Unions | 2,853 | 0.04 | 0.25 | 14 |
| FDIC | 2,571 | 0.02 | 0.25 | 15 |
| Board | 418 | 0.03 | 0.25 | 3 |
| OCC | 1,399 | 0.02 | 0.25 | 8 |
| NCUA | 2,437 | 0.01 | 0.25 | 5 |
| Total | 9,810 | | | 66 |

**Notes:**
(1) Respondents include all institutions estimated to originate HPMLs that are subject to 12 CFR 1026.35(c).
(2) There may be an additional ongoing burden of roughly 75 hours for privately-insured credit unions estimated to originate HPMLs that are subject to 12 CFR 1026.35(c). The Bureau will assume half of the burden for non-depository institutions and the privately-insured credit unions.

Finally, as explained in the PRA section of the 2013 Final Rule, respondents must also review the instructions and legal guidance associated with the Final Rule and train loan officers regarding the requirements of the Final Rule. The Agencies continue to estimate that these one-time costs are as follows: Bureau: 36,383 hours; FDIC: 10,284 hours; Board 3,344 hours; OCC: 19,586 hours; NCUA: 7,311 hours.[161]

The Agencies have a continuing interest in the public opinion of our collections of information. At any time, comments regarding the burden

[153] Some of the intermediate numbers are rounded, resulting in Estimated Total Annual Hours not precisely matching up with columns a, b, and c.

[154] The ''Estimated Number of Appraisals Per Respondent'' reflects the estimated number of Written Appraisals and Additional Written Appraisals that will be performed solely to comply with the 2013 Final Rule. It does not include the number of appraisals that will continue to be performed under current industry practice, without regard to the Final Rule's requirements.

[155] The information collection requirements (ICs) in the 2013 Final Rule (and this proposed rule) will be incorporated with the Bureau's existing collection associated with Truth in Lending Act (Regulation Z) 12 CFR 1026 (OMB No. 3170–0015/3170–0026).

[156] The burden estimates allocated to the Bureau are updated using the data described in the Bureau's section 1022 analysis in the 2013 Final Rule and in the Bureau's section 1022 analysis above, including significant burden reductions after accounting for qualified mortgages that are exempt from the Final Rule, and burden reductions after accounting for loans in rural areas that are exempt from the Additional Written Appraisal requirement in the Final Rule.

[157] There are 153 depository institutions (and their depository affiliates) that are subject to the Bureau's administrative enforcement authority. In addition, there are 146 privately-insured credit unions that are subject to the Bureau's administrative enforcement authority. For purposes of this PRA analysis, the Bureau's respondents under Regulation Z are 135 depository institutions that originate either open or closed-end mortgages; 77 privately-insured credit unions that originate either open or closed-end mortgages; and an estimated 2,787 non-depository institutions that are subject to the Bureau's administrative enforcement authority. Unless otherwise specified, all references to burden hours and costs for the Bureau respondents for the collection under Regulation Z are based on a calculation that includes half of the burden for the estimated 2,787 non-depository institutions and 77 privately-insured credit unions.

[158] The Bureau calculates its burden by including both HMDA reporting creditors and the HMDA non-reporting creditors, based on the 2012 counts. The other Agencies only report the burden for HMDA reporting creditors, based on the 2011 counts.

[159] The Bureau assumes half of the burden for the non-depository mortgage institutions and the credit unions supervised by the Bureau. The FTC assumes the burden for the other half.

[160] The ICs in the 2013 Final Rule will be incorporated with the Board's Reporting, Recordkeeping, and Disclosure Requirements associated with Regulation Z (Truth in Lending), 12 CFR part 226, and Regulation AA (Unfair or Deceptive Acts or Practices), 12 CFR part 227 (OMB No. 7100–0199). The burden estimates provided in this proposed rule pertain only to the ICs associated with the Final Rule.

[161] As discussed in the PRA section of the 2013 Final Rule, estimated one-time burden continues to be calculated assuming a fixed burden per institution to review the regulations and fixed burden per estimated loan officer in training costs. As a result of the different size and mortgage activities across institutions, the average per-institution one-time burdens vary across the Agencies. *See* 78 FR 10368, 10432 (February 13, 2013).

estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to the OMB desk officer for the Agencies by mail to U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, or by the internet to *oira_submission@omb.eop.gov,* with copies to the Agencies at the addresses listed in the **ADDRESSES** section of this **SUPPLEMENTARY INFORMATION**.

*FHFA*

The 2013 Final Rule and this proposal do not contain any collections of information applicable to the FHFA, requiring review by OMB under the PRA. Therefore, FHFA has not submitted any materials to OMB for review.

**Text of Proposed Revisions**

Certain conventions have been used to highlight the Federal Reserve System's proposed revisions. New language is shown inside ►bold-faced arrows◄, while language that would be deleted is shown inside [bold-faced brackets].

**List of Subjects**

*12 CFR Part 34*

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

*12 CFR Part 226*

Advertising, Appraisal, Appraiser, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

*12 CFR Part 1026*

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

**Department of the Treasury**

**Office of the Comptroller of the Currency**

**Authority and Issuance**

For the reasons set forth in the preamble, the OCC proposes to amend 12 CFR Part 34, as previously amended at 78 FR 10368, 10432 (Feb. 13, 2013), effective January 18, 2014, as follows:

## PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* 5412(b)(2)(B) and 15 U.S.C. 1639h.

■ 2. Section 34.202 is amended by adding new paragraph (a) and redesignating current paragraphs (a) through (c) as paragraphs (b) through (d) as follows:

**§ 34.202 Definitions applicable to higher priced mortgage loans.**

* * * * *

(a) Business day has the same meaning as in 12 CFR 1026.2(a)(6).

* * * * *

■ 3. Section 34.203 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2), and (b)(5) and adding paragraphs (b)(2)(i), (b)(2)(ii), (b)(7) and (b)(8) as follows:

**§ 34.203 Appraisalsfor higher-priced mortgage loans.**

* * * * *

(b) *Exemptions.* The requirements in paragraphs (c) through (f) of this section do not apply to the following types of transactions:

(1) A qualified mortgage pursuant to 15 U.S.C. 1639c;

(2) A transaction:

(i) Secured by a new manufactured home; or

(ii) Secured solely by an existing manufactured home and not land.

* * * * *

(5) A loan with a maturity of 12 months or less, if the purpose of the loan is a ''bridge'' loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

* * * * *

(7) An extension of credit that is a refinancing, as defined under 12 CFR 1026.20(a) except that the creditor need not be the original creditor or a holder or servicer of the original obligation, and that meets the following criteria:

(i) The owner or guarantor of the refinance loan is the current owner or guarantor of the existing obligation;

(ii) The regular periodic payments under the refinance loan do not:

(A) Cause the principal balance to increase;

(B) Allow the consumer to defer repayment of principal; or

(C) Result in a balloon payment, as defined in 12 CFR 1026.18(s)(5)(i); and

(iii) The proceeds from the refinance loan are used solely for the following purposes:

(A) To pay off the outstanding principal balance on the existing obligation; and

(B) To pay closing or settlement charges required to be disclosed under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.;* and

(8) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in Appendix C to Subpart G—OCC Interpretations, *see* Section 34.203(b)(8) of Appendix C to Subpart G.

* * * * *

■ 4. In Appendix C to Subpart G—OCC Interpretations:

■ a. *Paragraph 34.203(b)(2)* is redesignated *Paragraph 34.203(b)(2)(i).*

■ b. Under redesignated *Paragraph 34.203(b)(2)(i),* paragraph 1 is revised.

■ c. New *Paragraph 34.203(b)(2)(ii)* is added.

■ d. New *Paragraph 34.203(b)(7)* is added.

■ e. New *Paragraph 34. 203(b)(8)* is added.

■ f. Under *Paragraph 34.203(f)(2),* paragraph 2 is removed and current paragraph 3 is redesignated paragraph 2.

The revisions read as follows:

**Appendix C to Subpart G—OCC Interpretations**

* * * * *

*34.203(b) Exemptions.*

*Paragraph 34.203(b)(2)(i).*

1. *Secured by new manufactured home.* A higher-priced mortgage loan secured by a new manufactured home is not subject to the appraisal requirements of Subpart G, regardless of whether the transaction is also secured by the land on which it is sited is not a ''higher-priced mortgage loan'' subject to the appraisal requirements of Subpart G.

*Paragraph 34.203(b)(2)(ii).*

1. *Secured solely by an existing manufactured home and not land.* A higher-priced mortgage loan secured by a manufactured home and not land is not subject to the appraisal requirements of Subpart G, regardless of whether the home is titled as realty by operation of state law.

* * * * *

*Paragraph 34.203(b)(7).*

*Paragraph 34.203(b)(7)(i).*

1. *Owner or guarantor.* The term ''owner'' in § 34.203(b)(7)(i)(A) means an entity that owns and holds a loan in its portfolio. ''Owner'' does not refer to an investor in a mortgage-backed security. The term ''guarantor'' in § 34.203(b)(7)(i)(A)(*1*) refers to the entity that guarantees the credit risk on a loan that the entity holds in a mortgage-backed security.

*Paragraph 34.203(b)(7)(ii).*

1. *Regular periodic payments.* Under § 34.203(b)(7)(ii), the regular periodic

payments on the refinance loan must not: result in an increase of the principal balance (negative amortization); allow the consumer to defer repayment of principal (*see* Official Staff Interpretations to the Bureau's Regulation Z, comment 43(e)(2)(i)–2); or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term ''substantially equal,'' see Official Staff Interpretations to the Bureau's Regulation Z, comment 43(c)(5)(i)–4. In addition, a single-payment transaction is not a refinancing meeting the requirements of § 34.203(b)(7) because it does not require ''regular periodic payments.''

*Paragraph 34.203(b)(7)(iii).*

1. *Permissible use of proceeds.* The exemption for a refinancing under § 34.203(b)(7) is available only if the proceeds from the refinancing are used exclusively for two purposes: paying off the consumer's existing first-lien mortgage obligation and paying for closing costs, including paying escrow amounts required at or before closing. If the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under § 34.203(b)(7) from the appraisal requirements in Subpart G.

*Paragraph 34.203(b)(8).*

1. *Threshold amount.* For purposes of § 34.203(b)(8), the threshold amount in effect during a particular one-year period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Every year, this comment will be amended to provide the threshold amount for the upcoming one-year period after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

2. *Qualifying for exemption—in general.* A transaction is exempt under § 34.203(b)(8) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

3. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 34.203(b)(8) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 34.203(b)(8) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of Subpart G with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of Subpart G applies. *See* § 34.203(b) and § 34.203(d)(7).

* * * * *

## Board of Governors of the Federal Reserve System

### Authority and Issuance

For the reasons stated above, the Board of Governors of the Federal Reserve System proposes to amend Regulation Z, 12 CFR Part 226, as previously amended at 78 FR 10368, 10437 (Feb. 13, 2013), effective January 18, 2014, as follows:

## PART 226—TRUTH IN LENDING ACT (REGULATION Z)

■ 5. The authority citation for part 226 continues to read as follows:

**Authority:** 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l), and 1639h; Pub. L. 111–24 section 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 6. Section 226.2 is amended by revising paragraph (a)(6) as follows:

**§ 226.2—Definitions and rules of construction.**

(a) *Definitions.* For purposes of this part, the following definitions apply:

* * * * *

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 1026.15 and 1026.23, and for purposes of §§ 226.19(a)(1)(ii), 226.19(a)(2), 226.31, ►226.43, ◄and 226.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

* * * * *

■ 7. Section 226.43 is amended by revising paragraph (b) as follows:

**§ 226.43—Appraisals for higher-priced mortgage loans.**

* * * * *

(b) *Exemptions.* The requirements in paragraphs [(c)(3) through (6)] ►(c) through (f)◄ of this section do not apply to the following types of transactions:

(1) A qualified mortgage as defined [in 12 CFR 1026.43(e)]►pursuant to 15 U.S.C. 1639c◄;

(2) A transaction►:

(i) S◄[s]ecured by a new manufactured home;► or

(ii) Secured solely by an existing manufactured home and not land.◄

* * * * *

(5) A loan with ►a◄ maturity of 12 months or less, if the purpose of the loan is a ''bridge'' loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

* * * * *

►(7) An extension of credit that is a refinancing, as defined under 12 CFR 1026.20(a), except that the creditor need not be the original creditor or a holder or servicer of the original obligation, and that meets the following criteria:

(i) The owner or guarantor of the refinance loan is the current owner or guarantor of the existing obligation;

(ii) The regular periodic payments under the refinance loan do not:

(A) Cause the principal balance to increase;

(B) Allow the consumer to defer repayment of principal; or

(C) Result in a balloon payment, as defined in 12 CFR 1026.18(s)(5)(i); and

(iii) The proceeds from the refinance loan are used solely for the following purposes:

(A) To pay off the outstanding principal balance on the existing obligation; and

(B) To pay closing or settlement charges required to be disclosed under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.;* and

(8) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in the official staff commentary to this paragraph (b)(8).◄

* * * * *

■ 8. In Supplement I to part 226, under *Section 226.43—Appraisals for Higher-Priced Mortgage Loans:*

■ a. *Paragraph 43(b)(2)* is redesignated *Paragraph 43(b)(2)(i).*

■ b. Under redesignated *Paragraph 43(b)(2)(i),* paragraph 1 is revised.

■ c. New *Paragraph 43(b)(2)(ii)* is added.
■ d. New *Paragraph 43(b)(7)* is added.
■ e. New *Paragraph 43(b)(8)* is added.
■ f. Under *Paragraph 43(f)(2),* paragraph 2 is removed and current paragraph 3 is redesignated as paragraph 2.

The revisions read as follows:

## Supplement I to Part 226—Official Interpretations

* * * * *

*Section 226.43—Appraisals for Higher-Priced Mortgage Loans*

* * * * *

43(b) Exemptions.

*Paragraph 43(b)(2)►(i)◄.*

1. *Secured by new manufactured home.* A ►higher-priced mortgage loan◄[transaction] secured by a new manufactured home► is not subject to the appraisal requirements of § 226.43, ◄regardless of whether the transaction is also secured by the land on which it is sited [is not a ''higher-priced mortgage loan'' subject to the appraisal requirements of § 226.43].

►*Paragraph 43(b)(2)(ii).*

1. *Secured solely by an existing manufactured home and not land.* A higher-priced mortgage loan secured by a manufactured home and not land is not subject to the appraisal requirements of § 226.43, regardless of whether the home is titled as realty by operation of state law.◄

* * * * *

► *Paragraph 43(b)(7).*

*Paragraph 43(b)(7)(i).*

1. *Owner or guarantor.* The term ''owner'' in § 226.43(b)(7)(i) means an entity that owns and holds a loan in its portfolio. ''Owner'' does not refer to an investor in a mortgage-backed security. The term ''guarantor'' in § 226.43(b)(7)(i) refers to the entity that guarantees the credit risk on a loan that the entity holds in a mortgage-backed security.

P*Paragraph 43(b)(7)(ii).*

1. *Regular periodic payments.* Under § 226.43(b)(7)(ii), the regular periodic payments on the refinance loan must not: Result in an increase of the principal balance (negative amortization); allow the consumer to defer repayment of principal (*see* Official Staff Interpretations to the Bureau's Regulation Z, comment 43(e)(2)(i)–2); or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term ''substantially equal,'' see Official Staff Interpretations to the Bureau's Regulation Z, comment 43(c)(5)(i)–4. In addition, a single-payment transaction is not a refinancing meeting the requirements of § 226.43(b)(7) because it does not require ''regular periodic payments.''

*Paragraph 43(b)(7)(iii).*

1. *Permissible use of proceeds.* The exemption for a refinancing under § 226.43(b)(7) is available only if the proceeds from the refinancing are used exclusively for two purposes: Paying off the consumer's existing first-lien mortgage obligation and paying for closing costs, including paying escrow amounts required at or before closing. If the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under § 226.43(b)(7) from the appraisal requirements in § 226.43.

*Paragraph 43(b)(8).*

1. *Threshold amount.* For purposes of § 226.43(b)(8), the threshold amount in effect during a particular one-year period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Every year, this comment will be amended to provide the threshold amount for the upcoming one-year period after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

2. *Qualifying for exemption—in general.* A transaction is exempt under § 226.43(b)(8) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

3. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 226.43(b)(8) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.43(b)(8) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 226.43 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 226.43 applies. *See* § 226.43(b) and § 226.43(d)(7).◄

* * * * *

*43(f) Copy of appraisals.*

* * * * *

*43(f)(2) Timing.*

* * * * *

[2. *''Receipt'' of the appraisal.* For appraisals prepared by the creditor's internal appraisal staff, the date of ''receipt'' is the date on which the appraisal is completed.].

►2◄[3]. *No waiver.* Regulation B, 12 CFR 1002.14(a)(1), allowing the consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to § 226.43. A consumer of a higher-priced mortgage loan subject to § 226.43 may not waive the timing requirement to receive a copy of the appraisal under § 226.43(f)(1).

* * * * *

## Bureau of Consumer Financial Protection

## Authority and Issuance

For the reasons stated above, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as previously amended, including on February 13, 2013 (78 FR 10368, 10442 (Feb. 13, 2013)), effective January 18, 2014, as follows:

## PART 1026—TRUTH IN LENDING ACT (REGULATION Z)

■ 9. The authority citation for part 1026 continues to read as follows:

**Authority:** 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 et seq.

■ 10. Section 1026.2 is amended by revising paragraph (a)(6) to read as follows:

### § 1026.2—Definitions and rules of construction.

(a) *Definitions.* For purposes of this part, the following definitions apply:

* * * * *

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under sections 1026.15 and 1026.23, and for purposes of sections 1026.19(a)(1)(ii), 1026.19(a)(2), 1026.31, 1026.35(c), and 1026.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

■ 11. Section 1026.35 is amended by revising paragraphs (c) heading, (c)(2)(i), (c)(2)(ii), (c)(2)(v) and adding paragraphs (c)(2)(ii)(A), (c)(2)(ii)(B), (c)(2)(vii), and (c)(2)(viii) to read as follows:

### § 1026.35—Requirements for higher-priced mortgage loans.

* * * * *

(c) *Appraisals.** * *

* * * * *

(2) * * *

(i) A qualified mortgage as defined pursuant to 15 U.S.C. 1639c;

(ii) A transaction:

(A) Secured by a new manufactured home; or

(B) Secured solely by an existing manufactured home and not land.

* * * * *

(v) A loan with a maturity of 12 months or less, if the purpose of the loan is a ''bridge'' loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

* * * * *

(vii) An extension of credit that is a refinancing, as defined under § 1026.20(a) except that the creditor need not be the original creditor or a holder or servicer of the original obligation, and that meets the following criteria:

(A) The owner or guarantor of the refinance loan is the current owner or guarantor of the existing obligation;

(B) The regular periodic payments under the refinance loan do not:

(*1*) Cause the principal balance to increase;

(*2*) Allow the consumer to defer repayment of principal; or

(*3*) Result in a balloon payment, as defined in § 1026.18(s)(5)(i); and

(C) The proceeds from the refinance loan are used solely for the following purposes:

(*1*) To pay off the outstanding principal balance on the existing obligation; and

(*2*) To pay closing or settlement charges required to be disclosed under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.;* and

(viii) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in the official staff commentary to this paragraph (c)(2)(viii).

* * * * *

■ 12. In Supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans:*

■ a. *Paragraph 35(c)(2)(ii)* is redesignated *Paragraph 35(c)(2)(ii)(A).*

■ b. Under redesignated *Paragraph 35(c)(2)(ii)(A),* paragraph 1 is revised.

■ c. New *Paragraph 35(c)(2)(ii)(B)* is added.

■ d. New *Paragraph 35(c)(2)(vii)* is added.

■ e. New *Paragraph 35(c)(2)(viii)* is added.

■ f. Under *Paragraph 35(c)(6)(ii),* paragraph 2 is removed and current paragraph 3 is redesignated paragraph 2.

The revisions read as follows:

## Supplement I to Part 1026—Official Interpretations

* * * * *

*Section 1026.35—Requirements for Higher-Priced Mortgage Loans*

* * * * *

35(c)(2) Exemptions

Paragraph 35(c)(2)(ii)(A)

1. *Secured by new manufactured home.* A higher-priced mortgage loan secured by a new manufactured home is not subject to the appraisal requirements of § 1026.35(c), regardless of whether the transaction is also secured by the land on which it is sited.

Paragraph 35(c)(2)(ii)(B)

1. *Secured solely by an existing manufactured home and not land.* A higher-priced mortgage loan secured by a manufactured home and not land is not subject to the appraisal requirements of § 1026.35(c), regardless of whether the home is titled as realty by operation of state law.

* * * * *

Paragraph 35(c)(2)(vii)

Paragraph 35(c)(2)(vii)(A)

1. *Owner or guarantor.* The term ''owner'' in § 1026.35(c)(2)(vii)(A) means an entity that owns and holds a loan in its portfolio. ''Owner'' does not refer to an investor in a mortgage-backed security. The term ''guarantor'' in § 1026.35(c)(2)(vii)(A)(*1*) refers to the entity that guarantees the credit risk on a loan that the entity holds in a mortgage-backed security.

Paragraph 35(c)(2)(vii)(B)

1. *Regular periodic payments.* Under § 1026.35(c)(2)(vii)(D), the regular periodic payments on the refinance loan must not: result in an increase of the principal balance (negative amortization); allow the consumer to defer repayment of principal (*see* comment 43(e)(2)(i)–2); or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term ''substantially equal,'' see comment 43(c)(5)(i)–4. In addition, a single-payment transaction is not a refinancing meeting the requirements of § 1026.35(c)(2)(vii) because it does not require ''regular periodic payments.''

Paragraph 35(c)(2)(vii)(C)

1. *Permissible use of proceeds.* The exemption for a refinancing under § 1026.35(c)(2)(vii) is available only if the proceeds from the refinancing are used exclusively for two purposes: Paying off the consumer's existing first-lien mortgage obligation and paying for closing costs, including paying escrow amounts required at or before closing. If the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under § 1026.35(c)(2)(vii) from the appraisal requirements in § 1026.35(c).

Paragraph 35(c)(2)(viii)

1. *Threshold amount.* For purposes of § 1026.35(c)(2)(viii), the threshold amount in effect during a particular one-year period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Every year, this comment will be amended to provide the threshold amount for the upcoming one-year period after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

2. *Qualifying for exemption—in general.* A transaction is exempt under § 1026.35(c)(2)(viii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

3. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 1026.35(c)(2)(viii) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.35(c)(2)(viii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 1026.35(c) applies. *See* § 1026.35(c)(2) and § 1026.35(c)(4)(vii).

* * * * *

Dated: July 9, 2013.

**Thomas J. Curry,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, July 10, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

Dated: July 9, 2013.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

By the National Credit Union Administration Board on July 9, 2013.

**Mary Rupp,**

*Secretary of the Board.*

Dated at Washington, DC, this 9th day of July 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Dated: July 8, 2013.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

[FR Doc. 2013–17086 Filed 8–7–13; 8:45 am]

**BILLING CODE 6210–01–P; 4810–33–P; 4810–AM–P; 8070–01–P; 7590–01–P**

# FEDERAL REGISTER

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Part III

## Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7 and 75

Refuge Alternatives for Underground Coal Mines; Proposed Rules

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Part 75**

**RIN 1219–AB84**

## Refuge Alternatives for Underground Coal Mines

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Limited reopening of the record.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is reopening the rulemaking record for MSHA's existing rule on Refuge Alternatives for the limited purpose of obtaining comments on the frequency for motor task (also known as ''hands-on'' training), decision-making, and expectations training for miners to deploy and use refuge alternatives in underground coal mines. The U.S. Court of Appeals for the District of Columbia Circuit remanded a training provision in the Refuge Alternatives rule, directing MSHA to explain the basis for requiring motor task (hands-on), decision-making, and expectations training annually rather than quarterly or to reopen the record and allow public comment. MSHA will review the comments to determine an appropriate course of action for the Agency in response to comments. MSHA will publish its response in the **Federal Register** addressing the public comments and either explaining the reason that it is leaving the existing rule unchanged or modifying the rule as the result of the public comment process.

**DATES:** Comments must be received by midnight Eastern Daylight Saving Time on October 7, 2013.

**ADDRESSES:** Comments and informational material may be sent to MSHA by any of the following methods. Clearly identify all submissions in the subject line of the message with ''RIN 1219–AB84''.

- *Federal E-Rulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441.
- *Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

**FOR FURTHER INFORMATION CONTACT:** George F. Triebsch, Director, Office of Standards, Regulations, and Variances, MSHA, at *triebsch.george@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

*Concurrent Request for Information (RFI)*

Elsewhere in this issue of the **Federal Register,** MSHA is publishing a Request for Information (RFI) asking for data, comments, and industry experience relevant to miners' escape and refuge during an underground coal mine emergency. Responses to the RFI will assist the Agency in determining if changes to existing practices and regulations would improve the overall strategy for miners' escape and survivability.

*Availability of Information*

MSHA will post all comments and information on the Internet without change, including any personal information provided. Access comments and information electronically at *http://www.regulations.gov* or on MSHA's Web site at *http://www.msha.gov/currentcomments.asp*. Review comments in person at the MSHA Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

To subscribe to receive email notification when MSHA publishes rulemaking documents in the **Federal Register,** go to *http://www.msha.gov/subscriptions/subscribe.aspx*.

### I. Statutory and Regulatory History

The Mine Improvement and New Emergency Response Act of 2006 (MINER Act) amended the Federal Mine Safety and Health Act of 1977 (Mine Act). Section 13 of the MINER Act directed the National Institute for Occupational Safety and Health (NIOSH) to conduct research and tests concerning the use of refuge chambers in underground coal mines, and to report the results to Congress and the Secretary of Labor (Secretary). The MINER Act directed the Secretary to respond to the NIOSH Report by reporting to Congress the actions, if any, that the Secretary intended to take based on the NIOSH Report, including proposing regulatory changes and the reasons for such actions.

NIOSH finalized its *Research Report on Refuge Alternatives for Underground Coal Mines* (NIOSH Report) in December 2007. The report drew from NIOSH experience, independent research and testing, and a survey of existing research related to mine refuge chambers.

In December 2007, Congress directed the Secretary to propose regulations, consistent with the recommendations of the NIOSH Report, requiring rescue chambers, or facilities that afford at least the same measure of protection, in underground coal mines not later than June 15, 2008, and to finalize the regulation not later than December 31, 2008 (Consolidated Appropriations Act of 2008, SEC. 112(b)).

MSHA published a notice of proposed rulemaking on June 16, 2008 (73 FR 34140) and the final rule on December 31, 2008 (73 FR 80656). The final rule established requirements for refuge alternatives in underground coal mines.

On January 13, 2009, the United Mine Workers of America (UMWA) petitioned the U.S. Court of Appeals for the District of Columbia Circuit (Court) to review MSHA's refuge alternatives final rule. The Court issued its decision on October 26, 2010, holding that the Secretary had not adequately explained the basis for requiring motor task (hands-on), decision-making, and expectations training only annually, rather than quarterly. The Court, therefore, remanded the training provision and ordered MSHA to either ''provide an explanation . . . or . . . reopen the record, and afford interested parties an opportunity to comment.'' [*United Mine Workers* v. *MSHA,* 626 F.3d 84, 86, and 90–94 (D.C. Cir. 2010)]

### II. Response to Court Order; Reopening the Record

In response to the Court's decision, this notice reopens the record and solicits public comment concerning the appropriate frequency for motor task (hands-on), decision-making, and expectations training on refuge alternatives. MSHA will review the comments to determine what actions, if any, the Agency will take in response to comments. MSHA will publish its response in the **Federal Register** addressing the public comments and either explaining the reason that the Agency is leaving the existing rule unchanged or modifying it as the result of the public comment process.

Motor task (hands-on) training consists of performing necessary activities associated with deploying and using a refuge alternative and its components. Decision-making training consists of learning when it is appropriate to use refuge alternatives. Expectations training consists of anticipating and experiencing the conditions that might be encountered during use of a refuge alternative (e.g., high heat and humidity, confined space).

NIOSH's Report recommended that each of these three types of training be required quarterly. The existing rule requires these three types of training annually and refers to them together as ''annual expectations training.'' The existing rule also requires decision-making training during quarterly training and drills through reviewing and discussing scenarios for mine emergency evacuation, and a quarterly review of the written procedures for deploying and using the refuge alternatives and components that are provided at the mine. Annual motor task training, decision-making training, and expectations training, together with quarterly mine emergency evacuation training and drills, was intended to instill the discipline, confidence, and skills necessary for miners to survive a mine emergency.

Since the refuge alternatives rule became effective on March 2, 2009, refuge alternatives have been placed in underground coal mines across the country. During this time, mine operators, miners, manufacturers, MSHA, state governments, NIOSH, and other parties have gained experience with training miners under the existing rule. To benefit from this experience, MSHA requests public comment on the frequency of training for miners to deploy and use refuge alternatives including, but not limited to, the following issues:

1. With what frequency does motor task (hands-on) training need to be conducted to permit miners to develop and maintain the skills necessary to reliably and effectively deploy and use a refuge alternative in an emergency? If you believe that such training on an annual basis is insufficient, describe ways, if any, that quarterly training could be enhanced to allow miners to develop and maintain the necessary motor task skills when provided in conjunction with annual training.

2. With what frequency does expectations training need to be conducted to give miners the experience necessary to reduce the level of panic and anxiety that otherwise may accompany the deployment and use of a refuge alternative in an emergency?

3. With what frequency does decision-making training need to be conducted so that, in an emergency, miners understand that the refuge alternative is a last resort when escape from the mine is impossible?

4. Describe any advantages, disadvantages, and costs that would be associated with conducting motor task (hands-on), decision-making, and/or expectations training more frequently than once per year.

5. Based on your experience, has the quarterly training on procedures for deploying and using the refuge alternative reinforced annual motor task (hands-on), decision-making, and expectations training? If so, how? If not, why not?

6. Based on your experience, how long does it take to provide quarterly training and annual motor task (hands-on), decision-making, and expectations training for the types of refuge alternatives used in your mine? What is the cost of each type of training, including training materials?

7. What problems or issues have miners encountered during required quarterly or annual training?

Please provide any other data or information that you think would be useful to MSHA as the Agency evaluates the effectiveness of its regulations and standards related to training miners to deploy and use refuge alternatives in underground coal mines.

**List of Subjects in 30 CFR Part 75**

Coal mines, Mine safety and health, Reporting and recordkeeping requirements, Safety, Training programs, Underground mining.

**AUTHORITY:** 30 U.S.C. 811.

Dated: August 2, 2013.

**Joseph A. Main,**

*Assistant Secretary of Labor for Mine Safety and Health.*

[FR Doc. 2013–19028 Filed 8–7–13; 8:45 am]

**BILLING CODE 4510–43–P**

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### 30 CFR Parts 7 and 75

**RIN 1219–AB79**

### Refuge Alternatives for Underground Coal Mines

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for information.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is requesting data, comments, and information on issues and options relevant to miners' escape and refuge that may present more effective solutions than the existing rule during underground coal mine emergencies. The Agency continues to reiterate that in the event of an underground coal mine emergency, a miner should seek escape as the first line of defense. Responses to this Request for Information (RFI) will assist MSHA in determining if changes to existing practices and regulations would improve the overall strategy for survivability, escape, and training to protect miners in an emergency. MSHA will review the comments to determine what actions, if any, the Agency will take in response to comments.

**DATES:** Comments must be received by midnight Eastern Daylight Saving Time on October 7, 2013.

**ADDRESSES:** Comments and informational material may be sent to MSHA by any of the following methods. Clearly identify all submissions in the subject line of the message with RIN 1219–AB79.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441.
- *Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

**FOR FURTHER INFORMATION CONTACT:** George F. Triebsch, Director, Office of Standards, Regulations, and Variances, MSHA, at *triebsch.george@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

*Concurrent Limited Reopening of the Record*

Elsewhere in this issue of the **Federal Register,** MSHA is publishing a notice of the Agency's limited reopening of the record on a training provision in the Refuge Alternatives rule published December 31, 2008 (73 FR 80656). In response to a challenge to the final rule, the U.S. Court of Appeals for the District of Columbia Circuit directed MSHA to explain the basis for requiring some training annually rather than quarterly, or to reopen the record and allow additional public comment on the issue.

*Availability of Information*

MSHA will post all comments and information on the Internet without change, including any personal information provided. Access comments and information electronically at *http://www.regulations.gov* or on MSHA's Web site at *http://www.msha.gov/currentcomments.asp.* Review comments in person at the MSHA Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

To subscribe to receive email notification when MSHA publishes rulemaking documents in the **Federal Register,** go to *http://www.msha.gov/subscriptions/subscribe.aspx*.

## I. Statutory and Regulatory History

The Mine Improvement and New Emergency Response Act of 2006 (MINER Act) amended the Federal Mine Safety and Health Act of 1977 (Mine Act). Section 2 of the MINER Act added a requirement that each underground coal mine operator develop and adopt an Emergency Response Plan (ERP) to improve accident preparedness and response at each mine and periodically update the ERP to reflect changes in the mine, advances in technology, or other relevant considerations. An ERP must provide for the evacuation of all persons endangered by an emergency and the maintenance of persons trapped underground when escape is impossible.

Section 13 of the MINER Act directed the National Institute for Occupational Safety and Health (NIOSH) to conduct research and tests concerning the use of refuge chambers in underground coal mines, and to report the results to Congress and the Secretary of Labor (Secretary). The MINER Act directed the Secretary to respond to the NIOSH Report by reporting to Congress the actions, if any, the Secretary intended to take based on the NIOSH Report, including proposing regulatory changes and the reasons for such actions.

NIOSH finalized its *Research Report on Refuge Alternatives for Underground Coal Mines* (NIOSH Report) in December 2007. The report drew from NIOSH experience, independent research and testing, and a survey of existing research related to mine refuge chambers.

In December 2007, Congress directed the Secretary to propose regulations, consistent with the recommendations of the NIOSH Report, requiring rescue chambers, or facilities that afford at least the same measure of protection, in underground coal mines not later than June 15, 2008, and to finalize the regulation not later than December 31, 2008 (Consolidated Appropriations Act of 2008, SEC. 112(b)).

MSHA published a notice of proposed rulemaking on June 16, 2008 (73 FR 34140) and the final rule on December 31, 2008 (73 FR 80656). The final rule established requirements for refuge alternatives in underground coal mines.

## II. Key Issues on Which MSHA Requests Comment

MSHA is seeking information on an overall strategy for survivability and escape in the event of an underground coal mine emergency, with escape as the primary option. Specifically, MSHA is requesting information on escape and refuge options that may present more effective solutions than the existing rules for miners' escape and safety. MSHA is also seeking information on effective options to the specific requirements in the existing rule. Comments should address escape strategies, refuge alternatives, training, and certification.

Since the refuge alternatives rule became effective on March 2, 2009, refuge alternatives have been placed in underground coal mines across the country. During this time, mine operators, miners, manufacturers, MSHA, state governments, NIOSH, and other parties have gained experience and perspective on how all aspects of a mine's emergency preparedness program must work together to provide effective escape and alternatives for refuge for miners. To benefit from this experience and perspective, MSHA has compiled a series of questions and requests to obtain additional information on the following topics: Training, In-place Shelters, Escape Methodology, Replacement of Brass Fittings, Part 7 Testing and Approval, Apparent Temperature, Physiological and Psychological Factors, and Additional Requests for Information.

Continued development of refuge equipment and technology is crucial to enhance the effectiveness of refuge alternatives and improve miners' chances of surviving a mine emergency. Responses to this RFI will assist MSHA in determining an appropriate course of action with respect to escape and refuge capabilities in underground coal mines.

In responding to this request for information, please consider the requirements of the Mine Act, as amended by the MINER Act; knowledge gained through NIOSH research and development; practical experience with existing technology; and other information, such as economic and technological feasibility. When responding, please address your comment to the topic and question number, for example, ''A. Miner Training on Refuge Alternatives, Question 1.'' Please explain the rationale supporting your views. To the extent possible, provide relevant information on which you rely, including past experience, studies and articles, and standard professional practices. Include any scientific or technical information or data related to shelter and escape methods or equipment, particularly advancements or improvements.

MSHA is particularly interested in data and information that would help the Agency evaluate any escape or refuge options. Where appropriate, include cost data, such as cost for additional boreholes as mining advances, or reductions in costs, such as eliminating the cost of carbon dioxide scrubbing when breathable air is supplied through a borehole or piping from the surface.

### *A. Miner Training on Refuge Alternatives*

The NIOSH Research Report on Refuge Alternatives for Underground Coal Mines (NIOSH Report, Dec. 2007) included recommendations on training miners on refuge alternatives. It separately addressed motor task (hands-on) training on the operation of a refuge alternative, decision-making training on when to use a refuge alternative, and expectations training to help miners reduce the level of panic and anxiety associated with using a refuge alternative. MSHA's training requirements in the Refuge Alternatives rule include the types of training addressed in the NIOSH Report.

MSHA's existing rule requires decision-making training during the quarterly mine emergency evacuation training and drills. Miners practice mine evacuation quarterly based on four varied scenarios (gas or water inundation, fire, explosion) and discuss when it is appropriate to use a refuge alternative. During the quarterly drill training, miners must also receive training on procedures for deploying and operating refuge alternatives and components. MSHA requires annual expectations training that includes hands-on (motor task) training in the deployment and operation of refuge alternatives and components under simulated, realistic mine emergency conditions. Again, this training emphasizes that the refuge alternative is an option only when escape is impossible.

MSHA requests comment on the effectiveness of training provided to miners under the existing rule for deploying (e.g., the tent component of a prefabricated unit); operating (e.g., the air monitoring or breathable air component); and using (e.g., the airlock) refuge alternatives and components.

1. At the time of the final rule, training units for refuge alternatives and components were not available. Now that some manufacturers offer training units, describe if and how such units have been incorporated into required refuge alternatives training and quarterly emergency mine evacuation training and drills. How effective are

these training units? What are the costs associated with the use of training units? What is the service life of a training unit?

2. What publicly-available or commercial training products and guidance have you used for training miners about the deployment and use of refuge alternatives? In your experience, were these training aids adequate? If so, what features of the products or guidance were the most useful or effective and why? Please provide specific suggestions for improvement, if appropriate.

3. Discuss training experiences, e.g., frequency of miners' training needs for in-place shelters and prefabricated units.

*B. In-Place Shelters*

For purposes of this request for information, an ''in-place shelter'' is a unit consisting of 15 pounds per square inch (psi) stoppings constructed prior to an event in a secure space with an isolated atmosphere that meets the refuge alternative requirements in 30 CFR parts 7 and 75, and that provides breathable air using either boreholes or pipelines from a surface installed compressor or fan. The in-place shelter has an unlimited air supply as opposed to 96 hours of air generally provided in cylinders. In addition to providing shelter until rescue, the in-place shelter could be used by miners during an evacuation as a ''stopping point'' to establish communications, to plan for the remainder of the escape, and possibly to refill personal air supplies, such as a self-contained breathing apparatus (SCBA), or to transfer to a fresh self-contained self-rescue (SCSR) device.

MSHA requests comment on the following related to the utility, advantages, and disadvantages of in-place shelters:

4. How could in-place shelters improve safety for escaping miners if they were incorporated into an evacuation and SCBA/SCSR storage plan? MSHA requests information on how to design an escape strategy using one or more in-place shelters to facilitate escape.

5. Stoppings for in-place shelters must be at least 15 psi. MSHA seeks information and supporting rationale on the adequacy of 15 psi stoppings to assure the post-explosion integrity of SCSRs (or SCBAs) stored in an in-place shelter located between adjacent escapeways.

6. Currently, refuge alternatives are required to be located within 1,000 feet of the face. Provide options for the location of in-place shelters that provide equivalent protection and include your rationale for the options.

7. If there is an in-place shelter located between the working face and the mouth of the section, what are the advantages and disadvantages of also requiring a prefabricated refuge alternative within 1,000 feet of the face?

8. Discuss (or list) the advantages, disadvantages, and restrictions on providing breathable air and communication through a borehole to an in-place shelter. Please share your experiences with implementation of in-place shelters, e.g., surface access rights, difficult terrain, limited access, other land uses, and cost.

9. What are appropriate design characteristics, including doors, for a stopping used to construct an in-place shelter to ensure an isolated atmosphere following a mine emergency?

10. Discuss the advantages and disadvantages of (1) an in-place shelter and (2) a prefabricated refuge alternative. Please include specific costs, such as the cost of installation of piping and associated components to an in-place shelter. What are the maintenance costs for (1) an in-place shelter and (2) a prefabricated refuge alternative?

11. MSHA standards require the doors of the in-place shelter to remain closed to maintain an isolated atmosphere and prevent the accumulation of methane or toxic gases and to protect the interior components from overpressure and flash fire. Describe how the in-place shelter could be ventilated during normal mining operations to prevent coal dust, smoke, and gas accumulations in the interior of the in-place shelter.

12. If mine air is used to ventilate the in-place shelter, what concentrations of carbon monoxide, methane, and other toxic gases should an in-place shelter be designed to purge following an explosion or fire to accomplish the initial purge in 20 minutes?

13. How can piping used to supply breathable air to an in-place shelter be protected from mining activity, as well as an explosion or fire? Explain what type of piping and protection should be used and why.

14. If the pipe is buried or covered, how could the operator maintain and inspect the pipe to ensure that breathable air can be provided in acceptable quantities to the in-place shelter?

15. Breathable air, air monitoring, and harmful gas removal components of refuge alternatives must be approved under 30 CFR part 7 by December 31, 2013. What are the specific costs for retrofitting existing prefabricated refuge alternatives to meet MSHA's part 7 approval criteria? How do these costs compare to the costs associated with installing in-place shelters?

16. Discuss technology that can be used to provide emergency communications to the in-place shelter by taking advantage of the protected piping system or borehole that delivers breathable air.

*C. Escape Methodology*

MSHA considers long-term shelter in a refuge alternative as a last resort to protect persons who are unable to escape from an underground coal mine. Refuge alternatives can also be used to facilitate escape by sustaining trapped miners until they receive communications regarding escape options. NIOSH stated, in its report on refuge alternatives, that—

> . . . the potential of refuge alternatives to save lives will only be realized to the extent that mine operators develop comprehensive escape and rescue plans that incorporate refuge alternatives.

Manufacturers are continuing to conduct research and develop improved SCSRs with greater than one-hour rated capacities. Additionally, the use of SCBAs in conjunction with refill stations may provide greater than one-hour rated breathing capacities. These developments may impact escape strategies in the future and potentially increase the distances permitted between SCSR caches or SCBA refill stations.

MSHA requests information related to incorporating in-place shelters into the escape strategy in mine evacuation plans.

17. If an SCBA system is used, discuss the feasibility of using full-face respirator masks, recognizing the need for fit testing and for miners to be clean shaven.

18. Please provide information regarding how maximum distances between in-place shelters could be affected by using improved SCSRs or SCBAs with greater than one-hour ratings.

*D. Replacement of Brass Fittings*

On January 9, 2011, a catastrophic failure occurred in an oxygen cylinder fitting connected to the breathable air system in a refuge alternative located in an underground coal mine. Subsequently, a brass fitting failure in a second refuge alternative was discovered, and MSHA learned that cracks had been discovered in both the brass fittings and cylinder valves of a third refuge alternative.

The refuge alternative manufacturer, state inspectors, and MSHA examined the refuge alternatives to determine the

cause of the failures. MSHA sent representative samples of the brass fittings to the OSHA Salt Lake City Technical Center (SLTC) laboratory. The OSHA report stated the following:

> The analysis performed at the SLTC revealed that the cracks are a result of stress-corrosion cracking (SCC) and the evidence suggests that dezincification is a contributing factor. The stress-corrosion cracks that have formed in the fittings and valves indicate that they are on the path to failure. The demonstrated short and unpredictable service life of the CGA brass valves and fittings is troublesome. The current situation left unchecked represents a safety hazard.

As a result of the premature failures of brass valves and fittings on breathable air components, the West Virginia Office of Miners' Health Safety & Training (WVOMHS&T) issued an order on October 14, 2011 (Order), requiring the refitting of state-approved underground mine shelters. The Order generally established an October 31, 2011 deadline for manufacturers to inspect all mine shelters. In accordance with the Order, shelters found to contain valves or fittings showing signs of corrosion, stress corrosion cracking, or having improper dimensions were to be taken out of service immediately, unless the manufacturer provided a signed statement that the shelter is safe to remain in service until the scheduled refit date. The Order further required replacement of all brass compressed gas cylinder valves and associated fittings used in mine shelters by the scheduled refit date.

MSHA agreed with WVOMHS&T in recognizing the safety hazard associated with existing brass valves and fittings and concurred with the procedures established in the Order. The Order affected all West Virginia-approved refuge alternatives regardless of the state in which the units are used; however, refuge alternatives that are not West Virginia-approved are not subject to the Order. MSHA issued a policy consistent with the WVOMHS&T Order to address the hazard with respect to refuge alternatives in all underground coal mines. The policy provides for timely replacement of brass valves and fittings.

MSHA requests comments and information related to the replacement of brass fittings and valves in refuge alternatives.

19. Brass fittings and cylinder valves used in refuge alternatives have exhibited degradation over time and are currently being replaced by fittings and valves made from materials such as Monel and stainless steel. Please provide information regarding the need for a predictive maintenance or replacement schedule for these new fittings and valves to guard against leakage or failure and the cost to retrofit and maintain these units. Include information from specific experience, if applicable.

*E. Part 7 Testing and Approval*

The approval requirements for refuge alternatives are included in 30 CFR part 7—Testing by Applicant or Third-Party. The regulation for refuge alternatives provides approval criteria, allows alternatives to the requirements, and promotes the development of new technology.

MSHA has a 20-year history of administering the part 7 approval program. Subpart L of part 7 requires that an applicant or a third-party must test the refuge alternative or component. The applicant, usually a manufacturer, provides the required information and test results to MSHA to demonstrate that the refuge alternative or component meets the applicable technical requirements and test criteria. MSHA will issue an approval for a refuge alternative or one of its components based on the Agency's evaluation of the information and test results submitted with the approval application. The MSHA approval under part 7 assures operators and miners that the refuge alternative can be used safely and effectively in underground coal mines and that the components can be used safely.

MSHA requests comment on the following testing and approval issues:

20. Based on your experience, what issues have arisen during the operation, calibration, or maintenance of gas monitoring equipment?

21. Based on your experience with the part 7 approval requirements for refuge alternatives and components, provide other options that offer equivalent product performance, thus assuring equivalent or greater protection for miners.

*F. Apparent Temperature*

Apparent temperature is a measure of relative discomfort due to the combined effects of air movement, heat, and humidity on the human body. The likelihood of adverse effects from heat may vary with a person's age, health, and body characteristics; however, core body temperatures in excess of 104°F are considered life threatening, with severe heat exhaustion or heat stroke possible after prolonged exposure or significant physical activity. NIOSH recommended that the apparent temperature within the occupied refuge alternative should not exceed 95°F.

Existing MSHA regulations require that the apparent temperature in a refuge alternative must be controlled so that, when it is used in accordance with the manufacturer's instructions and defined limitations, the apparent temperature in the fully-occupied refuge alternative does not exceed 95°F. MSHA requires that ERPs specify the maximum mine air temperature at each location where a refuge alternative will be placed, as well as the maximum mine air temperature under which the refuge alternative is designed to operate when the unit is fully occupied.

MSHA requests the following information related to the apparent temperature in a fully-occupied refuge alternative:

22. Provide information on the availability, use, and cost of air conditioning units in refuge alternatives to control apparent temperatures.

23. Please provide information on the effects outside air temperatures have on the apparent temperatures in in-place shelters; include your rationale.

*G. Physiological and Psychological Factors*

MSHA developed the refuge alternatives rule based on Agency data and experience, NIOSH recommendations, research on available and developing technology, state regulations, and comments and testimony from the mining community. MSHA considers refuge alternatives as a last resort to protect persons who are unable to escape from an underground coal mine in the event of an emergency. When miners have no other option and must endure the conditions in refuge alternatives for up to 96 hours, the physical and mental stress of the occupants must be considered.

During rulemaking, several commenters expressed concern that refuge alternatives have not been proven effective in an actual mine and that human subject testing is necessary to assure proper functioning and durability of the units. In the preamble to the final rule, on the issue of human subject testing, MSHA stated:

> * * * MSHA is aware that NIOSH is developing a protocol and seeking approval for human subject testing. If approved, the results of this human subject testing will not be available prior to the effective date of the final rule. The Agency [MSHA] will consider the results of such testing for future rulemaking, if warranted. (73 FR 80658)

NIOSH's work in this area is ongoing. At this time, MSHA is not aware of any 96-hour human subject testing conducted in the United States. However, MSHA is aware of shorter duration tests, and tests where miners were allowed to enter and leave the refuge alternative, that have

been conducted in the United States in the years since the final rule.

MSHA requests comment on the following related to the physiological and psychological factors for miners in a refuge alternative:

24. Provide comments on miners' confidence in the effectiveness of existing refuge alternatives or their willingness to use one during an emergency.

25. Recognizing that an in-place shelter would allow direct connection to the surface, through which unlimited breathable air and communications can be provided, and would not require a miner to depend on a carbon dioxide scrubbing system, how might the use of in-place shelters affect a miner's psychological and physiological well-being when escape is impossible?

26. Regarding space and volume available to miners, what advantages do in-place shelters provide over prefabricated units with regard to the psychological and physiological well-being of trapped miners? Please be specific.

*H. Additional Requests for Information*

Since the MINER Act was passed, MSHA, mine operators, miners, refuge alternative manufacturers, and states have gained experience in the deployment, use, maintenance, and inspection of refuge alternatives. Based on this experience, MSHA requests comment on the following issues related to the existing refuge alternative rule:

27. What innovations in the areas of escape and refuge should be considered to improve miner safety?

28. Some manufacturers conduct inspections of prefabricated refuge alternatives at regular intervals, such as every 6 months. Based on your experience, what would be an appropriate examination interval for refuge alternatives and what should this examination include? Please be specific and include detailed rationale for your recommendation. Who should conduct these examinations and what qualifications or training should the person conducting these examinations possess?

29. Currently, state-approved, prefabricated structural components that were accepted in ERPs prior to March 2, 2009, are grandfathered until December 31, 2018. What would be the impact of changing the grandfathering allowance for structural components and requiring an earlier date for part 7 approvals?

30. How can an inflatable stopping (to be installed post-event) be an effective and safe means for creating a protected, secure space with an isolated atmosphere? What factors should MSHA consider when determining whether to allow the use of inflatable stoppings in conjunction with boreholes or piping to provide effective shelter?

31. Please provide information regarding the prevention of oxygen enrichment (greater than 23%) in the interior atmosphere of a refuge alternative when only oxygen is provided by breathable air components over a period of 96 hours.

Please provide any other data or information that you think would be useful to MSHA as the Agency evaluates the effectiveness of its regulations and standards related to refuge alternatives in underground coal mines.

**List of Subjects**

*30 CFR Part 7*

Coal mines, Incorporation by reference, Mine safety and health, Reporting and recordkeeping requirements, Underground mining.

*30 CFR Part 75*

Coal mines, Mine safety and health, Reporting and recordkeeping requirements, Safety, Training programs, Underground mining.

**Authority:** 30 U.S.C. 811.

Dated: August 2, 2013.

**Joseph A. Main,**

*Assistant Secretary of Labor for Mine Safety and Health.*

[FR Doc. 2013–19029 Filed 8–7–13; 8:45 am]

BILLING CODE 4510–43–P

# Reader Aids

**Federal Register**

Vol. 78, No. 153

Thursday, August 8, 2013

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| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6064** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |
| TTY for the deaf-and-hard-of-hearing | **741–6086** |

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## FEDERAL REGISTER PAGES AND DATE, AUGUST

46491–46798 ..... 1
46799–47152 ..... 2
47153–47526 ..... 5
47527–48024 ..... 6
48025–48282 ..... 7
48283–48598 ..... 8

## CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Executive Orders:**
13650 ..... 48029
**Administrative Orders:**
Memorandums:
Memorandum of July 29, 2013 ..... 48027
Presidential Determinations:
No. 2013–11 of July 26, 2013 ..... 48025

**5 CFR**

**Proposed Rules:**
890 ..... 48337

**7 CFR**

6 ..... 46491
272 ..... 46799
923 ..... 48283
930 ..... 46494
946 ..... 48285
1410 ..... 48035
**Proposed Rules:**
457 ..... 47214
920 ..... 46823

**9 CFR**

**Proposed Rules:**
2 ..... 47215
3 ..... 47215

**10 CFR**

95 ..... 48037
**Proposed Rules:**
95 ..... 48076
810 ..... 46829

**12 CFR**

1076 ..... 47153
**Proposed Rules:**
34 ..... 48548
46 ..... 47217
226 ..... 48548
252 ..... 47217
325 ..... 47217
741 ..... 46850
748 ..... 46850
1026 ..... 48548

**13 CFR**

**Proposed Rules:**
115 ..... 46528

**14 CFR**

39 ..... 47527, 47529, 47531, 47534, 47537, 47543, 47546, 47549, 48286
71 ..... 46497, 48290, 48291, 48292, 48293, 48294, 48295, 48296, 48297,48298, 48299, 48300, 48301, 48302, 48303
**Proposed Rules:**
39 ..... 46532, 46536, 46538, 46540, 46543, 47228, 47230, 47233, 47235, 47581, 48339
71 ..... 47154, 48078, 48079, 48080, 48081

**17 CFR**

37 ..... 47154
200 ..... 46498

**18 CFR**

**Proposed Rules:**
410 ..... 47241

**19 CFR**

351 ..... 46799

**20 CFR**

404 ..... 46499
416 ..... 46499

**21 CFR**

101 ..... 47154

**22 CFR**

126 ..... 47179
**Proposed Rules:**
303 ..... 48083

**23 CFR**

**Proposed Rules:**
636 ..... 46546

**26 CFR**

1 ..... 46502, 46805, 46807, 46851, 46854
**Proposed Rules:**
1 ..... 46851, 46854

**29 CFR**

1960 ..... 47180
**Proposed Rules:**
1908 ..... 48342

**30 CFR**

**Proposed Rules:**
7 ..... 48593
75 ..... 48592, 48593
1202 ..... 48343
1205 ..... 48343
1210 ..... 48343

**32 CFR**

199 ..... 48303
706 ..... 48042
**Proposed Rules:**
199 ..... 48366, 48367

**33 CFR**

100 ..... 46809, 47555, 48311

117 .....47191, 48314, 48315
165 .....46809, 46810, 46813, 46815, 47555, 47567, 48043, 48044, 48046, 48315
**Proposed Rules:**
117.....47242
165.....46855, 48085

**34 CFR**

Subtitle A .....47980
668.....48048
**Proposed Rules:**
Ch. III.....46858, 46860

**36 CFR**

**Proposed Rules:**
1250.....47245

**40 CFR**

9.....48051
52 .....46504, 46514, 46516, 46520, 46521, 46816, 47572, 48318, 48323, 48326
81 .....47191
180.....48068
300.....47205
721.....48051
**Proposed Rules:**
52 .....46549, 46552, 46861, 47253, 47259, 47264, 48087, 48103, 48373
81.....48087, 48103
300.....47267

**42 CFR**

412.....47860
413.....47936
418.....48234
424.....47936

**43 CFR**

1820.....46525
**Proposed Rules:**
2.....46555

**45 CFR**

5b.....47210
**Proposed Rules:**
Subtitle A .....46558

**46 CFR**

**Proposed Rules:**
401.....48374

**47 CFR**

54.....47211

**48 CFR**

Ch.1 .....46780, 46796
2.....46781, 46795
4.....46782
8.....46783
12.....46783
15.....46783
16.....46792
17.....46783
22.....46795
25.....46782, 46792
42.....46783
49.....46783
52 .....46782, 46792, 46794, 46795
252.....48331, 48333
**Proposed Rules:**
42.....48123
212.....48397
216.....48397
232.....48403
246.....48407
247.....48397
252 .....48397, 48403, 48407

**49 CFR**

95.....48334
**Proposed Rules:**
192.....46560
392.....48125
396.....48125

**50 CFR**

622 .....46820, 47212, 47574
648.....47580
665.....48075
**Proposed Rules:**
17 .....46862, 46889, 47060, 47109, 47268, 47582, 47590, 47612, 47832
20.....47136
224.....48134
226.....46563, 47635
648.....46897, 46903

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

**Last List July 29, 2013**

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